



The DFSA Rulebook

Takeover Rules Module

(TKO)

Contents

The contents of this module are divided into the following chapters sections and appendices:

1	INTRODUCTION AND THE TAKEOVER PRINCIPLES.....	1
1.1	The takeover rules.....	1
1.2	Application of these rules	1
1.3	Appeals to the Regulatory Appeals Committee.....	3
1.4	Interpretation and definitions	3
1.5	The takeover principles	4
2	THE APPROACH, ANNOUNCEMENTS AND ADVICE.....	7
2.1	The approach	7
2.2	Secrecy before announcements.....	7
2.3	Announcement of a possible bid	8
2.4	Announcement of a firm intention to make a bid.....	9
2.5	Announcements in other circumstances	11
2.6	Mode of publication of an announcement	11
2.7	Governing bodies to obtain independent advice	12
3	RESTRICTED DEALINGS BEFORE AND DURING AN OFFER PERIOD.....	13
3.1	Acquisitions before a bid period	13
3.2	Acquisitions during a bid period	13
3.3	Restrictions on the sale of shares during a bid period	13
3.4	Disclosure of dealings during a bid period	14
4	MANDATORY BIDS	16
4.1	Requirement for a mandatory bid.....	16
4.2	Conditions and consents	18
4.3	Consideration to be offered.....	18
4.4	Obligations of directors selling shares.....	19
4.5	Restrictions on exercise of control by a bidder.....	19
5	THE TERMS OF A VOLUNTARY BID	20
5.1	The acceptance condition	20
5.2	Requirement for a bid in cash	20
5.3	Subjective conditions.....	20



TAKEOVER RULES (TKO)

6	PROVISIONS APPLICABLE TO ALL BIDS	22
6.1	Where there is more than one class of shares	22
6.2	Appropriate bid for options, convertibles and rights	22
6.3	Special deals with favourable conditions	23
6.4	Announcement of acceptance levels	23
6.5	Use of proxies and authorities in relation to acceptances	24
7	CONDUCT DURING A BID	25
7.1	Standards and responsibilities for care and accuracy	25
7.2	Distribution of documents and announcements	25
7.3	Equality of information	26
7.4	Restrictions on frustrating action	26
8	DOCUMENTS ISSUED BY GOVERNING BODIES	28
8.1	The general obligation as to information	28
8.2	Bid document and target circular disclosures	28
8.3	Documents subsequently sent to shareholders	28
8.4	Availability of documents for inspection	29
9	PROFIT FORECASTS	31
9.1	References to profit forecasts	31
9.2	Standards of care	31
9.3	Assumptions	31
9.4	Reports in connection with profit forecasts	32
9.5	Statements to be treated as profit forecasts	32
9.6	Miscellaneous rules relating to forecasts	33
10	ASSET VALUATIONS	34
10.1	Valuations in connection with a bid	34
10.2	Opinion and consent letters	35
11	BID TIMING AND REVISION	36
11.1	Filing and posting the bid document and target circular	36
11.2	Closing dates and extensions	36
11.3	Settlement of consideration	38
11.4	Revision of bids	38
11.5	Alternative bids	39
11.6	Withdrawal of acceptances	39
12	RESTRICTIONS FOLLOWING BIDS	40
12.1	Delay of twelve months	40
13	PARTIAL BIDS	41



TAKEOVER RULES (TKO)

13.1	Application of this chapter	41
13.2	DFSA consent required	41
13.3	Restrictions and requirements.....	41
14	REDEMPTION OR ACQUISITION OF OWN CAPITAL.....	43
14.1	Redemption or acquisition of own shares	43
14.2	Other methods of bid.....	44
15	FEES	45
15.1	Imposition and calculation of a fee	45
15.2	Responsibility and timing for payment.....	45
16	WAIVERS OR MODIFICATIONS	47
16.1	Applications to waive or modify the Markets Law 2004 and rules.....	47
17	ENFORCEMENT.....	49
17.1	Applicable provisions.....	49
App1	CONTENTS OF BID DOCUMENTS	50
A1.1	Disclosure as to the bidder and its intentions.....	50
A1.2	Financial Disclosure in Securities Exchange Bid	50
A1.3	Disclosure of shareholdings and dealings.....	51
A1.4	Other disclosures	52
App2	CONTENTS OF TARGET CIRCULARS.....	55
A2.1	Disclosure in initial target circular	55
A2.2	Financial disclosure.....	56
App3	CONTENTS OF SUBSEQUENT DOCUMENTS	57
A3.1	Obligation to update material information.....	57
App4	SCALE OF FEES.....	58

1 INTRODUCTION AND THE TAKEOVER PRINCIPLES

1.1 The takeover rules

1.1.1 The Rules in this Module (TKO) comprise the Takeover Rules referred to in the Markets Law 2004.

1.1.2 Unless the context otherwise provides, a reference to “Rules” in this Module is a reference to these Takeover Rules.

Guidance

1. The Rules in this Module (TKO) are made in accordance with Article 34 of the Markets Law 2004.
2. The purpose of these Rules is set out in Article 33 of the Markets Law 2004, being to:
 - a. ensure that a Takeover takes place in an efficient, competitive, fair and informed market;
 - b. ensure that shareholders are treated fairly and shareholders of the same class are treated the same; and
 - c. provide an orderly framework within which a Takeover is conducted.
3. The Rules throughout this Module are based upon and should be read in conjunction with the Takeover Principles as prescribed in Section 1.5.
4. The Rules are not concerned with the financial or commercial advantages or disadvantages of a Takeover. These are matters for the Bidders and Targets and their shareholders.
5. When there is any doubt whatsoever as to whether a proposed course of conduct is in accordance with the Takeover Principles or with other more specific Rules, parties or their advisers should consult the DFSA in advance to obtain guidance.
6. Takeover transactions may from time to time be subject to the dual jurisdiction of the DFSA and a regulator of another jurisdiction. In such cases, early consultation should take place with the DFSA as to how any conflicts between the relevant rules and regulations may be resolved. In appropriate circumstances, a waiver or modification from these Rules may be appropriate – see the Guidance to Chapter 16.

1.2 Application of these rules

1.2.1 The Rules in this Module (TKO) apply to Persons to whom the Markets Law 2004 applies, and in particular:

- (a) Reporting Entities as Targets or potential Targets under the Rules;



TAKEOVER RULES (TKO)

- (b) Bidders or potential Bidders and any Person acting in concert with them;
- (c) Directors and officers of Targets and Bidders; and
- (d) professional advisers in relation to a Takeover transaction.

Guidance

1. The Rules apply to Takeover transactions, however effected, including:
 - a. partial Bids;
 - b. Bids by a parent entity for Shares in its subsidiary; and
 - c. certain other transactions where control of a Reporting Entity is to be obtained or consolidated.
2. Each Director of a Bidder and of the Target has a responsibility to ensure, so far as he is reasonably able, that these Rules are complied with in the conduct of a Bid. Financial advisers have a particular responsibility to comply with the Rules and to ensure, so far as they are reasonably able, that a Bidder and the Target, and their respective Directors, are aware of their responsibilities under the Rules and will comply with them. Financial advisers should also be mindful of conflicts of interest.

1.2.2 Subject to Rule 1.2.3, the Rules apply to offers or bids for Shares of a Reporting Entity, and also to Convertibles, options and subscription rights relating to a Reporting Entity as provided Section 6.2 of the Rules.

1.2.3 The Rules do not apply in respect of offers or bids for Shares of a Person who is a Reporting Entity solely by reason of one or more of the following:

- (a) the Person has filed a prospectus with the DFSA under Article 15 of the Markets Law for the sole purpose of issuing Securities that:
 - (i) are not Shares nor Securities that are convertible to Shares; and
 - (ii) do not confer, directly or indirectly, a voting right;
- (b) the Person has or had, at any time, Securities admitted to an Official List of Securities where such Securities:
 - (i) are not Shares nor Securities that are convertible to Shares; and
 - (ii) do not confer, directly or indirectly, a voting right;or
- (c) the Person merged with or acquired a Reporting Entity to which, by reason of this Rule or otherwise, these Rules do not apply.

Guidance

In exceptional cases, the DFSA may waive or modify the application of the Rules if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules. For example, the DFSA may, in appropriate circumstances, waive the application of the Rules in relation to a Person who is a Reporting Entity solely by reason of the DFSA having declared that the Person is a Reporting Entity.

1.3 Appeals to the Regulatory Appeals Committee

1.3.1 The Regulatory Appeals Committee has jurisdiction to hear and determine an appeal in relation to any decision of the DFSA under these Rules.

1.3.2 An appeal under Rule 1.3.1 may be made by:

- (a) an applicant for a decision; or
- (b) a Bidder or Target whose interests may be materially affected by a decision.

1.4 Interpretation and definitions

1.4.1 For the purpose of these Rules, Persons “acting in concert” comprise Persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition by any of them of Shares in a Reporting Entity, to obtain or consolidate control of that Reporting Entity.

Guidance

The DFSA will presume (without limiting the general application of the definition in the Markets Law) that the following Persons will be “acting in concert” with other Persons in the same category unless the contrary is established:

- a. any of the following with each other: a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, (for this purpose ownership or control of 20% or more of the equity Share capital of a company is regarded as the test of associated company status);
- b. a company with any of its Directors (together with their close relatives and related trusts);
- c. a company with any of its pension funds;
- d. an investment manager with any investment company, unit trust, or other Person whose investments such investment manager manages on a discretionary basis, in respect of relevant investment accounts;
- e. a financial or other professional adviser (including a stockbroker) with its client in respect of the Shareholdings of the adviser and Persons controlling, controlled by or under the same control as the adviser; and
- f. Directors of a Reporting Entity which is subject to a Bid or where the Directors have reason to believe a bona fide Bid for their Reporting Entity may be imminent.

1.4.2 For the purpose of these Rules, a purchase for “cash” includes a contract or arrangement where the consideration consists of a debt instrument capable of being redeemed in less than 3 years.

1.4.3 For the purpose of these Rules, an investment manager or stockbroker will be “connected” with a Bidder or the Target, as the case may be, if the investment



TAKEOVER RULES (TKO)

manager and/or stockbroker is controlled by, controls or is under the same control as:

- (a) a Bidder;
- (b) the Target;
- (c) any bank or financial or other professional advisers to a Bidder or the Target; or
- (d) an investor in a consortium (for example, through a special purpose vehicle formed for the purpose of making a Bid).

1.4.4 For the purpose of these Rules, “control” means a holding, or aggregate holdings, of Shares carrying 30% or more of the voting rights of a Person, irrespective of whether the holding or holdings give de facto control, and includes control arising from acting in concert with another person or other persons.

1.4.5 For the purpose of these Rules, the “posting” of a document is effected by ordinary postal service delivery or by any other process of delivery which is reasonably certain to bring the contents of the document to the attention of the intended individual addressee.

