

TAKEOVER REGULATIONS 2015

Chapter 1 The Takeover Panel

The Panel and its rules

1. The Panel

- (1) A takeover panel (the “Panel”) shall be established for the purpose of carrying out the functions conferred on it by or under these Regulations.
- (2) The membership of Panel shall be determined by the Board from time to time.
- (3) The Panel shall be responsible for ensuring orderly conduct of takeover bids and merger transactions in accordance with these Regulations and the rules made by the Panel pursuant to these Regulations, including-
 - (a) setting out general principles for the conduct of takeover bids and merger transactions,
 - (b) ensuring that the Panel’s powers are exercised in order to give effect to such principles,
 - (c) giving rulings and directions on the application of these Regulations and the rules made by the Panel pursuant to these Regulations, and
 - (d) the day to day supervision of takeover bids and merger transactions.
- (4) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.
- (5) The Panel may make arrangements for any of its functions to be discharged by-
 - (a) a committee or sub-committee of the Panel,
 - (b) an officer or member of staff of the Panel, or a person acting as such,
 - (c) an officer or member of staff of the Financial Services Regulator, or a person acting as such, or
 - (d) an officer or member of staff of the Registrar, or a person acting as such.

2. Rules

- (1) The Panel may make rules-
 - (a) for or in connection with the regulation of takeover bids and merger transactions of relevant companies, however effected, including by means of contractual offer, statutory merger or scheme of arrangement and other transactions which have the objective or potential effect (directly or indirectly) of obtaining or consolidating control of relevant companies, as well as partial offers to shareholders for securities in relevant companies (a “takeover transaction”),
 - (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any such bid or transaction, and

- (c) about cases where-
 - (i) any such bid or transaction is, or has been, contemplated or apprehended, or
 - (ii) an announcement is made denying that any such bid or transaction is intended.
- (2) A reference to rules in the following provisions of this Chapter is to rules under these Regulations.
- (3) Subject to sub-section (6), rules made under this Section apply in respect of the following persons in relation to takeover transactions-
 - (a) any body corporate whose voting shares are, or have been in the 5 years prior to the relevant date, listed or admitted to trading on any recognised investment exchange within the Abu Dhabi Global Market, irrespective of their jurisdiction of incorporation,
 - (b) any company registered in the Abu Dhabi Global Market (whether incorporated in or continued into the Abu Dhabi Global Market) as a public company at any time in the 5 years prior to the relevant date and having more than 100 shareholders except where, on the application of the company, the Panel rules otherwise,
 - (c) any person making or contemplating making an offer to acquire securities in any of the foregoing,
 - (d) directors, partners, officers, employees or representatives through whom any of the foregoing acts, and
 - (e) professional advisers of the foregoing in so far as they are acting in relation to a takeover transaction.

In the case of (a) and (b) above, the relevant date is the date on which an announcement is made of a proposed offer for the company or the date on which some other event occurs which has significance under rules made under this Section.

- (4) Bodies corporate who are subject to rules made under this Section-
 - (a) are required to ensure that their directors and employees are provided with adequate guidance in respect of the application of rules made under this Section, and
 - (b) shall be held responsible for the acts or omissions of their directors or employees.
- (5) In the event of uncertainty as to the application of rules made under this Section to any entity or person, clarification should be sought from the Panel.
- (6) Rules made under this Section shall not apply to companies established for the sole purpose of collective investment or to any cell of such a company.

3. Further provisions about rules

- (1) Rules made by the Panel may-
 - (a) make different provision for different purposes,
 - (b) make provision subject to exceptions or exemptions,

- (c) make provision by reference to other rules made by the Panel, the Financial Services Regulator or any other person exercising a regulatory function within the Abu Dhabi Global Market, as those rules have effect from time to time,
- (d) may contain such incidental, supplemental, consequential and transitional provision as the Panel considers appropriate, and
- (e) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.

Rules made by virtue of paragraph (e) must require the Panel to give reasons for acting as mentioned in that paragraph.

- (2) Any power conferred on the Panel to make rules is exercisable in writing.
- (3) A rule making instrument must be published by the Panel on its website.
- (4) A person is not to be taken to have contravened any rule made by the Panel if the person shows that at the time of the alleged contravention the rule making instrument concerned had not been published in accordance with subsection (3).

