

**Appendix 2**

In this appendix underlining indicates new text and striking through indicates deleted text.



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# Notice of Amendments

Takeover Rules Module

**(TKO)**

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<b><u>Consequential changes</u></b>
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## **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~~2012.

**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~~8 of the Markets Law ~~2004~~2012.
2. The purpose of these Rules is set out in Article ~~33~~51 of the Markets Law ~~2004~~2012, 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.

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### **1.2 Application of these Rules**

**1.2.1** The Rules in this Module (TKO) apply to Persons to whom the Markets Law ~~2004~~2012 applies, and in particular:

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

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**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 45~~14~~ of the Markets Law 2012 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.

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**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 2012) 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.

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## **1.5 The Takeover Principles**

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- 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~~2012 including Article 42 relating to insider dealing.

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- 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 ~~3553~~ of the Markets Law ~~2004~~2012. 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~~2012 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 ~~589~~ of the Markets Law ~~2004~~2012 and Chapter 16 of these Rules.

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## **2 THE APPROACH, ANNOUNCEMENTS AND ADVICE**

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### **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~~2012 including Article ~~4258~~ relating to insider dealing.

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### **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 MKT Rule 8.2.14.7.1 of the ~~Offered Securities Rules~~.

**Guidance**

1. ~~Rule 8.2.1 of the Offered Securities Rules (OSR) requires announcement to, amongst others, NASDAQ Dubai Limited. In this regard NASDAQ Dubai Limited acts as the regulatory information service provider in the DIFC.~~
2. ~~An announcement should not be delayed while full information is being obtained. Additional information may be the subject of a later supplementary announcement.~~
3. ~~An announcement should not be delayed while full information is being obtained.~~  
[Amended][RM63][VER4/01/09]

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**3 RESTRICTED DEALINGS BEFORE AND DURING AN OFFER PERIOD**

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**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 8.2.14.7.1 of the Markets Offered Securities Rules.

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**4 MANDATORY BIDS**

**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 ~~589~~ of the Markets Law ~~2004~~2012 and ~~Article 25 of the Regulatory Law 2004~~, the DFSA may waive or modify the application of the Markets Law ~~2004~~2012 and ~~or~~ 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.
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.

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## **6 PROVISIONS APPLICABLE TO ALL BIDS**

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### **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 ~~8.2.14.7.1~~ of the ~~Offered Securities Markets~~ Rules.

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## **8 DOCUMENTS ISSUED BY GOVERNING BODIES**

### **8.1 The general obligation as to information**

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- 8.1.2** The Governing Bodies of the Bidder and Target must make timely disclosure of all statements, notices, declarations and other documents such as the Bid Document and the Target Circular in the same manner as a market disclosure under Rule ~~8.2.14.7.1~~ of the ~~Offered Securities Markets~~ Rules. [Added][VER2/02-07][RM40/07]

#### **Guidance**

This provision applies Rule ~~8.2.14.7.1~~ of the ~~Offered Securities Markets~~ Rules in respect of the Bidder and Target to a takeover regardless of whether they are Reporting Entities. For the avoidance of doubt, specific obligations to make disclosure are also contained in Rules 2.6.1, and 3.4.1. [Added][VER2/02-07][RM40/07]

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## **16 WAIVERS OR MODIFICATIONS**

### **16.1 Applications to Waive or Modify the Markets Law ~~2004~~2012 and Rules**

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**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 ~~589~~ of the Markets Law ~~2004~~2012 and ~~Article 25 of the Regulatory Law 2004~~, the DFSA may waive or modify the application of the Markets Law ~~2004~~2012 and ~~or~~ 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;
  - 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.

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## 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 ~~5266~~ of the Markets Law ~~2004~~2012, 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 ~~86~~ of the Markets Law ~~2004~~2012 addresses prevention of market misconduct, and Part ~~97~~ addresses contraventions and proceedings. Article ~~5468~~ of the Markets Law ~~2004~~2012 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~~2012 or the Rules. These include, by Article ~~5468~~(1)(e), orders in relation to activities relating to Takeovers. ~~By Under~~ Article ~~57(3)~~71(2), 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)~~ 70(6) of the Markets Law ~~2004~~2012, 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 ~~97~~ of the Markets Law ~~2004~~2012, 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.

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