1.4.6 For the purpose of these Rules, a “purchase” or other acquisition of Shares, where relevant, includes the purchase of Shares assented to a Bid.

1.4.7 For the purpose of these Rules, a “right” over Shares includes any right acquired by a Person by virtue of an agreement to purchase Shares or an option to acquire Shares or an irrevocable commitment to accept a Bid to be made by him or an agreement to acquire voting rights or general control of them.

1.4.8 For the purpose of these Rules, a “Securities Exchange Bid” is a Bid in which the consideration includes Securities of the Bidder or any other Person.

1.4.9 For the purpose of these Rules, “voting rights” means all the voting rights attributable to the Share capital of a Reporting Entity which are currently exercisable at a general meeting.

Guidance

Where a waiver or modification is sought as per Guidance Note 1 to Rule 4.1.3, consideration should also be given as to whether the definition of “voting rights” will require consequential modification.

1.5 The takeover principles

1.5.1 All shareholders of a Target must be treated fairly by a Bidder and all shareholders of the same class must be treated equally.

- 1.5.2** During the course of a Bid, or when a Bid is contemplated, neither a Bidder, nor a Target, nor any of their respective advisers may furnish information to some shareholders which is not available to all shareholders. This principle does not apply to the furnishing of information in confidence by a Target or its adviser to a bona fide potential Bidder or its adviser, or vice versa.

Guidance

Where information is disclosed in confidence to a Bidder or Target, a Director may receive material information in his capacity as Director. That Director, or his associates, may also hold shares in the Bidder or Target in a personal capacity. In these circumstances, a Director should be mindful of his duties, including in relation to conflicts of interests and misuse of position. Directors should also be well aware of restrictions and prohibitions under the Markets Law 2004 including Article 42 relating to insider dealing.

- 1.5.3** A Bidder must only announce a Bid:
- (a) after the most careful and responsible consideration; and
 - (b) when the Bidder has every reason to believe that it can and will continue to be able to implement the Bid.
- 1.5.4** A Bidder and Target must:
- (a) give shareholders of the Target sufficient time and information to enable them to reach a properly informed decision on a Bid; and
 - (b) not withhold any material information from the shareholders of the Target.
- 1.5.5** Any document or advertisement addressed to shareholders containing information or advice from a Bidder or the Target or their respective Governing Bodies or advisers must be prepared with the highest standards of fairness, care and accuracy.
- 1.5.6** Bidders and Targets must use every endeavour to prevent the creation of a false market in the Securities of a Bidder or the Shares of a Target. Parties involved in Bids must take care that statements are not made which may mislead shareholders or the market.
- 1.5.7** At no time after a bona fide Bid has been communicated to the Governing Body of a Target, or after the Governing Body of a Target has reason to believe that such a Bid might be imminent, may any action be taken by the Governing Body of the Target, without the approval of the shareholders in general meeting, which could effectively result in any bona fide Bid being frustrated or in the shareholders being denied an opportunity to decide on its merits.
- 1.5.8** A Bidder and Target must exercise rights of control in good faith and without the oppression of a minority.

TAKEOVER RULES (TKO)

- 1.5.9** The Governing Body of a Target must act in the interests of the Target as a whole. The shareholders' interests, taken as a whole, must be considered when a Governing Body or its Directors are giving advice to shareholders.
- 1.5.10** Directors of a Bidder and the Target must, in advising their shareholders, act only in their capacity as Directors and not have regard to their personal or family shareholdings or to their personal relationships with the Bidder or Target. Directors of the Target must give careful consideration before they enter into any commitment with a Bidder (or anyone else) which would restrict their freedom to advise their shareholders in the future.
- 1.5.11** Where a Person (or Persons acting in concert) acquires control of a Reporting Entity, a general Bid to all other shareholders is normally required, and a similar obligation may arise if control is consolidated. Where an acquisition is contemplated as a result of which a Person may incur such an obligation, he must, before making the acquisition, ensure that he can and will be able to continue to be able to implement such a Bid.
- 1.5.12** All Persons concerned with a Takeover which is subject to the Takeover Rules must co-operate to the fullest extent with the DFSA and provide all relevant information.

Guidance

1. These Takeover Principles are prescribed in accordance with Article 35 of the Markets Law 2004. The principles have the full force and effect of Rules and are therefore binding and enforceable. They are essentially statements of good standards of commercial behaviour. They apply to all transactions with which the Takeover Rules are concerned. They are, however, expressed in broad general terms and the Markets Law 2004 and these Rules do not define the precise extent of, or the limitations on, their application.
2. The remaining Rules in this Module effectively expand upon these Takeover Principles, and provide examples of their application and make provision governing specific aspects of Takeover procedure. Although most of the Rules are expressed in more detailed language than the Takeover Principles, they are not framed in technical language and, like the Takeover Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter and the DFSA may waive or modify the application of a Rule if it considers that, in the particular circumstances of the case, it would operate unduly harshly or in an unnecessarily restrictive or burdensome, or otherwise inappropriate, manner. See Article 58 of the Markets Law 2004 and Chapter 16 of these Rules.

2 THE APPROACH, ANNOUNCEMENTS AND ADVICE

2.1 The approach

- 2.1.1** A Person must, in making a Bid or in making an approach with a view to a Bid being made, make such Bid or approach in the first instance to the Governing Body of the Target or to its duly authorised advisers.
- 2.1.2** If a Bid or approach is made by a Person on behalf of an ultimate Bidder or potential Bidder, the Person must disclose the identity of the ultimate Bidder or potential Bidder at the outset of making the Bid or approach.
- 2.1.3** A Bidder must, upon receiving a request from the Governing Body of the Target, provide information reasonably required to verify that the Bidder is, or will be, in a position to implement the Bid in full.

2.2 Secrecy before announcements

- 2.2.1** Before an announcement by which the relevant information is made publicly available, a Person privy to confidential information, which constitutes Material Information or otherwise, concerning a Bid or contemplated Bid must treat that information as secret and may only pass it to another Person if:
- (a) it is necessary to do so; and
 - (b) that Person is made aware of the need for secrecy.

Guidance

Other legislation similarly applies to use and disclosure of confidential information. Persons associated with potential Takeover transactions should, for instance, be well aware of restrictions and prohibitions under the Markets Law 2004 including Article 42 relating to insider dealing.

- 2.2.2** A Person concerned in a Bid or contemplated Bid must take reasonable steps so as to minimise the chances of an accidental leak of information.

Guidance

A Bidder or Target should maintain appropriate systems and controls to ensure the maintenance of confidentiality. This may include, for example, maintaining a register of information disclosed and to whom.

2.3 Announcement of a possible bid

Guidance

An announcement of a possible Bid is intended to preserve the integrity of trading in a Reporting Entity's Shares on the Authorised Market Institution, or any other exchange upon which that entity's Shares are traded, preceding or during negotiations which may lead to an announcement of a firm intention to make a Bid.

2.3.1 A potential Bidder must make an announcement of a possible Bid when, before approaching a potential Target:

- (a) either:
 - (i) the potential Target is the subject of rumour and speculation;
or
 - (ii) there is an abnormal movement in the price of the potential Target's Shares;and
- (b) there are reasonable grounds to conclude that it is the potential Bidder's actions (whether through inadequate security or otherwise) which have led to the situation.

Guidance

1. As a consequence of this Rule, the potential Bidder should keep a close watch on the potential Target's Share price for any signs of untoward movement.
2. The DFSA should be consulted at the latest when a potential Target becomes the subject of any rumour and speculation or where there is a material or abrupt movement in its share price after the time when a Bid is first actively considered.
3. Additional information may be the subject of a later supplementary announcement.
4. A potential Bidder should consult with the DFSA at the earliest opportunity where the requirement to make an announcement pursuant to Rule 2.3.1 may be considered inappropriate. The DFSA may waive or modify the application of the Rule if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

2.3.2 A Target must make an announcement of a possible Bid when, following an approach to it which may or may not lead to a Bid:

- (a) the Target is the subject of rumour and speculation; or
- (b) there is an abnormal movement in the price of the Target's Shares; or
- (c) negotiations or discussions are about to be extended to include more than a very restricted number of Persons (outside those in the entities concerned who need to know and their immediate advisers).

Guidance

1. As a consequence of this Rule, the Target should keep a close watch on its Share price for any signs of untoward movement.
2. The DFSA should be consulted at the latest when the Target becomes the subject of any rumour and speculation or where there is a price movement of 10% or more above the lowest Share price since the time of the approach. An abrupt price rise of a smaller percentage could also be considered abnormal. In considering whether a price movement is abnormal, the DFSA may look at a range of factors, including the general market, publicly available information, and the relevant time period.
3. Additional information may be the subject of a later supplementary announcement.

2.3.3 An announcement of a possible Bid must:

- (a) name the potential Bidder; and
- (b) state that the shareholders concerned should exercise caution in dealing in their Shares.

Guidance

The announcement of a possible Bid may be brief and couched in general terms and should, in the normal course, state that talks are taking place or that a potential Bidder is considering making a Bid or that an announcement is pending which could have a material effect on the price of the Shares.

2.4 Announcement of a firm intention to make a bid**2.4.1** A Bidder must make an announcement of a firm intention to make a Bid immediately upon:

- (a) giving any notification to the Target as described in Rule 2.4.2; or
- (b) an acquisition of Shares which gives rise to an obligation to make a Mandatory Bid under Chapter 4 of these Rules;

whichever is the earlier.

Guidance

The respective obligations of the Target and of the Bidder to make announcements under these Rules may be satisfied by the making of a joint announcement.

2.4.2 A Target must make an announcement when the Governing Body of the Target has been notified of a firm intention to make a Bid from a serious source, irrespective of the attitude of the Governing Body to the Bid.

2.4.3 An announcement by the Bidder of a firm intention to make a Bid must contain:

- (a) the identity of the Bidder;
- (b) the principal terms of the Bid;
- (c) details of any existing holding of Shares in the Target:
 - (i) which the Bidder owns or over which it has control;
 - (ii) which is owned or controlled by any Person acting in concert with the Bidder or in respect of which the Bidder has received an irrevocable commitment to accept the Bid;
 - (iii) in respect of which the Bidder holds an option to purchase; and
 - (iv) in respect of which any Person acting in concert with the Bidder holds an option to purchase;
- (d) all material conditions (including normal conditions relating to acceptances, listing and increase of capital) to which the Bid or the posting of it is to be subject; and
- (e) details of any arrangement which exists with any Bidder, with the Target or with any Person acting in concert with the Bidder or with the Target in relation to relevant Shares, whether or not any dealings have taken place.

Guidance

The DFSA may waive or modify the application of Rule 2.4.3 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

2.4.4 A Bidder must not:

- (a) make an announcement of a firm intention to make a Bid; or
- (b) take any action which would give rise to the requirement to make such an announcement;

unless the Bidder and its financial adviser have proper grounds for believing that the Bidder is and will continue to be able to implement the Bid.