4. Consultation

- (1) Before the Panel makes, modifies or replaces rules, it must publish a draft of the rules on its website.
- (2) The draft must be accompanied by a notice that representations about the proposal may be made to the Panel within a specified time.
- (3) Before the Panel issues rules, it may have regard to any representations made to it in accordance with subsection (2) .
- (4) Subsections (1) to (3) do not apply if the Panel considers that there is an urgent need to publish the rules.
- (5) Subsection (2) does not apply in relation to rules issued by the Panel if it considers that the delay involved in complying with it would be prejudicial to its objectives.

5. Rulings

- (1) The Panel may give rulings on the interpretation, application or effect of rules.
- (2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has binding effect.

6. Directions

Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order-

- (a) to restrain a person from acting (or continuing to act) in breach of rules,
- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules, or

- (c) otherwise to secure compliance with rules.

7. Waiver or modification of rules

- (1) The Panel may, on the application or with the consent of a person who is subject to rules made by the Panel, direct that all or any of those rules-
 - (a) are not to apply to that person, or
 - (b) are to apply to that person with such modifications as may be specified in the direction.
- (2) An application must be made in such manner as the Panel may direct.
- (3) The Panel may not give a direction made pursuant to subsection (1) unless it is satisfied that-
 - (a) compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and
 - (b) the direction would not adversely affect the advancement of any of the Abu Dhabi Global Market's objectives.
- (4) A direction may be given subject to conditions.
- (5) The Panel may-
 - (a) revoke a direction made pursuant to subsection (1), or
 - (b) vary it on the application, or with the consent, of the person to whom it relates.

8. Publication of waivers and modifications

- (1) Subject to subsection (2), a direction made pursuant to Section 7(1) must be published by the Panel on its website.
- (2) Subsection (1) does not apply if the Panel is satisfied that it is inappropriate or unnecessary to publish the direction.
- (3) In deciding whether it is satisfied as mentioned in subsection (2), the Panel must consider whether the failure to publish the direction would adversely affect the advancement of any of the Abu Dhabi Global Market's objectives.

9. Guidance

- (1) The Panel may give guidance with respect to-
 - (a) the operation of any provision of these Regulations and of any rules,
 - (b) any other matter relating to the functions and powers of the Panel, and
 - (c) any other matter about which it appears to the Panel to be desirable to give guidance.
- (2) Guidance is indicative and non-binding and may comprise-
 - (a) guidance made and issued by the Panel as notations to the rules, and

- (b) any guidance issued by the Panel which has not been incorporated into the rules.
- (3) Nothing shall constitute guidance unless it is published by the Panel on its website and indicates that it constitutes guidance.

10. Fees and charges

Rules made under Section 2(1) may provide for fees or charges to be payable to the Panel.

Information

11. Power to require documents and information

- (1) Subject to Section 25, the Panel may by notice in writing require a person-
 - (a) to produce any documents that are specified or described in the notice, and
 - (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (2) A requirement under subsection (1) must be complied with-
 - (a) at a place specified in the notice, and
 - (b) before the end of such reasonable period as may be so specified.
- (3) This section applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions.
- (4) The Panel may require-
 - (a) any document produced to be authenticated, or
 - (b) any information provided (whether in a document or otherwise) to be verified,in such manner as it may reasonably require.
- (5) The Panel may authorise a person to exercise any of the Panel's powers under this section.
- (6) A person exercising a power by virtue of subsection (5) must, if required to do so, produce evidence of his authority to exercise the power.
- (7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this section.
- (9) A reference in this section to the production of a document includes a reference to the production of-
 - (a) a hard copy of information recorded otherwise than in hard copy form, or
 - (b) information in a form from which a hard copy can be readily obtained.

12. Restrictions on disclosure

(1) In this Section and in Section 13 “Confidential Information” means information which, regardless of whether or not received by virtue of a requirement to provide it imposed by or under these Regulations-

- (a) relates to the business or other affairs of any person, and
- (b) was received by the Panel for the purposes of, or in the discharge of, any functions of the Panel under any rules made by or under these Regulations,

unless-

- (i) the information has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section, or
- (ii) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

(2) Confidential Information must not be disclosed by-

- (a) the Panel, or by any person obtaining the Confidential Information directly or indirectly from the Panel,
- (b) any person who is or has been employed by the Panel,
- (c) a person who is or has been engaged to provide services to the Panel, or
- (d) any expert instructed by the Panel,

without the prior consent of-

- (i) the person from whom the Panel obtained the Confidential Information, and
- (ii) if different, the person to whom it relates.