2.4.5 The announcement of a firm intention to make a Bid containing a whole or partial cash consideration must include confirmation by the financial adviser or by another appropriate third party that resources are available to the Bidder sufficient to satisfy full acceptance of the Bid.

Guidance

The DFSA takes the view that the Person confirming availability of resources will not be expected to produce the cash itself if, in giving the confirmation, it acted responsibly and took all reasonable steps to assure itself that the cash was available.

- 2.4.6** When there has been an announcement of a firm intention to make a Bid, the Bidder must proceed with the Bid unless the posting of the Bid is subject to the prior fulfilment of a previously disclosed specific condition and that condition has not been fulfilled.

Guidance

The DFSA may waive or modify the application of Rule 2.4.6 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

2.5 Announcements in other circumstances

- 2.5.1** Where an acquisition of Target Shares by a Bidder or any Person acting in concert with it gives rise to obligations under:

- (a) Rule 3.1.1 (acquisitions before a Bid Period), or
- (b) the Rules in Chapter 4 (Mandatory Bid); or
- (c) Rule 5.2.1 (requirement for a Bid in cash),

an appropriate announcement must be made immediately after such an acquisition.

- 2.5.2** Whenever practicable, the announcement must also state the number of Shares acquired and the consideration paid.

2.6 Mode of publication of an announcement

- 2.6.1** An announcement under Section 2.3, 2.4 or 2.5 must be published in the same manner as a market disclosure required under Rule 8.2.1 of the Offered Securities Rules.

Guidance

1. Rule 8.2.1 of the Offered Securities Rules (OSR) requires announcement to, amongst others, the DIFX. In this regard the DIFX acts as the regulatory information service provider in the DIFC.
2. Additional information may be the subject of a later supplementary announcement.
3. An announcement should not be delayed while full information is being obtained.

2.7 Governing bodies to obtain independent advice

Guidance

1. Rules 2.7.1 and 2.7.2 require the Target's adviser to have a sufficient degree of independence from the Target to ensure the advice given is properly objective. In certain circumstances it may not be appropriate for a Person who has had a recent advisory relationship with a Bidder to give advice to a Target. Additionally, the DFSA would consider a Person who has a significant interest in or financial connection with either a Bidder or the Target of such a kind as to create a conflict of interest.
2. The requirement for competent independent advice is of particular importance where the Bid is a management buyout or similar transaction or is being made by the existing controlling shareholder or group of shareholders. In any such cases, the independence of the adviser must be beyond question.
3. The DFSA should be consulted if there is any potential of a contravention of these Rules 2.7.1 and 2.7.2. The DFSA may waive or modify the application of the Rules if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

2.7.1 The Governing Body of a Bidder must:

- (a) obtain competent independent advice on any Bid when the Bid being made is a reverse Takeover or when the Directors are faced with a conflict of interest; and
- (b) make known the substance of such advice to its shareholders early enough to enable them to make a timely and informed decision on the merits of the Bid.

Guidance

When the Governing Body of a Bidder is required to obtain competent independent advice, it should do so before announcing its Bid or any revised Bid. Such advice should be as to whether or not the making of the Bid is in the interests of the Bidder's shareholders. Shareholders should have sufficient time to consider advice given to them prior to any general meeting held to implement the proposed Bid.

2.7.2 The Governing Body of a Target must:

- (a) obtain competent independent advice on any Bid including as to how it affects all shareholders; and
- (b) make known the substance of such advice to its shareholders early enough to enable them to make a timely and informed decision on the merits of the Bid.

Guidance

In obtaining advice as to how a Bid affects all shareholders, consideration should specifically be given to the effect on minority shareholders or classes of shareholders, where applicable. It is expected that the substance of any such advice will be summarised in the Target Circular. See Sections 8.1 and 8.2 of the Rules.

3 RESTRICTED DEALINGS BEFORE AND DURING AN OFFER PERIOD

3.1 Acquisitions before a bid period

3.1.1 Subject to Rules 4.3.1 and 5.2.1, when a Bidder or any Person acting in concert with it has acquired Shares in the Target:

- (a) within the six month period prior to the commencement of the Bid Period; or
- (b) during the period, if any, between the commencement of the Bid Period and an announcement made by the Bidder in accordance with Section 2.4;

the Bid to the shareholders of the same class must not be on less favourable terms.

3.2 Acquisitions during a bid period

3.2.1 If, after the commencement of the Bid Period and before the Bid closes for acceptance, a Bidder or any Person acting in concert with it acquires relevant Shares in the Target at above the Bid price (being the then current Bid price), the Bidder must revise its Bid to not less than the highest price paid for the Shares so acquired.

3.2.2 Immediately after the acquisition, the Bidder must make an announcement that a revised Bid will be made in accordance with Rule 3.2.1.

Guidance

In relation to Rule 3.2.2, see also Section 11.4 of these Rules.

3.2.3 The announcement must also state the number of Shares acquired and the price paid.

3.3 Restrictions on the sale of shares during a bid period

3.3.1 During a Bid Period, the Bidder and Persons acting in concert with it must not sell any Shares in the Target.

Guidance

1. As a matter of course, the DFSA will not waive the requirements under Rule 3.3.1 for sales where a Mandatory Bid under Chapter 4 is being made.
2. Where the DFSA grants a waiver from this requirement, it may:
 - a. require a period of prior public notice that sales might be made; and
 - b. impose a restriction that after notice has been given that sales may be made, neither the Bidder nor Persons acting in concert with it may make further purchases.

3.4 Disclosure of dealings during a bid period**3.4.1** Dealings in relevant Securities during a Bid Period by the Bidder or the Target, and by any Person acting in concert, for:

- (a) their or his own account; or
- (b) the account of clients;

must be disclosed forthwith by the Person concerned:

- (c) to the DFSA; and
- (d) in the same manner as a market disclosure required under Rule 8.2.1 of the Offered Securities Rules.

Guidance

Where two or more persons act pursuant to an agreement or understanding, whether formal or informal, to acquire or control relevant Securities, the DFSA will treat them as a single person for the purpose of this Rule.

3.4.2 Disclosure of dealings in relevant Securities of a Bidder is only required following:

- (a) an announcement of a Securities Exchange Bid; or
- (b) an earlier commencement of a Bid Period if it has not been announced that any Bid is likely to be solely in cash.

3.4.3 A disclosure pursuant to Rule 3.4.1 must, at least:

- (a) provide the total number of the relevant Securities purchased or sold;
- (b) provide the total number of the respective dealings for the Person's own account and for the account of clients;
- (c) detail the prices paid or received;



TAKEOVER RULES (TKO)

(d) identify the Person dealing.

3.4.4 For the purpose of the Rules in this Section, “relevant Securities” include:

- (a) Securities of the Target which are subject to a Bid or which carry voting rights;
- (b) equity Share capital of the Bidder and the Target;
- (c) Securities of a Bidder which carry substantially the same rights as any to be issued as consideration for a Bid;
- (d) Securities of Bidder and the Target carrying conversion or subscription rights into any of the above;
- (e) options in respect of any of the foregoing and derivatives materially referenced to any of the foregoing.

Guidance

In the case of investment accounts managed on a discretionary basis, relevant Securities or Shares so managed will be treated, for the purpose of this Rule, as controlled by that manager and not by the Person on whose behalf the relevant Securities or Shares are managed.

4 MANDATORY BIDS

4.1 Requirement for a mandatory bid

4.1.1 Subject to Rule 4.1.2, when:

- (a) any Person acquires, whether by a series of transactions over a period of time or not, Shares which carry 30% or more of the voting rights of a Reporting Entity;
- (b) two or more Persons are acting in concert, and they collectively hold Shares which carry less than 30% of the voting rights of a Reporting Entity, and any one or more of them acquires Shares and such acquisition has the effect of increasing to 30% or more their collective holding of Shares carrying voting rights of the Reporting Entity;
- (c) any Person holds not less than 30% of Shares carrying voting rights of a Reporting Entity and such Person acquires additional Shares and such acquisition has the effect of increasing that person's holding of Shares carrying voting rights by more than 3% from the lowest percentage holding of that Person in the 12 month period ending on and inclusive of the date of the relevant acquisition; or
- (d) two or more Persons are acting in concert, and they collectively hold not less than 30% of Shares carrying voting rights of a Reporting Entity, and any one or more of them acquires additional Shares and such acquisition has the effect of increasing their collective holding of Shares carrying voting rights by more than 3% from the lowest percentage holding of such Persons in the 12 month period ending on and inclusive of the date of the relevant acquisition;

such Person must extend Bids under these Rules to the holders of any class of equity Share capital, whether voting or non-voting, and also to the holders of any class of voting non-equity Share capital of which such Person, or Persons acting in concert with him, hold Shares.

Guidance

1. Under Article 58 of the Markets Law 2004 and Article 25 of the Regulatory Law 2004, the DFSA may waive or modify the application of the Markets Law 2004 and of the Rules.
2. Where an obligation to make a Mandatory Bid arises as a consequence of Persons acting in concert, the DFSA should be consulted at the earliest opportunity to determine, where appropriate, which Person or Persons should mount the Bid and consequently whether any waiver or modification from this Rule is appropriate. The DFSA may, for example, require the Bid to be made by the Person who acquired the shares which triggered the obligation under Rule 4.1.1 to make the Mandatory Bid.

TAKEOVER RULES (TKO)

3. A definition of “acting in concert” is provided in Rule 1.4.1. As a consequence of that definition, Rule 4.1.1 may require a Bid to be made even when no single Person in a group acting in concert holds 30% or more of the voting rights.
4. Where a Person acquires shares independently from other shareholders, and subsequently groups together with other shareholders to co-operate or to consolidate control of a Reporting Entity, and their existing shareholdings amount to 30% or more of the voting rights in the Reporting Entity, the DFSA would not normally require a Bid to be made under Rule 4.1.1. However, having once joined together, Rule 4.1.1 may apply. For example, a Mandatory Bid may be required when a member of the group acquires further shares carrying voting rights such that the total of the groups holdings reach 30% or more.
5. The DFSA will entertain an application for waiver or modification relating to the amount of permissible creep under Rule 4.1.1(c) or (d) only in exceptional circumstances. Without in any way limiting the DFSA’s discretion, such a circumstance may include where there is a dilution of voting rights by the issue of new shares or otherwise and it is appropriate to net off the dilution against acquisitions.

4.1.2 Rule 4.1.1 does not apply in relation to an acquisition of Shares of a Reporting Entity which is the result of:

- (a) exercise of a right conferred by law of a minority shareholder to have his shareholding compulsorily acquired by a Bidder; or
- (b) exercise of a right conferred by law of a Bidder to compulsorily acquire the shareholding of a minority shareholder.

Guidance

1. An example of a right described in Rule 4.1.2(a) appears in Article 85 of the Companies Law.
2. Provisions described in Rule 4.1.2(b) are commonly referred to as “squeeze-out” or “mopping-up” provisions. See for example Article 83 of the Companies Law.

4.1.3 Bids for different classes of equity Share capital must be fair and appropriate, having regard to current circumstances, and the DFSA must be consulted in advance in such cases.

Guidance

1. The DFSA may waive or modify the application of the Rules if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.
2. When the issue of new Shares as consideration for an acquisition or a cash subscription would otherwise result in an obligation to make a Mandatory Bid under the Rules in this Chapter 4, the DFSA will normally dispense with such obligation if there is a waiver thereof by a majority of independent votes at a meeting of the shareholders. The requirement for a Mandatory Bid will also be dispensed with, provided there has been a majority of independent votes at a properly constituted meeting of shareholders, in cases involving the underwriting of an issue of Shares. The DFSA may in its discretion grant a dispensation in cases where an underwriter

TAKEOVER RULES (TKO)

incurs an obligation under these Rules unexpectedly, for example as a result of an inability to obtain sub-underwriters for all or part of his liability. Where a waiver or modification is granted as per this Guidance, consideration should also be given as to whether the definition of “voting rights” in Section 1.4 will require consequential modification.

3. Notwithstanding the fact that, at a general meeting of the Reporting Entity, the issue of new Shares is made conditional upon the prior approval of a majority of votes of shareholders independent of the transaction:
 - a. the DFSA will not normally dispense with an obligation under this Section if the Person to whom the new Shares are to be issued or any Persons acting in concert with him have acquired relevant Shares in the Target in the 12 months prior to the posting of the Bid Document but subsequent to negotiations, discussions or the reaching of understandings or agreements with the Directors of the Target in relation to the proposed issue of new Shares;
 - b. a waiver by independent votes shall be invalidated if any acquisitions are made in the period between the posting of the Bid Document to the shareholders and the meeting.
4. The DFSA may dispense with the requirement of a Mandatory Bid where the approval of independent votes to the transfer of existing Shares from one holder to another is obtained.

4.2 Conditions and consents

- 4.2.1 A Mandatory Bid made under these Rules must be conditional only upon the Bidder having received acceptances in respect of Shares which, together with Shares acquired or agreed to be acquired before or during the Bid, will result in the Bidder and any Person acting in concert with it holding Shares carrying more than 50% of the voting rights.
- 4.2.2 No acquisition of Shares which would give rise to a requirement for a Mandatory Bid under these Rules may be made if the making or implementation of such Bid would or might be dependent on the passing of a resolution at any meeting of shareholders of the Bidder or upon any other conditions, consents or arrangements.

Guidance

The DFSA may waive or modify the application of Rules 4.2.1 or 4.2.2 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

4.3 Consideration to be offered

- 4.3.1 Mandatory Bids made under these Rules must, in respect of each class of Shares involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the Bidder or any Person acting in concert

with it for Shares of that class during the Bid Period and within the preceding six months.

Guidance

1. If the Bidder considers that the highest price should not apply in a particular case, the Bidder should consult the DFSA. The DFSA may waive or modify the application of Rule 4.3.1 if it is satisfied that circumstances are appropriate to provide a dispensation from this Rule. See Chapter 16 of these Rules. Factors that the DFSA may take into account include the size or timing of the relevant acquisitions, the attitude of the Governing Board of the Target, whether Shares had been purchased at high prices from Directors or other Persons closely connected with the Bidder or Target, and the number of Shares purchased in the preceding six months.
2. The DFSA should be consulted where there is more than one class of Shares involved.
3. Also note related provisions, Rule 3.1.1 (acquisitions before a Bid Period) and Rule 5.2.1 (requirement for a Bid in cash).

- 4.3.2** The cash Bid or any cash alternative must remain open after the Bid has become or is declared unconditional as to acceptances for not less than 14 days after the date on which it would otherwise have expired.

Guidance

See also Rule 11.2.2.

4.4 Obligations of directors selling shares

- 4.4.1** When a Director of a Reporting Entity sells Shares owned or controlled by him in that Reporting Entity to an identifiable purchaser as a result of which the purchaser is required to make a Bid under the Rules in this Chapter, such Director must stipulate as a condition of the sale that the purchaser undertakes to fulfil his obligations under the Rules.

- 4.4.2** In addition, such Director must not resign from the Governing Body until the first closing date of the Bid or the date upon which the Bid becomes or is declared unconditional, whichever is the later.

4.5 Restrictions on exercise of control by a bidder

- 4.5.1** No nominee of a Bidder or Persons acting in concert with it may be appointed to the Governing Body of the Target, nor may a Bidder and Persons acting in concert with it exercise the votes attaching to any Shares held in the Target, until the Bid Document has been posted.

5 THE TERMS OF A VOLUNTARY BID

5.1 The acceptance condition

5.1.1 It must be the condition of any Bid for voting equity Share capital which, if accepted in full, would result in the Bidder holding Shares carrying over 50% of the voting rights of the Target, that the Bid will not become or be declared unconditional as to acceptances unless the Bidder has acquired or agreed to acquire (either pursuant to the Bid or otherwise) Shares carrying over 50% of the voting rights attributable to:

- (a) the equity Share capital alone; and
- (b) the equity Share capital and the non-equity Share capital combined.

5.2 Requirement for a bid in cash

5.2.1 Where the Shares of any class under Bid in the Target acquired for cash by a Bidder or any Person acting in concert with it during the Bid Period, or within six months prior to its commencement, carry 10% or more of the voting rights currently exercisable at a class meeting of that class, the Bid for that class must be in cash or accompanied by a cash alternative at not less than the highest price paid by the Bidder or any Person acting in concert with it for Shares of that class during the Bid Period or within six months prior to its commencement.

Guidance

1. The DFSA may waive or modify the application of Rule 5.2.1 if it is satisfied that circumstances are appropriate. For example, if the Bidder considers that the highest price ought not to apply in a particular case, it must consult the DFSA, which may grant a waiver or modification to reflect an adjusted price. See Chapter 16 of these Rules.
2. Also note related provisions, Rule 3.1.1 (acquisitions before a Bid Period) and Rule 4.3.1 (consideration to be offered in a Mandatory Bid).

5.3 Subjective conditions

5.3.1 Subject to prior consent of the DFSA, a Bid shall not be subject to conditions which depend solely on subjective judgements by the Directors of the Bidder or the fulfilment of which is in their hands.



TAKEOVER RULES (TKO)

Guidance

1. The DFSA may be prepared to accept an element of subjectivity in certain special circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition may depend. This may especially arise in cases involving official authorisations, the granting of which may be subject to an additional material obligation of the Bidder. Consent would also normally be granted where an announcement for a Bid is to be expressed as being conditional on statements or estimates being appropriately verified.
2. A Bidder should not invoke any condition, other than the acceptance condition, so as to cause the Bid to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the Bidder in the context of the Bid.
3. Conditions that depend solely on a force majeure are not prohibited by this Rule.

6 PROVISIONS APPLICABLE TO ALL BIDS

6.1 Where there is more than one class of shares

6.1.1 Where a Target has more than one class of Shares as its capital, the Bidder must:

- (a) make a fair and appropriate Bid, having regard to current circumstances, for each class whether such capital carries voting rights or not;
- (b) consult the DFSA in advance of such a Bid being made; and
- (c) ensure that a Bid for non-voting Shares is not conditional on any particular level of acceptances in respect of that class unless the Bid for the voting Shares is also conditional on the success of the Bid for the non-voting Shares.

Guidance

A fair and appropriate Bid need not necessarily be an identical Bid.

6.1.2 Classes of non-equity Share capital need not be the subject of a Bid, except in the circumstances referred to in Rule 4.1.1.

6.1.3 Where a Bid is made for more than one class of Shares, separate Bids must be made for each class.

6.2 Appropriate bid for options, convertibles and rights

6.2.1 When a Bid is made for Shares and the Target has:

- (a) issued options conferring a right to acquire Shares;
- (b) issued Convertibles conferring a right to convert a Security into Shares; or
- (c) issued subscription rights conferring a right to subscribe for Shares;

which remain outstanding, the Bidder must make a Bid or proposal to the holders of each such category of options, Convertibles or subscription rights.

6.2.2 A Bid or proposal under Rule 6.2.1 must, in relation to the holders in each such category:

- (a) be fair and appropriate;

- (b) provide equal treatment; and
- (c) ensure that their interests are safeguarded.

6.3 Special deals with favourable conditions

6.3.1 A Bidder or Persons acting in concert with it must not make any arrangements with shareholders and must not deal or enter into arrangements to deal in Shares of the Target, or enter into arrangements which involve acceptance of a Bid, either during a Bid or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

Guidance

The DFSA may waive or modify the application of Rule 6.3.1 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

6.4 Announcement of acceptance levels

6.4.1 By 9:00am (Dubai time) at the latest on the business day following the day on which a Bid is due to expire, or becomes or is declared unconditional as to acceptances, or is extended, the Bidder must make an appropriate announcement including an announcement made in the same manner as a market disclosure required under Rule 8.2.1 of the Offered Securities Rules.

6.4.2 The announcement must state the total numbers of Shares and rights over Shares (as nearly as practicable);

- (a) for which acceptances of the Bid have been received;
- (b) held before the Bid Period; and
- (c) acquired or agreed to be acquired during the Bid Period;

and must specify the percentages of the relevant classes of Shares represented by these numbers.

Guidance

1. See also Rule 11.2.2.
2. If, during a Bid, any statements are made by a Bidder or its advisers about the level of acceptances of the Bid or the number or percentages of shareholders who have accepted the Bid, an immediate announcement must be made in conformity with these Rules.



TAKEOVER RULES (TKO)

3. If a Bidder fails within the time limit to comply with the requirements in this Section, the DFSA or Authorised Market Institution (as appropriate) may consider a temporary suspension of listing of the Target's Shares and, where appropriate, the Bidder's Shares until the relevant information is given.

6.5 Use of proxies and authorities in relation to acceptances

6.5.1 A Bidder must not require the shareholders of the Target, as a term of his acceptance of a Bid, to appoint a proxy to vote in respect of those Shares or to appoint a particular Person to exercise any other rights or take any other action in relation to those Shares unless the appointment is on the following terms, which must be set out in the Bid Document:

- (a) the proxy may not vote, the rights may not be exercised and no other action may be taken unless the Bid is wholly unconditional or, in the case of voting by the proxy, the Bid will become wholly unconditional or lapse immediately upon the outcome of the resolution in question;
- (b) where relevant, the votes are to be cast as far as possible to satisfy any outstanding condition of the Bid;
- (c) the appointment ceases to be valid if the acceptance is withdrawn; and
- (d) the appointment applies only to Shares in respect of which there is an acceptance of the Bid.