13. Exceptions from Section 12

(1) Section 11 does not prevent a disclosure of Confidential Information which is made for the purpose of facilitating the carrying out of the Panel’s functions and is-

- (a) permitted or required under any enactment applicable to the Panel, including, for the avoidance of doubt, any applicable international obligations,
- (b) made to-
 - (i) any regulatory authority or body in the Abu Dhabi Global Market (including the Registrar and the Financial Services Regulator),
 - (ii) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance, whether in the Abu Dhabi Global Market or otherwise,

- (iii) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services, whether in the Abu Dhabi Global Market or otherwise,
- (iv) a civil or criminal law enforcement agency, whether in the Abu Dhabi Global Market or otherwise,
- (v) any other governmental or other regulatory body or authority, whether in the Abu Dhabi Global Market or otherwise,

for the purpose of assisting the performance by any such person of its functions and powers, or

- (c) made in good faith for the purposes of the exercise of the functions and powers of the Panel or in order to further the Panel's objectives.
- (2) Any disclosure by the Panel pursuant to subsection (1) may include, insofar as the Panel considers appropriate, provisions-
- (a) making any permission to disclose Confidential Information subject to conditions (which may relate to the obtaining of consents or any other matter), and
 - (b) restricting the uses to which Confidential Information disclosed may be put.

14. Admissibility of statements made to the Panel

- (1) A statement made to the Panel by a person in compliance with Section 11 is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.
- (2) The Panel shall not disclose a statement made by a person in answer to any question asked pursuant to Section 11 to any law enforcement agency for the purpose of criminal proceedings against the person unless-
 - (a) the person consents to the disclosure; or
 - (b) the Panel is required by law or Court order to disclose the statement.

Co-operation

15. Panel's duty of co-operation

- (1) The Panel must take such steps as it considers appropriate to co-operate with-
 - (a) any regulatory authority or body in the Abu Dhabi Global Market (including the Registrar and the Financial Services Regulator),
 - (b) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter terrorist financing or sanctions compliance, whether in the Abu Dhabi Global Market or otherwise,
 - (c) a self-regulatory body or organisation exercising and performing powers and functions in relation to financial services, whether in the Abu Dhabi Global Market or otherwise,

- (d) a civil or criminal law enforcement agency, whether in the Abu Dhabi Global Market or otherwise,
 - (e) any other governmental or other regulatory body or authority, whether in the Abu Dhabi Global Market or otherwise,
- (2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

Appeals

16. Appeals

- (1) An appeal lies to the Court from any decision or direction of the Panel made under these Regulations or under rules made under Section 2.
- (2) Notice of appeal against a decision or direction of the Panel must be given to the Court within [28] days of the relevant decision or direction.
- (3) On hearing the appeal, the Court shall-
 - (a) make an order in respect of such decision or direction on such terms and conditions as it thinks fit, and
 - (b) in doing so may make any decision or direction which the Panel might have made.

Contravention of rules etc.

17. Sanctions

- (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has-
 - (a) acted in breach of rules, or
 - (b) failed to comply with a direction given by virtue of section 6.
- (2) The Panel must prepare a statement (a “policy statement”) of its policy with respect to-
 - (a) the imposition of the sanction in question, and
 - (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be imposed.

An element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in subsection (3).

- (3) The factors are-
 - (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened,
 - (b) the extent to which the breach or failure was deliberate or reckless, and
 - (c) whether the person on whom the sanction is to be imposed is an individual.

- (4) The Panel may at any time revise a policy statement.
- (5) The Panel must prepare a draft of any proposed policy statement (or revised policy statement) and consult such persons about the draft as the Panel considers appropriate.
- (6) The Panel must publish on its website any policy statement (or revised policy statement) that it prepares.

18. Failure to comply with rules about bid documentation

- (1) Where an offer document published in respect of a takeover bid does not comply with offer document rules, a contravention of these Regulations is committed by-
 - (a) the person making the bid, and
 - (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.
- (2) A person commits a contravention of these Regulations under subsection (1) only if-
 - (a) he knew that the offer document did not comply, or was reckless as to whether it complied, and
 - (b) he failed to take all reasonable steps to secure that it did comply.
- (3) Where a response document published in respect of the bid does not comply with response document rules, contravention of these Regulations is committed by any director or other officer of the company who-
 - (a) knew that the response document did not comply, or was reckless as to whether it complied, and
 - (b) failed to take all reasonable steps to secure that it did comply.
- (4) A person who contravenes these Regulations is liable to a fine not exceeding level [●].
- (5) Nothing in this section affects any power of the Panel in relation to the enforcement of its rules.
- (6) In this section-
 - “offer document” means a document required to be published by the offer document rules,
 - “offer document rules” means rules designated as such in rules made under these Regulations,
 - “response document” means a document required to be published by the response document rules, and
 - “response document rules” means rules designated as such in rules made under these Regulations.

19. Compensation

- (1) The Panel may make rules which provide for a person to pay such compensation as the Panel thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.

- (2) Rules made by virtue of this section may include provision for the payment of interest (including compound interest).

20. Enforcement by the Court

- (1) If, on the application of the Panel, the Court is satisfied-
- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
 - (b) that a person has contravened a rule-based requirement or a disclosure requirement,
- the Court may make any order it thinks fit to secure compliance with the requirement.
- (2) Except as provided by subsection (1), no person has a right to seek an injunction to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.
- (3) In this section-
- “contravene” includes fail to comply,
 - “disclosure requirement” means a requirement imposed under section 11, and
 - “rule-based requirement” means a requirement imposed by or under rules.

21. No action for breach of statutory duty etc.

- (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.
- (2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.
- (3) In this section-
- (a) “contravention” includes failure to comply, and
 - (b) “disclosure requirement” and “rule-based requirement” have the same meaning as in Section 20.

Miscellaneous and supplementary

22. Panel as party to proceedings

The Panel is capable (despite being an unincorporated body) of-

- (a) bringing proceedings under this Chapter in its own name, and
- (b) bringing or defending any other proceedings in its own name.

23. Exemption from liability in damages

- (1) Neither the Panel, nor any person within subsection (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions.
- (2) A person is within this subsection if-
 - (a) he is (or is acting as) a member, officer or member of staff of the Panel, or
 - (b) he is a person authorised under section 11.
- (3) Subsection (1) does not apply if the act or omission is shown to have been in bad faith.

24. Self-incrimination

- (1) Subject to Section 25, it is not a reasonable excuse for a person to refuse or fail to-
 - (a) permit inspection and copying of any information or document,
 - (b) give or produce, or procure the giving or production of, any information or document, or
 - (c) answer questions,

pursuant to any requirement under Section 11 or an order made by the Court under Section 20 to secure compliance with such a requirement on the grounds that any such information or document or answer, as the case may be-

 - (d) might tend to incriminate the person, or
 - (e) is, or contains, or might reveal a communication made in confidence.

25. Protected information and documents

- (1) In this Section, "Protected Items" means-
 - (a) communications between a professional legal adviser and his client or any person representing his client which fall within subsection (2),
 - (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within subsection (2) (as a result of paragraph (b) of that subsection),
 - (c) items which-
 - (i) are enclosed with, or referred to in, such communications,
 - (ii) fall within subsection (2), and
 - (iii) are in the possession of a person entitled to possession of them,
 - (d) in the case of any information held by the Panel, information which-
 - (i) is supplied by or relating to bodies dealing with security matters,

- (ii) is held by public authorities in the exercise of their functions,
 - (iii) relates to national security or international relations,
 - (iv) relates to the economic and financial interests of the Abu Dhabi Global Market or to its financial stability, and
 - (v) constitutes trade secrets.
- (2) A communication or item falls within this subsection if it is made-
- (a) in connection with the giving of legal advice to the client, or
 - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

A communication or item is not a Protected Item if it is held with the intention of furthering a criminal purpose.