7 CONDUCT DURING A BID

7.1 Standards and responsibilities for care and accuracy

7.1.1 A Bidder and the Target, respectively, must ensure that each document or advertisement issued, or statement made, by them or on their behalf during the course of a Bid:

- (a) satisfies the highest standards of accuracy;
- (b) adequately and fairly presents any information contained in it; and
- (c) will not mislead shareholders and the market or create uncertainty.

Guidance

1. This Rule applies whether the document, advertisement or information is issued directly by the Bidder or Target or by an adviser on their behalf.
2. Campaigns in which shareholders are contacted by telephone should be conducted only by staff of the financial advisers who are fully conversant with the requirements of and their responsibilities under the Rules. Only previously published information which remains accurate, and is not misleading at the time it is quoted, should be used in telephone campaigns. Shareholders should not be put under pressure and should be encouraged to consult their professional advisers.

7.1.2 Each document issued to shareholders or advertisements published in connection with a Bid, in which there is a material expression of opinion must state that the Directors of the Bidder and/or, where appropriate, the Target, accept responsibility for the information contained in the document or advertisement and that to the best of their knowledge and belief (having taken all reasonable care to ensure that such is the case) the information contained in the document or advertisement is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the import of such information.

7.1.3 If it is proposed that any Director shall be excluded from such a statement referred to in Rule 7.1.2, the omission and the reasons for it must be stated in the document or advertisement.

7.2 Distribution of documents and announcements

7.2.1 Copies of all relevant documents and announcements bearing on a Bid, and of advertisements and any material to be released to the media, must at the time of release be filed with the DFSA.

Guidance

The time of filing of Bid Documents and Target Circulars with the DFSA is addressed in Section 11.1.

- 7.2.2** Copies of all relevant documents and announcements when issued or made must also be made available at the same time to the advisers to all other parties to the Bid.

7.3 Equality of information

- 7.3.1** Subject to Rule 7.3.2, information about entities involved in a Bid must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

- 7.3.2** Rule 7.3.1 does not apply to:

- (a) the furnishing of information in confidence by a Target to a bona fide potential Bidder or vice versa; or
- (b) the issue of circulars to their own investment clients by brokers or advisers to any party to the transaction.

- 7.3.3** Any information, including particulars of shareholders, given to one Bidder or potential Bidder, must, on request, be furnished equally and as promptly to another Bidder or bona fide potential Bidder, even if that other Bidder is less welcome.

- 7.3.4** If the Bid or potential Bid is for a management buy-out or similar transaction, the Bidder or potential Bidder must, on request, forthwith furnish the independent Directors of the Target or its advisers with all information which has been furnished by the Bidder or potential Bidder to external providers or potential providers of finance (whether equity or debt) for the buy-out.

7.4 Restrictions on frustrating action

- 7.4.1** During the course of a Bid, or even before the date of the Bid if the Governing Body of the Target has reason to believe that a bona fide Bid might be imminent, the Governing Body must not, except in pursuance of a contract entered into earlier, without the approval of the shareholders to the relevant proposal given in general meeting:

- (a) issue any authorised but unissued Shares;
- (b) issue or grant options in respect of any unissued Shares;



TAKEOVER RULES (TKO)

- (c) create or issue, or permit the creation or issue of, any Securities carrying rights of conversion into or subscription for Shares;
- (d) sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a material amount;
- (e) enter into contracts otherwise than in the ordinary course of business;
or
- (f) pay any dividend which is abnormal as to timing and amount.

7.4.2 The notice convening the general meeting of shareholders must include information about the Bid or contemplated Bid.

7.4.3 Where it is considered that an obligation or other special circumstance already exists, although a formal contract has not been entered into, the DFSA must be consulted and its consent obtained to proceed without a meeting of shareholders.

8 DOCUMENTS ISSUED BY GOVERNING BODIES

8.1 The general obligation as to information

8.1.1 The Governing Bodies of the Bidder and Target must give sufficient information and advice to the shareholders of the Target to enable them to reach a properly informed decision as to the merits of a Bid. Such information must be made available to such shareholders early enough to enable them to make a timely and informed decision.

8.2 Bid document and target circular disclosures

8.2.1 In its Bid Document, the Bidder must disclose the information specified in App1, together with any other relevant information to enable the Target's shareholders to reach a properly informed decision.

Guidance

See also Rule 11.1.1.

8.2.2 The Governing Body of the Target must circulate its views on the Bid, including any alternative Bids, to its shareholders in a Target Circular.

Guidance

Nothing in these Rules precludes a Bidder and a Target issuing a joint document under which they comply with their respective obligations.

8.2.3 In its initial Target Circular, the Governing Body of the Target must disclose the information specified in App2 (whether recommending acceptance or rejection of the Bid), together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the Bid.

Guidance

See also Rule 11.1.2.

8.3 Documents subsequently sent to shareholders

8.3.1 Documents subsequently sent to shareholders of the Target by either the Bidder or Target during the Bid Period must contain the information specified in App3.

8.4 Availability of documents for inspection

8.4.1 Where a Bidder or Target:

- (a) has prepared or possesses any document prescribed in Rule 8.4.2; or
- (b) has referred to or relied upon any document prescribed in Rule 8.4.2 in its Bid Document or Target Circular;

the Bidder or Target respectively must make any such document available for inspection from the time the Bid Document or Target Circular, as appropriate, is published until the end of the Bid Period. The Bid Document or Target Circular must state which documents are so available and the place in the DIFC where inspection can be made:

8.4.2 The following documents are prescribed for the purposes of Rule 8.4.1:

- (a) Where a profit forecast has been made:
 - (i) the reports of the auditors or reporting accountants (Rule 9.4.1); and
 - (ii) the letters giving the consents of the auditors or reporting accountants and appropriate external valuers to the issue of the relevant document, with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document (Rules 9.4.4 and 9.6.1).
- (b) Where an asset valuation has been made:
 - (i) the valuation certificate and associated report or a schedule containing details of the aggregate valuation (Section 10.2); and
 - (ii) a letter stating that the valuer has given and not withdrawn his consent to the publication of his valuation certificate in the form and context in which it is included in the relevant document.
- (c) Any document evidencing an irrevocable commitment to accept a Bid or any arrangement, undertaking or agreement relating to the commitment to accept a Bid or to the circumstances in which the Bidder may or may not invoke or seek to invoke a condition to its Bid.
- (d) The memorandum and articles of association of the Target, and where there is a Securities Exchange Bid, also of the Bidder.
- (e) The annual financial statements of the Target, and, where there is a Securities Exchange Bid, also the Bidder for the last three completed financial years in respect of which audited annual financial statements have been issued.



TAKEOVER RULES (TKO)

- (f) Any other document materially relied upon in the Bid Document or Target Circular.

Guidance

The DFSA may waive or modify the application of certain provisions of this Section 8.4 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules.

9 PROFIT FORECASTS

9.1 References to profit forecasts

9.1.1 A reference in this Section 9 to:

- (a) a “profit forecast” includes a forecast of loss; and
- (b) a “profit” includes a loss.

9.2 Standards of care

9.2.1 When a profit forecast is to be given by a Bidder or Target to shareholders, the Directors of the respective Bidder or Target:

- (a) are responsible for the compilation of the profit forecast; and
- (b) in so doing, must compile the forecast with the highest standards of objectivity, care and accuracy.

Guidance

The hazards attached to the forecasting of profits must in no way detract from the necessity of maintaining the highest standards of accuracy and fair presentation in all communications to shareholders in a Bid.

9.3 Assumptions

9.3.1 When a profit forecast appears in any document addressed to shareholders in connection with a Bid, the material assumptions, including the commercial assumptions, upon which the Directors have based their profit forecast, must be stated and explained in the document.

9.2.2 When, after a Bid Document has been posted, a profit forecast is given in a public announcement (whether by newspaper or any other means of publication), any assumptions on which the forecast is based must be included in the announcement.

9.4 Reports in connection with profit forecasts

- 9.4.1** In all cases, the assumptions, accounting policies and calculations for a profit forecast must be examined and reported on by the auditors or reporting accountants.
- 9.4.2** When income from land and buildings is a material element in a profit forecast, that part of the forecast must be examined and reported on by an independent external valuer. This Rule does not apply where the income is virtually certain, for example, known rents receivable under existing leases.
- 9.4.3** Any relevant profit forecast which has been made before the commencement of the Bid Period must be examined, repeated and reported on in the document sent to shareholders.

Guidance

The DFSA may waive or modify the application of Rule 9.3.3 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules. In exceptional circumstances, the DFSA may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with the Rules nor for a revised forecast to be made. In these circumstances, shareholders must be given a full explanation of why the requirements of the Rules are not capable of being met.

- 9.4.4** When a Bid Document has been posted, the reports shall be included in the document containing the forecast or, when the forecast has been made in a public announcement (whether by newspaper or any other means of publication), in a document which shall be sent to shareholders with a minimum of delay after the announcement is published. The reports must be accompanied by a statement that those making them have given and not withdrawn their consent to publication.

9.5 Statements to be treated as profit forecasts

- 9.5.1** The following statements must be treated as profit forecasts:
- (a) an estimate of profit for a period which has already expired;
 - (b) a profit forecast for a limited period (for example, for the following quarter); and
 - (c) any unaudited interim and preliminary profit figures published during a Bid Period, excepting unaudited statements of annual or interim results which have already been published.

Guidance

1. When no figure is mentioned, or even if the word "profit" is not used, the DFSA may consider that certain forms of words constitute a profit forecast, particularly when

considered in context. Examples include statements that "profits will be somewhat higher than last year" and "performance in the second half year is expected to be similar to our performance and results in the first half year" (when interim figures have already been published). Whenever a form of words puts a floor under, or a ceiling on, the likely profits of a particular period or contains the data necessary to calculate an approximate figure for future profits, it will be treated by the DFSA as a profit forecast which must be reported on in accordance with this Rule. In cases of doubt the DFSA must be consulted.

2. A dividend forecast will not normally be considered a profit forecast unless, for example, it is accompanied by an estimate as to dividend cover.

9.6 Miscellaneous rules relating to forecasts

9.6.1 When a Bidder or Target includes a forecast in a document, any document subsequently sent out by that entity in connection with that Bid must contain a statement by the Directors that:

- (a) the forecast remains valid for the purpose of the Bid; and
- (b) the accountants and others who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

9.6.2 When a forecast of profit before taxation appears in a document addressed to shareholders, it must be accompanied by a forecast of earnings per Share arising from the profit.

9.6.3 Whenever a profit forecast is made in relation to a period in which trading has already commenced, any previously published profit figures in respect of any expired part of that trading period, together with comparable figures for the same part of the preceding year, must be stated.

9.6.4 All the relevant provisions of this Section apply also to a profit forecast prepared on an inflation-adjusted basis, in which case:

- (a) the basis of computation underlying such a forecast must be stated; and
- (b) the forecast must be accompanied by a corresponding forecast prepared on a historical cost basis.