- (3) A person may not be required by or under these Regulations to produce, disclose or permit the inspection of Protected Items.
- (4) Where there are any grounds for withholding any Protected Items, such grounds shall apply only to the relevant parts of the document which are affected by such grounds and not to any other part of the document.
- (5) A lawyer may be required under this Chapter to furnish the name and address of his client.
- (6) Where the Panel requires a lawyer to give information or to produce a Document or to answer a question, and the giving of the information or the production of the Document or the answer to the question would involve disclosing a legally privileged communication made by, on behalf of, or to, the lawyer in his capacity as a lawyer, the lawyer is entitled to refuse to comply with the requirement unless-
- (a) where the person to whom, or by, or on behalf of whom, the communication was made is a body corporate that is subject to winding up proceedings, the liquidator of the body consents to the lawyer complying with the requirement, or
 - (b) otherwise, the person to whom, or by, or on behalf of whom, the communication was made consents to the lawyer complying with the requirement.
- (7) Where a lawyer so refuses to comply with a requirement, he shall, as soon as practicable, give to the Panel a written notice setting out-
- (a) where the lawyer knows the name and address of the person to whom, or by whom, or on behalf of whom, the communication was made, then that name and address, and
 - (b) where the requirement to give information or produce a document relates to a communication which was made in writing, then sufficient particulars to identify the document containing the communication.

Chapter 2 “Squeeze-out” and “Sell-out”

Takeover offers

26. Meaning of “takeover offer”

(1) For the purposes of this Chapter an offer to acquire shares in a company is a “takeover offer” if the following two conditions are satisfied in relation to the offer.

(2) The first condition is that it is an offer to acquire-

- (a) all the shares in a company, or
- (b) where there is more than one class of shares in a company, all the shares of one or more classes,

other than shares that at the date of the offer are already held by the bidder.

Sections 27 and 29(2) contain provisions supplementing this subsection.

(3) The second condition is that the terms of the offer are the same-

- (a) in relation to all the shares to which the offer relates, or
- (b) where the shares to which the offer relates include shares of different classes, in relation to all the shares of each class.

Section 28 contains provision treating this condition as satisfied in certain circumstances.

(4) In subsections (1) to (3) “shares” means shares, other than relevant treasury shares, that have been allotted on the date of the offer (but see subsection (5)).

(5) A takeover offer may include among the shares to which it relates-

- (a) all or any shares that are allotted after the date of the offer but before a specified date,
- (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date, or
- (c) all or any other relevant treasury shares.

(6) In this section-

“relevant treasury shares” means shares that-

- (a) are held by the company as treasury shares on the date of the offer, or
- (b) become shares held by the company as treasury shares after that date but before a specified date,

“specified date” means a date specified in or determined in accordance with the terms of the offer.

- (7) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, then, if the terms of the offer are revised in accordance with that provision-
- (a) the revision is not to be regarded for the purposes of this Chapter as the making of a fresh offer, and
 - (b) references in this Chapter to the date of the offer are accordingly to be read as references to the date of the original offer.

27. Shares already held by the bidder etc.

- (1) The reference in section 26 to shares already held by the bidder includes a reference to shares that he has contracted to acquire, whether unconditionally or subject to conditions being met.

This is subject to subsection (2).

- (2) The reference in section 26 to shares already held by the bidder does not include a reference to shares that are the subject of a contract-
- (a) intended to secure that the holder of the shares will accept the offer when it is made, and
 - (b) entered into-
 - (i) by deed and for no consideration,
 - (ii) for consideration of negligible value, or
 - (iii) for consideration consisting of a promise by the bidder to make the offer.
- (3) The condition in section 26 is treated as satisfied where-
- (a) the offer does not extend to shares that associates of the bidder hold or have contracted to acquire (whether unconditionally or subject to conditions being met), and
 - (b) the condition would be satisfied if the offer did extend to those shares.

(For further provision about such shares, see section 29).

28. Cases where offer treated as being on same terms

- (1) The condition in section 26 (terms of offer to be the same for all shares or all shares of particular classes) is treated as satisfied where subsection (2) or (3) below applies.
- (2) This subsection applies where-
- (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry,
 - (b) there is a difference in the value of consideration offered for the shares allotted earlier as against that offered for those allotted later,
 - (c) that difference merely reflects the difference in entitlement to the dividend, and

- (d) the condition in section 26 would be satisfied but for that difference.
- (3) This subsection applies where-
- (a) the law of a country or territory outside the Abu Dhabi Global Market-
 - (i) precludes an offer of consideration in the form, or any of the forms, specified in the terms of the offer (“the specified form”), or
 - (ii) precludes an offer of consideration in the specified form except after compliance by the bidder with conditions with which he is unable to comply or which he regards as unduly onerous,
 - (b) the persons to whom an offer of consideration in the specified form is precluded are able to receive consideration in another form that is of substantially equivalent value, and
 - (c) the condition in section 26 would be satisfied but for the fact that an offer of consideration in the specified form to those persons is precluded.

29. Shares to which an offer relates

- (1) Where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the bidder-
- (a) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (b) does not do so by virtue of acceptances of the offer,
- those shares are treated for the purposes of this Chapter as excluded from those to which the offer relates.
- (2) For the purposes of this Chapter shares that an associate of the bidder holds or has contracted to acquire, whether at the date of the offer or subsequently, are not treated as shares to which the offer relates, even if the offer extends to such shares.

In this subsection “contracted” means contracted unconditionally or subject to conditions being met.

- (3) This section is subject to section 31 and (9).

30. Effect of impossibility etc. of communicating or accepting offer

- (1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Chapter if-
- (a) those shareholders have no registered address in the Abu Dhabi Global Market,
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the Abu Dhabi Global Market, and

- (c) a copy of the offer was delivered to the Registrar requesting that the Registrar publish on the Registrar's website notice of receipt of the offer together with details of where in the Abu Dhabi Global Market the offer can be inspected or a copy of it obtained.
- (2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the Abu Dhabi Global Market, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Chapter.
- (3) It is not to be inferred-
 - (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Chapter unless the requirements of paragraphs (a) to (c) of subsection (1) are met, or
 - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in subsection (2).

“Squeeze-out”

31. Right of bidder to buy out minority shareholder

- (1) Subsection (2) applies in a case where a takeover offer does not relate to shares of different classes.
- (2) If the bidder has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire-
 - (a) not less than 90% in value of the shares to which the offer relates, and
 - (b) in a case where the shares to which the offer relates are voting shares, not less than 90% of the voting rights carried by those shares,he may give notice to the holder of any shares to which the offer relates which the bidder has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (3) Subsection (4) applies in a case where a takeover offer relates to shares of different classes.
- (4) If the bidder has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire-
 - (a) not less than 90% in value of the shares of any class to which the offer relates, and
 - (b) in a case where the shares of that class are voting shares, not less than 90% of the voting rights carried by those shares,he may give notice to the holder of any shares of that class to which the offer relates which the bidder has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.
- (5) In the case of a takeover offer which includes among the shares to which it relates-
 - (a) shares that are allotted after the date of the offer, or

- (b) relevant treasury shares (within the meaning of section 26) that cease to be held as treasury shares after the date of the offer,

the bidder's entitlement to give a notice under subsection (2) or (4) on any particular date shall be determined as if the shares to which the offer relates did not include any shares allotted, or ceasing to be held as treasury shares, on or after that date.

- (6) Subsection (9) applies where-

- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied, and
- (b) there are shares in the company which the bidder, or an associate of his, has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.

- (7) The bidder's entitlement to give a notice under subsection (2) or (4) shall be determined as if-

- (a) the shares to which the offer relates included shares falling within paragraph (b) of subsection (6), and
- (b) in relation to shares falling within that paragraph, the words "by virtue of acceptances of the offer" in subsection (2) or (4) were omitted.

- (8) Where-

- (a) a takeover offer is made,
- (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the bidder-
 - (i) acquires or unconditionally contracts to acquire any of the shares to which the offer relates, but
 - (ii) does not do so by virtue of acceptances of the offer, and
- (c) subsection (10) applies,

then for the purposes of this section those shares are not excluded by section 29 from those to which the offer relates, and the bidder is treated as having acquired or contracted to acquire them by virtue of acceptances of the offer.

- (9) Where-

- (a) a takeover offer is made,
- (b) during the period beginning with the date of the offer and ending when the offer can no longer be accepted, an associate of the bidder acquires or unconditionally contracts to acquire any of the shares to which the offer relates, and
- (c) subsection (10) applies,

then for the purposes of this section those shares are not excluded by section 29 from those to which the offer relates.

- (10) This subsection applies if-
- (a) at the time the shares are acquired or contracted to be acquired as mentioned in subsection (8) or (9) (as the case may be), the value of the consideration for which they are acquired or contracted to be acquired (“the acquisition consideration”) does not exceed the value of the consideration specified in the terms of the offer, or
 - (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms.