10 ASSET VALUATIONS

10.1 Valuations in connection with a bid

10.1.1 When a Person provides a valuation of assets in connection with a Bid, the Person must ensure that the valuation is supported by the opinion of an appropriate external and independent valuer.

Guidance

1. Rule 10.1.1 applies not only to land, buildings and process plant and machinery but also to other assets, for example, inventory, ships, aircraft and individual parts of a business.
2. This Rule does not apply to an assessment of value carried out merely for the purpose of preparation of financial accounts.

10.1.2 The person must ensure that such a valuation states:

- (a) the effective date as at which the assets were valued;
- (b) the name, professional qualifications and address of the valuer; and
- (c) if the valuation is not current, that a current valuation would not be materially different.

10.1.3 If a statement according with Rule 10.1.2 cannot be made, the Person must ensure that the valuation is updated.

Guidance

1. In certain cases, Bid Documents and Target Circulars issued by the Bidder or the Target will include statements of assets reproducing Directors' estimates of asset values published with the entity's accounts. The DFSA will not regard such estimates as "given in connection with a Bid" except where asset values are a particularly significant factor in assessing the Bid and the estimates are, accordingly, given considerably more prominence in the relevant documents than merely being referred to in a note or appendix to a statement of assets.
2. In exceptional cases, certain Reporting Entities, in particular property companies, which are the subject of an unexpected Bid may find difficulty in obtaining, within the time available, the opinion of an appropriate external valuer to support an asset valuation, as required by this Section, before the Target Circular has to be sent out. In such cases, the DFSA may waive strict compliance with this requirement. The DFSA will only do this where the interests of shareholders appear on balance to be best served by permitting informal valuations to appear coupled with such substantiation as is available. Targets or their advisers who wish to make use of this procedure should consult the DFSA at the earliest opportunity.

10.2 Opinion and consent letters

10.2.1 Where a valuation of assets is given in any document addressed to shareholders:

- (a) the document must include:
 - (i) the opinion of the valuer; and
 - (ii) a statement that the valuer has given and not withdrawn his consent to the publication of his valuation certificate;

and

- (b) the valuation certificate must be made available for inspection in the manner described in Rule 8.4.1, together with an associated report or schedule containing details of the aggregate valuation.

Guidance

Where the DFSA is satisfied that disclosure under Rule 10.2.1(b) may be commercially disadvantageous to the entity concerned, it may modify these requirements so as to allow the report or schedule to appear in a summarised form. In certain cases, the DFSA may require any of these documents to be reproduced in full in a document sent to shareholders.

11 BID TIMING AND REVISION

11.1 Filing and posting the bid document and target circular

11.1.1 A Bidder must:

- (a) post the Bid Document to shareholders within 21 days of its announcement of a firm intention to make a Bid; and
- (b) give prior notice to the DFSA by filing a copy of the Bid Document with the DFSA at least 1 full day (24 hours) prior to such posting.

Guidance

1. The DFSA must be consulted if it is considered inappropriate or unlikely that the Bid Document is posted within this period and may, in considering any appropriate waiver or modification, require that interest for the period of delay be included in the Bid.
2. The DFSA will not consider the merits of the Bid. It should not be assumed that because of this prior notification, the DFSA will not use powers available to it where the need for remedial action is subsequently identified.

11.1.2 The Governing Body of the Target must:

- (a) advise the Target's shareholders of its views on the Bid by posting a Target Circular to the shareholders within 21 days of publication of the Bid Document; and
- (b) give prior notice to the DFSA by filing a copy of the Target Circular with the DFSA at least 1 full day (24 hours) prior to such posting.

Guidance

1. See also Rule 8.2.2.
2. The DFSA will not consider the merits of the response to the Bid. It should not be assumed that because of this prior notification, the DFSA will not use powers available to it where the need for remedial action is subsequently identified.

11.2 Closing dates and extensions

11.2.1 A Bidder must ensure that its Bid remains open for at least 35 days following the date on which the Bid Document is posted.

11.2.2 Where a Bidder announces an extension of a Bid, either the next closing date must be stated or, if the Bid is unconditional as to acceptances, a statement

TAKEOVER RULES (TKO)

may be made that the Bid will remain open until further notice. In the latter case, at least 14 days' notice in writing must be given, before the Bid is closed, to those shareholders who have not accepted.

Guidance

There is no obligation to extend a Bid, the conditions of which are not met by the first or any subsequent closing date.

11.2.3 After a Bid has become or is declared unconditional as to acceptances, the Bidder must ensure that its Bid remains open for acceptance for not less than 14 days after the date on which it would otherwise have expired. When, however, a Bid is unconditional as to acceptances from the outset, a 14 day extension is not required but the Bidder must clearly and prominently set out the position in the Bid Document.

11.2.4 A Bidder must comply with any firm statement made by it as to the duration of its Bid.

Guidance

If statements in relation to the duration of a Bid such as "the Bid will not be extended beyond a specified date unless it is unconditional as to acceptances" ("no extension statements") are included in documents sent to shareholders in the Target, or are made by or on behalf of a Bidder, its Directors, officials or advisers, and not withdrawn immediately if incorrect, then only in exceptional circumstances will the DFSA allow a Bidder subsequently to extend its Bid beyond the stated date except where the right to do so has been specifically reserved.

11.2.5 A Bidder must not allow or declare its Bid (whether revised or not) to become unconditional as to acceptances after midnight (Dubai time) on the 67th day after the day the initial Bid Document was posted.

Guidance

The DFSA may waive or modify the application of these Rules if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules. Note that a waiver of Rule 11.2.5 will normally only be granted:

- a. if a competing Bid has been announced (in which case both Bidders will normally be bound by the time-table established by the posting of the competing Bid Document);
or
- b. if the Governing Body of the Target consents to an extension.

11.2.6 On the 67th day after the day upon which the initial Bid Document was posted (or any other date beyond which the Bidder has stated that its Bid will not be extended) the Bidder must make an announcement by 5.00pm (Dubai time) as to whether the Bid is unconditional as to acceptances or has lapsed.

11.2.7 All conditions must be fulfilled or the Bid will lapse within 21 days of:

- (a) the first closing date; or
- (b) the date on which the Bid becomes unconditional as to acceptances;

whichever is the later.

11.2.8 If the Governing Body of the Target proposes to announce any material new information after the 46th day following the posting of the Bid Document, it must consult the DFSA in advance of making any such announcement.

Guidance

1. The DFSA should be consulted in good time. This Rule does not displace the obligation upon a reporting entity to make timely disclosure of material information.
2. Where a matter which might give rise to such an announcement being made after the 46th day is known to the Target, every effort should be made to bring forward the date of the announcement.
3. If an announcement of the kind referred to in this Rule is made after the 46th day, the DFSA will normally be prepared to grant an extension (by waiver or modification as necessary) to “Day 53” (see Rule 11.4.1) and/or “Day 67” (see Rule 11.2.5).
4. For the purpose of Rule 11.2.8, material new information would include trading results, profit or dividend forecasts, asset valuations and proposals for dividend payments or for any material acquisition or disposal.

11.3 Settlement of consideration

11.3.1 The consideration must be paid within 14 days of the date of the Bid becoming or being declared unconditional and acceptance thereof, whichever is the later.

11.4 Revision of bids

11.4.1 A Bidder must ensure that its Bid, if revised, is kept open for at least 14 days following the date on which the revised Bid Document is posted.

Guidance

1. No document revising the Bid may therefore be posted within the 14 days ending on the last day the Bid may become unconditional as to acceptances.
2. Rule 11.2.4 also applies in relation to revised bids. If statements in relation to the value or type of consideration such as “the Bid will not be further increased” or “our Bid remains at x cents per Share and it will not be raised” (“no increase statements”) are included in documents sent to Target shareholders, or are made by or on behalf of a Bidder, its Directors, officials or advisers, and not withdrawn immediately if incorrect, then only in exceptional circumstances will the DFSA permit the Bidder to subsequently amend the terms of its Bid in any way, even if the amendment would not result in an increase of the value of the Bid, except where the right to do so has been specifically reserved.



TAKEOVER RULES (TKO)

11.4.2 Where a Bid is revised, all shareholders who accepted the original Bid must be entitled to the revised consideration.

11.4.3 The Bidder may introduce new conditions only to the extent necessary to implement an increased or improved Bid.

11.5 Alternative bids

11.5.1 The provisions of the Rules in Sections 11.2, 11.3 and 11.4 apply equally to alternative Bids, including cash alternatives.

11.5.2 Where a firm statement has been made that an alternative Bid will not be extended or reintroduced and that that alternative Bid has ceased to be open for acceptance, neither that alternative, nor any substantially similar alternative, may be reintroduced. Where, however, such a statement has not been made and an alternative Bid has closed for acceptance, a Bidder is not precluded from reintroducing that alternative at a later date.

Guidance

Reintroduction would constitute a revision of the Bid and would, therefore, be subject to the requirements of, and only be permitted as provided in, the Rules in Section 11.4.

11.6 Withdrawal of acceptances

11.6.1 A shareholder of the Target who has accepted the Bid may withdraw his acceptance:

- (a) from the date which is 14 days after the first closing date of the initial Bid, if the Bid has not by such date become or been declared unconditional as to acceptances; and
- (b) no later than the time that the Bid becomes or is declared unconditional as to acceptances.

12 RESTRICTIONS FOLLOWING BIDS**12.1 Delay of twelve months**

12.1.1 Where a Bid has been announced or posted but has not become or been declared unconditional and has been withdrawn or has lapsed, neither the Bidder, nor any Person who acted in concert with the Bidder in the course of the original Bid, nor any Person who is subsequently acting in concert with any of them, may within 12 months from the date on which such Bid is withdrawn or lapses either:

- (a) make a Bid for the relevant Shares of the Target (including a partial Bid which could result in the Bidder holding Shares carrying 30% or more of the voting rights of the Target); or
- (b) acquire any Shares of the Target if the Bidder or any such Person would thereby become obliged under Chapter 4 to make a Bid;
- (c) acquire any Shares of the Target or any rights over such Shares if the Shares and rights over Shares held by any such Person, together with Persons acting in concert with him, would in aggregate carry 30% or more of the voting rights of the Target.

12.1.2 The restrictions in Rule 12.1.1 also apply following a partial Bid which could result in a holding of not less than the 30% and not more than 50% of the voting rights of the Target whether or not the Bid has become or been declared unconditional. When such a Bid has become or been declared unconditional, the period of 12 months runs from that date.