32. Further provision about notices given under section 27

- (1) A notice under section 31 must be given in the prescribed manner.
- (2) No notice may be given under section 31 or (4) after the end of the period of three months beginning with the day after the last day on which the offer can be accepted.
- (3) At the time when the bidder first gives a notice under section 31 in relation to an offer, the bidder must send to the company-
 - (a) a copy of the notice, and
 - (b) a statutory declaration by him in the prescribed form, stating that the conditions for the giving of the notice are satisfied.
- (4) Where the bidder is a company (whether or not a company within the meaning of these Regulations) the statutory declaration must be signed by a director.
- (5) A person contravenes these Regulations if-
 - (a) he fails to send a copy of a notice or a statutory declaration as required by subsection (3), or
 - (b) he makes such a declaration for the purposes of that subsection knowing it to be false or without having reasonable grounds for believing it to be true.
- (6) It is a defence for a person alleged to have contravened these Regulations by failing to send a copy of a notice as required by subsection (3) to prove that he took reasonable steps for securing compliance with that subsection.
- (7) A person who contravenes this section shall be liable to a fine of up to level [●].

33. Effect of notice under section 27

- (1) Subject to section 38, this section applies where the bidder gives a shareholder a notice under section 31.
- (2) The bidder is entitled and bound to acquire the shares to which the notice relates on the terms of the offer.

- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration, the notice must give particulars of the choice and state-
- (a) that the shareholder may, within six weeks from the date of the notice, indicate his choice by a written communication sent to the bidder at an address specified in the notice, and
 - (b) which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder-
- (a) is not cash and the bidder is no longer able to provide it, or
 - (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the bidder, which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.

- (6) At the end of six weeks from the date of the notice the bidder must immediately-
- (a) send a copy of the notice to the company, and
 - (b) pay or transfer to the company the consideration for the shares to which the notice relates.

Where the consideration consists of shares or securities to be allotted by the bidder, the reference in paragraph (b) to the transfer of the consideration is to be read as a reference to the allotment of the shares or securities to the company.

- (7) If the shares to which the notice relates are registered, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by an instrument of transfer executed on behalf of the holder of the shares by a person appointed by the bidder.

On receipt of that instrument the company must register the bidder as the holder of those shares.

- (8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments, the copy of the notice sent to the company under subsection (6)(a) must be accompanied by a statement to that effect.

On receipt of that statement the company must issue the bidder with warrants or other instruments in respect of the shares, and those already in issue in respect of the shares become void.

- (9) The company must hold any money or other consideration received by it under subsection (6)(b) on trust for the person who, before the bidder acquired them, was entitled to the shares in respect of which the money or other consideration was received.

Section 34 contains further provision about how the company should deal with such money or other consideration.

34. Further provision about consideration held on trust under section 29(9)

- (1) This section applies where a bidder pays or transfers consideration to the company under section 33.
- (2) The company must pay into a separate bank account that complies with subsection (3)-
 - (a) any money it receives under paragraph (b) of section 33, and
 - (b) any dividend or other sum accruing from any other consideration it receives under that paragraph.
- (3) A bank account complies with this subsection if the balance on the account-
 - (a) bears interest at an appropriate rate, and
 - (b) can be withdrawn by such notice (if any) as is appropriate.
- (4) If-
 - (a) the person entitled to the consideration held on trust by virtue of section 33 cannot be found, and
 - (b) subsection (5) applies,

the consideration (together with any interest, dividend or other benefit that has accrued from it) must be paid into a separate bank account complying with subsection (3) in the name of the Panel or such other person as the Panel may specify.
- (5) This subsection applies where-
 - (a) reasonable enquiries have been made at reasonable intervals to find the person, and
 - (b) twelve years have elapsed since the consideration was received, or the company is wound up.
- (6) If the person entitled to the consideration held on trust by virtue of section 33 cannot be found and subsection (5) applies-
 - (a) the trust terminates,
 - (b) the company or (if the company is wound up) the liquidator must sell any consideration other than cash and any benefit other than cash that has accrued from the consideration, and
 - (c) a sum representing-
 - (i) the consideration so far as it is cash,
 - (ii) the proceeds of any sale under paragraph (b), and
 - (iii) any interest, dividend or other benefit that has accrued from the consideration,

must be deposited in a separate bank account complying with subsection (3) and in the name of the Panel or such other person as the Panel may specify and the receipt for the deposit must be transmitted to the Panel .