13 PARTIAL BIDS

13.1 Application of this chapter

13.1.1 The provisions of this Chapter 13 apply to partial Bids.

13.2 DFSA consent required

13.2.1 A potential Bidder must obtain the DFSA's prior consent for any partial Bid.

Guidance

1. Consent will normally be granted under Rule 13.2.1 where a Bid could not result in the Bidder holding Shares carrying 30% or more of the voting rights of a Target.
2. In the case of a Bid which could result in the Bidder holding Shares carrying 30% or more but less than 100% of the voting rights of a Target, such consent will not normally be granted if the Bidder or Persons acting in concert with it have acquired, selectively or in significant numbers, Shares in the Target during the 12 months preceding the application for consent or if Shares have been purchased at any time after the partial Bid was reasonably in contemplation.

13.3 Restrictions and requirements

13.3.1 The Bidder and Persons acting in concert with it must not purchase Shares in the Target during the Bid Period.

13.3.2 In the case of a successful partial Bid, neither the Bidder, nor any Person who acted in concert with the Bidder in the course of the partial Bid, nor any Person who is subsequently acting in concert with any of them, may purchase such Shares during a period of 12 months after the end of the Bid Period.

13.3.3 When a Bid is made which may result in the Bidder holding Shares carrying not less than 30% and not more than 50% of the voting rights of a Target, the Bidder must:

- (a) state the precise number of Shares sought to be acquired; and
- (b) ensure that the Bid is not declared unconditional as to acceptances unless acceptances are received for not less than that number.

13.3.4 A Bidder must ensure that any Bid which could result in the Bidder holding Shares carrying 30% or more of the voting rights of a Target is conditional on:

TAKEOVER RULES (TKO)

- (a) a specified number of acceptances being received, and
- (b) approval of the Bid being given by shareholders holding over 50% of the voting rights not held by the Bidder and Persons acting in concert with it.

Guidance

1. Approval is normally signified by means of a separate box on the form of acceptance.
2. The requirement under Rule 13.3.4 may on occasion be waived if over 50% of the voting rights of the Target are held by one shareholder.

13.3.5 In making a partial Bid, the Bidder must:

- (a) make the Bid to all shareholders of a class;
- (b) make arrangements for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings;
- (c) ensure that Shares tendered in excess of this percentage are accepted by the Bidder from each shareholder in the same proportion to the number tendered to the extent necessary to enable it to obtain the total number of Shares which it has sought to acquire.

13.3.6 When a Bid is made for a Target with more than one class of equity Share capital which may result in the Bidder holding Shares carrying 30% or more of the voting rights, Bids for each class must be fair and appropriate.

Guidance

The DFSA should be consulted in advance of any such case.

14 REDEMPTION OR ACQUISITION OF OWN CAPITAL

14.1 Redemption or acquisition of own shares

14.1.1 When a Reporting Entity redeems or acquires its own voting Shares, any resulting increase in the percentage of voting rights held by a shareholder or group of shareholders acting in concert must be treated as an acquisition for the purpose of the Rules in Chapter 4.

Guidance

1. The DFSA should be consulted in advance in any case where this Rule may become relevant. In appropriate circumstances the DFSA may waive any resulting obligation to make a general Bid if there is a vote of independent shareholders and appropriate procedures are followed. See Chapter 16.
2. In the case of a redemption or reduction of capital which has as its purpose the elimination of a minority shareholding, the DFSA may in appropriate circumstances require that at the relevant meetings the majority votes must be excluded.

14.1.2 Where an obligation to extend a Bid arises as a consequence of application of Rule 14.1.1, then, for the purposes of these Rules:

- (a) the Reporting Entity undertaking the redemption or acquisition is deemed to be the Target;
- (b) where the obligation to extend the Bid arises as a consequence of a shareholder obtaining or consolidating control as a result of the redemption or purchase by the Reporting Entity of its own shares, that shareholder must extend a Bid;
- (c) where the obligation to extend the Bid arises as a consequence of a group of Persons acting in concert obtaining or consolidating control as a result of the redemption or purchase by the Reporting Entity of its own shares, each such Person must extend a Bid; and
- (d) the provisions of these Rules relating to disclosure and, where possible, timing and periods of notice will apply with any necessary adaptation to meet that purpose.

Guidance

Where an obligation to make a Bid arises as a consequence of Persons acting in concert, the DFSA should be consulted at the earliest opportunity to determine whether any waiver or modification of this Rule is appropriate. See also Rule 4.1.1 and accompanying Guidance.

14.1.3 Any redemption or acquisition of Securities of the Bidder or Shares of the Target made or to be made in terms of a Bid or any such redemption or acquisition effected within 12 months prior to the commencement of the Bid



TAKEOVER RULES (TKO)

Period must be disclosed in accordance with Section 3.4 and in all relevant Bid Documents and Target Circulars.

Guidance

Nothing in this Rule limits or displaces any obligation of disclosure that a Bidder or Target or other Person may have aside from these Rules and irrespective of the existence of, or obligation to extend, a Bid.

14.2 Other methods of bid

14.2.1 Where a Bid is implemented by a scheme of arrangement or conversion of Securities or any other method, then, for the purposes of these Rules:

- (a) the DFSA must be consulted in advance;
- (b) in the case of a scheme of arrangement, the Reporting Entity in respect of which the scheme is proposed is deemed to be the Target, and the Persons who will be the holders of Shares of the Reporting Entity after the scheme of arrangement has been sanctioned are deemed to be the Bidder; and
- (c) the provisions of these Rules relating to disclosure and, where possible, timing and periods of notice will apply with any necessary adaptation to meet that purpose.

15 FEES

15.1 Imposition and calculation of a fee

15.1.1 Fees are payable on Bid Documents as set out in the scale of fees in App4. The amount of the fee depends on the value of the Bid according to the scale as set out in that appendix.

Guidance

Where a Bidder issues a revised Bid Document that increases the value of the Bid, the DFSA will require payment of the difference between the fee that would be applicable under App4 in respect of the value of the revised Bid, and the fee previously paid in respect of the value of the initial Bid.

15.1.2 When the fee falls to be calculated on the basis of the value of the Securities to be issued as consideration, it will be computed by reference to the closing price of the relevant Securities at the last practicable date before the publication of the Bid Document as stated in that document and/or, as the case may be, by reference to the estimated value of any unlisted Securities consideration given in the document.

Guidance

In relation to the giving of an estimated value of any unlisted Securities consideration, see App1.4.1(m).

15.1.3 Where there are alternative Bids, the alternative with the highest value will be used to calculate the value of the Bid. Bids for all classes of equity Share capital will be included in the calculation of the value of the Bid, but Bids for non-equity Share capital, Convertibles, Options, etc. will not.

15.1.4 When a merger is effected by Bids for both entities by a new entity created to make the Bids, the fee will be determined by the value of the lower of the two Bids.

15.1.5 The DFSA may reduce, waive or refund all or part of any fee if it considers that, in the circumstances of a particular case, it would be equitable to do so.

15.2 Responsibility and timing for payment

15.2.1 The Bidder is responsible for the payment of the relevant fee to the DFSA.

15.2.2 Payment must be made to the DFSA:

- (a) at the time of filing of the Bid Document with the DFSA; and



TAKEOVER RULES (TKO)

(b) before the document is posted.

15.2.3 In all cases a note setting out the calculation of the fee must accompany the Bid Document provided to the DFSA. If the Bid is revised, a similar note must be provided with the revised Bid Document and any necessary further payment.

15.2.4 Where payment of a fee is not made at or before the date on which it is due, without limiting the right of the DFSA to take any other action, the sum due will be increased by 1% for each calendar month, or part of a calendar month, that it remains outstanding beyond the due date.

Guidance

If a fee is not paid by the date on which it becomes due, this may constitute a breach of a Rule and the DFSA is entitled to take action including, but not limited to, taking steps to suspend or cancel listing.

16 WAIVERS OR MODIFICATIONS

16.1 Applications to waive or modify the Markets Law 2004 and rules

16.1.1 A Person wishing to seek a waiver or modification of a provision of the Law or Rules as it applies to him, must:

- (a) apply in writing to the DFSA;
- (b) clearly identify the provision in relation to which he seeks a waiver or modification;
- (c) ensure that the application is accompanied by a statement of the reasons supporting the application; and
- (d) pay the prescribed fee (if any).

16.1.2 In considering the application, the DFSA may:

- (a) carry out any enquiries which it considers appropriate;
- (b) require the applicant to provide additional information in such form as the DFSA considers appropriate;
- (c) require any information furnished by the applicant to be verified in such manner as the DFSA may specify; and
- (d) take into account any information which it considers appropriate in relation to the application.

Guidance

1. Under Article 58 of the Markets Law 2004 and Article 25 of the Regulatory Law 2004, the DFSA may waive or modify the application of the Markets Law 2004 and of the Rules.
2. The DFSA may grant a waiver or modification from the application of the Rules where a Takeover transaction is subject to the dual jurisdiction of the DFSA and a regulator or agency of a jurisdiction other than the DIFC. While applications will be considered on a case by case basis, it should be expected that the factors that the DFSA will take into account in considering such an application will include:
 - (a) whether the application of legislation or procedures of that other jurisdiction will or will not adequately and properly govern the transaction;



TAKEOVER RULES (TKO)

- (b) whether such legislation or procedures will or will not provide shareholder protection in a manner commensurate with these Rules, DIFC Law and international best practice;
- (c) whether the grant of the application is or is not in the interests of the DIFC.

17 ENFORCEMENT

17.1 Applicable provisions

Guidance

1. The Takeover Rules (including the Takeover Principles in Section 1.5) have the force of law. As acknowledged in Article 52 of the Markets Law 2004, a failure to comply with a Rule may constitute a contravention by virtue of Article 85 of the Regulatory Law 2004. Those that seek to take advantage of the facilities of the Securities markets in the DIFC should conduct themselves in matters relating to Takeovers not only in accordance with the Takeover Rules but also in accordance with the highest business standards.
2. Part 8 of the Markets Law 2004 addresses prevention of market misconduct, and Part 9 addresses contraventions and proceedings. Article 54 of the Markets Law 2004 provides that the DFSA may apply to the Court or the Financial Markets Tribunal to obtain an order or orders against a Person who has contravened the Markets Law 2004 or the Rules. These include, by Article 54(1)(e), orders in relation to activities relating to Takeovers. By Article 57(3), the Financial Markets Tribunal also has jurisdiction to make a finding or declaration of unacceptable circumstances and additional orders as it sees fit.
3. As reflected in Article 56(4) of the Markets Law 2004, an appeal may be made from the Financial Markets Tribunal to the Court pursuant to Article 32(5) of the Regulatory Law 2004.
4. The purpose of the provisions of Part 9 of the Markets Law 2004, along with the powers of the DFSA, is set out in the Enforcement module (ENF) of the Rules. The enforcement powers of the DFSA will be exercised in accordance with the DFSA's enforcement philosophy as set out in ENF.

App1 CONTENTS OF BID DOCUMENTS**A1.1 Disclosure as to the bidder and its intentions****A1.1.1** The Bidder must disclose the following information:

- (a) the name and address of the Bidder;
- (b) the name and address of any financial adviser or other person making the Bid on behalf of the Bidder;
- (c) the identity of any Persons acting in concert with the Bidder;
- (d) whether or not any Securities acquired in pursuance of the Bid will be transferred to any other Persons and, if so, the names of any such Persons and details of any such agreement, arrangement or understanding;
- (e) the names of the Directors of the Bidder and their direct and indirect interests, if any, in the Bidder and Target;
- (f) the nature and particulars of the business of the Bidder and its financial and trading prospects;
- (g) the Bidder's reasons for the Bid;
- (h) the Bidder's intentions regarding the continuation of the business of the Target;
- (i) the Bidder's intentions regarding any major changes to be introduced in the business of the Target, including any redeployment of the fixed assets of the Target;
- (j) the Bidder's intentions with regard to the continued appointment of Directors and employment of the employees of the Target and of its subsidiaries.

A1.2 Financial Disclosure in Securities Exchange Bid**A1.2.1** In the case of a Securities Exchange Bid, the Bidder must disclose the following information relating to the financial affairs of the Bidder:

- (a) for the past 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the amount of tax, extraordinary items, minority shareholders' interests, the amount absorbed by dividends and earnings and dividends per Share;

- (b) a statement of the assets and liabilities shown in the latest published audited accounts;
- (c) a cash flow statement if provided in the latest published audited accounts;
- (d) all known material changes in the financial or trading position of the Bidder subsequent to the latest published audited accounts or a statement that there are no known material changes;
- (e) details relating to items referred to in paragraph (a) above in respect of any interim statement or preliminary announcement made since the latest published audited accounts;
- (f) inflation-adjusted information relating to paragraphs (a) and (b) if any has been published;
- (g) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation adjusted information;
- (h) a description of how the Bid is to be financed and the source of the finance, including details of the principal lenders or arrangers of such finance;
- (i) details of any reorganisation of capital including capital raisings during the two financial years preceding the commencement of the Bid Period; and
- (j) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges or guarantees or other material contingent liabilities of the Bidder and any of its subsidiaries, or, if there are no such liabilities, a statement to such effect.

A1.2.2 The figures to be disclosed under A1.2.1 (a) and (b) must be adjusted to eliminate material unusual and non-recurring items and the nature of the adjustments made must be disclosed.

A1.2.3 Where, because of a change in accounting policy, figures are not comparable to a material extent, this must be disclosed and where possible the approximate amount of the resultant variation must be stated.

A1.3 Disclosure of shareholdings and dealings

A1.3.1 The Bidder must disclose:



TAKEOVER RULES (TKO)

- (a) the shareholdings of the Bidder in the Target;
- (b) the holdings of Securities in the Bidder (in the case of a Securities Exchange Bid only) and in the Target in which each Director of the Bidder is directly or indirectly interested;
- (c) the holdings of Securities in the Bidder (in the case of a Securities Exchange Bid only) and in the Target which any Person acting in concert with the Bidder owns or controls, together with the name of such Person acting in concert;
- (d) the holdings of Securities in the Bidder (in the case of a Securities Exchange Bid only) and in the Target owned or controlled by any Person who, prior to the posting of the Bid Document, has irrevocably committed himself to accept the Bid, together with the name of such Person.

A1.3.2 If in any of the above categories there are no holdings of Shares or Securities, this fact must be stated, provided that this does not apply to the category in A1.3.1(d) if there are no such irrevocable commitments.

A1.3.3 If any Person whose holdings of Shares or Securities are required by this Section to be disclosed has dealt for value in the Shares in question during the period beginning six months prior to the Bid Period and ending with the latest practicable date prior to the posting of the Bid Document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact must be stated.

A1.4 Other disclosures

A1.4.1 The Bidder must disclose the following information:

- (a) the price or other consideration to be paid for the Shares;
- (b) precise particulars of the Shares in respect of which the Bid is made and whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared;
- (c) the terms of the Bid and its proposed implementation and the mechanics thereof;
- (d) all conditions applicable to the Bid;
- (e) a statement to the effect that settlement of the consideration to which any shareholder is entitled under the Bid will be implemented in full in accordance with the terms of the Bid without regard to any lien, right of set-off, counterclaim or other analogous right to which the Bidder may otherwise be, or claim to be, entitled against such shareholder;

- (f) particulars of all documents required, and procedures to be followed, for acceptance of the Bid;
- (g) whether the Bidder intends to avail itself of any powers of compulsory acquisition;
- (h) in the case of a partial Bid, the reasons for making a partial Bid rather than a full Bid;
- (i) where the Bid is for cash or includes an element of cash or other assets not comprising Securities, the Bid Document must include confirmation by a financial adviser or by an appropriate external and independent Person (for example, the Bidder's bank) that resources are available to the Bidder sufficient to satisfy full acceptance of the Bid;
- (j) a statement on whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the Bidder or any Person acting in concert with it and any of the Directors of the Target or Persons who were Directors within the preceding 12 months, or shareholders or Persons who were shareholders within the preceding 12 months, having any connection with or dependence upon the Bid;
- (k) a statement on whether or not any agreement, arrangement or understanding exists between a Bidder and the Target and Persons acting in concert with them in relation to the Shares;
- (l) full particulars of any such agreement, arrangement or understanding referred to in (j) and (k); and
- (m) where the Bid involves the issue of unlisted Securities, an estimate of the value of such Securities provided by an external independent adviser, together with the assumptions and methodology used in arriving at that value.

Guidance

1. For the purposes of A1.4.1(i), the Person confirming that resources will be available will not be expected to produce the cash itself if, in giving the confirmation, it acts responsibly and has taken all reasonable steps to assure itself that the cash will be available.
2. The DFSA may waive or modify the application of certain provisions of this A1.4 if it is satisfied that circumstances are appropriate. See Chapter 16 of these Rules. In relation to A1.4.1(e), note that the DFSA will only grant a waiver or modification in exceptional circumstances and where all shareholders are to be treated equally.



TAKEOVER RULES (TKO)

A1.4.2

In the case of a Securities Exchange Bid, the Bidder must provide the following additional information:

- (a) a summary of the principal contents of each material contract (not being a contract entered into in the ordinary course of business) entered into by the Bidder or any of its subsidiaries during the period beginning two years before the commencement of the Bid Period, including particulars of dates, parties, terms and conditions and any consideration passing to or from the Bidder or any of its subsidiaries;
- (b) whether and in what manner the emoluments of the Directors of the Bidder will be affected by the acquisition of the Target or by any other associated transaction, or, if there will be no affect, a statement to that effect;
- (c) details of the authorised and issued Share capital and the rights of shareholders in respect of capital, dividends and voting;
- (d) details of any material litigation to which the Bidder is, or may become, a party; and
- (e) how and when the documents of title to the Securities will be issued.

App2 CONTENTS OF TARGET CIRCULARS**A2.1 Disclosure in initial target circular**

A2.1.1 The Governing Body of the Target must disclose the following information:

- (a) the substance of the advice given to it by its external advisers;
- (b) where relevant, its views on the statements in the Bid Document regarding the Bidder's intentions in respect of the Target and its Directors made pursuant to A1.1;
- (c) details of the holdings of Securities of the Target in the Bidder;
- (d) details of the holdings of Shares in the Target and Securities in the Bidder in which Directors of the Target are directly or indirectly interested;
- (e) details of the holdings of Shares in the Target and (in the case of a Securities Exchange Bid only) of Securities in the Bidder which any Person acting in concert with the Target owns or controls and the holdings of Shares in the Target and, (in the case of a Securities Exchange Bid only) of Securities in the Bidder, owned or controlled by a subsidiary of the Target, or by any Person acting in concert with it;
- (f) details of the holdings of Shares in the Target and (in the case of a Securities Exchange Bid only) of Securities in the Bidder owned or controlled by a Person who has any agreements, arrangements or understandings of the kind referred to in A1.4.1 (j) and (k) with the Target or with any Person acting in concert with the Target;
- (g) details of any agreements, arrangements or understandings of the kind referred to in A1.4.1 (j) and (k) or, if there are none, a statement to that effect;
- (h) material particulars of all service contracts of any Director or proposed Director of the Target with the entity or any of its subsidiaries, or, if there are none, a statement to that effect; and
- (i) whether the Directors of the Target intend, in respect of their own beneficial holdings of Shares, to accept or reject the Bid.

A2.1.2 If any Person whose holdings of Shares or Securities are required by A2.1.1 to be disclosed has dealt for value in the Shares or Securities

in question during the period beginning six months prior to the Bid Period and ending with the latest practicable date prior to the posting of the Target Circular, the details, including dates and prices, must be stated. If no such dealings have taken place, that fact must be stated.

A2.2 Financial disclosure

A2.2.1 The Target must disclose the following information relating to its financial affairs:

- (a) for the past 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the amount of tax, extraordinary items, minority shareholders' interests, the amount absorbed by dividends and earnings and dividends per Share;
- (b) a statement of the assets and liabilities shown in the latest published audited accounts;
- (c) a cash flow statement if provided in the latest published audited accounts;
- (d) all known material changes in the financial or trading position of the Target subsequent to the latest published audited accounts or a statement that there are no known material changes;
- (e) details relating to items referred to in paragraph (a) above in respect of any interim statement or preliminary announcement made since the latest published audited accounts;
- (f) inflation-adjusted information relating to paragraphs (a) and (b) if any has been published;
- (g) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation adjusted information;
- (h) details of any reorganisation of capital including capital raisings during the two financial years preceding the commencement of the Bid Period; and
- (i) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges or guarantees or other material contingent liabilities of the Target and any of its subsidiaries, or, if there are no such liabilities, a statement to such effect.

App3 CONTENTS OF SUBSEQUENT DOCUMENTS**A3.1 Obligation to update material information**

A3.1.1 Documents subsequently sent to shareholders of the Target by either the Bidder or Target must contain details of any material changes in information previously published by or on behalf of the relevant Bidder or Target during the Bid Period. If there have been no such changes, this must be stated.

A3.1.2 Without limiting the application of A3.1.1, the following matters must be updated:

- (a) holdings of relevant Shares and Securities and dealings (A1.3.1 and A2.1.1(c)-(f));
- (b) Directors' emoluments (A1.4.2(b));
- (c) special arrangements (A1.4.1(j));
- (d) ultimate owner of Shares acquired under the Bid (A1.1.1(d));
- (e) changes to Directors' service contracts (A2.1.1(h)); and
- (f) agreements, arrangements or understandings in relation to Bids (Rules A1.4.1(j) and (k) and A2.1.1(f) and (g)).



TAKEOVER RULES (TKO)

App4 SCALE OF FEES

Value of the Bid US\$ million	Charge US\$	Charge as a maximum percentage of the value of the Bid %
Less than 5	5,000	---
Over 5 to 25	10,000	0.20
Over 25 to 100	37,500	0.15
Over 100 to 500	100,000	0.10
Over 500	250,000	0.05