- (7) The expenses of any such enquiries as are mentioned in subsection (5) may be paid out of the money or other property held on trust for the person to whom the enquiry relates.

“Sell-out”

35. Right of minority shareholder to be bought out by bidder

- (1) Subsections (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.

For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of section 26.

- (2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the bidder to acquire those shares if, at any time before the end of the period within which the offer can be accepted-
- (a) the bidder has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)-
 - (i) amount to not less than 90% in value of all the voting shares in the company (or would do so but for section 42), and
 - (ii) carry not less than 90% of the voting rights in the company (or would do so but for section 42).
- (3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the bidder to acquire those shares if, at any time before the end of the period within which the offer can be accepted-
- (a) the bidder has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates, and
 - (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than 90% in value of all the shares in the company (or would do so but for section 42).
- (4) If a takeover offer relates to shares of one or more classes and at any time before the end of the period within which the offer can be accepted-
- (a) the bidder has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and

- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)-
- (i) amount to not less than 90% in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than 90% of the voting rights carried by the shares of that class,
- the holder of any shares of that class to which the offer relates who has not accepted the offer may require the bidder to acquire those shares.
- (5) For the purposes of subsections (2) to (4), in calculating 90% of the value of any shares, shares held by the company as treasury shares are to be treated as having been acquired by the bidder.
- (6) Subsection (7) applies where-
- (a) a shareholder exercises rights conferred on him by subsection (2), (3) or (4),
 - (b) at the time when he does so, there are shares in the company which the bidder has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional, and
 - (c) the requirement imposed by subsection (2)(b), (3)(b) or (4)(b) (as the case may be) would not be satisfied if those shares were not taken into account.
- (7) The shareholder is treated for the purposes of section 37 as not having exercised his rights under this section unless the requirement imposed by paragraph (b) of subsection (2), (3) or (4) (as the case may be) would be satisfied if-
- (a) the reference in that paragraph to other shares in the company which the bidder has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire, and
 - (b) the reference in that subsection to the period within which the offer can be accepted were a reference to the period referred to in section 36.
- (8) A reference in subsection (2)(b), (3)(b), (4)(b), (6) or (7) to shares which the bidder has acquired or contracted to acquire includes a reference to shares which an associate of his has acquired or contracted to acquire.

36. Further provision about rights conferred by section 31

- (1) Rights conferred on a shareholder by subsection (2), (3) or (4) of section 35 are exercisable by a written communication addressed to the bidder.
- (2) Rights conferred on a shareholder by subsection (2), (3) or (4) of that section are not exercisable after the end of the period of three months from-
- (a) the end of the period within which the offer can be accepted, or
 - (b) if later, the date of the notice that must be given under subsection (3) below.

- (3) Within one month of the time specified in subsection (2), (3) or (4) (as the case may be) of that section, the bidder must give any shareholder who has not accepted the offer notice in the prescribed manner of-
- (a) the rights that are exercisable by the shareholder under that subsection, and
 - (b) the period within which the rights are exercisable.

If the notice is given before the end of the period within which the offer can be accepted, it must state that the offer is still open for acceptance.

- (4) Subsection (3) does not apply if the bidder has given the shareholder a notice in respect of the shares in question under section 31.
- (5) A bidder who fails to comply with subsection (3) contravenes this section.

If the bidder is a company, every director or other officer of that company who is in default or to whose neglect the failure is attributable also contravenes this section.

- (6) If a bidder other than a company is alleged to have contravened these Regulations by failing to comply with subsection (3), it is a defence for him to prove that he took all reasonable steps for securing compliance with that subsection.
- (7) A person who contravenes this section shall be liable to a fine of up to level [●].

37. Effect of requirement under section 31

- (1) Subject to section 38, this section applies where a shareholder exercises his rights under section 35 in respect of any shares held by him.
- (2) The bidder is entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed between the bidder and the shareholder.
- (3) Where the terms of an offer are such as to give the shareholder a choice of consideration-
- (a) the shareholder may indicate his choice when requiring the bidder to acquire the shares, and
 - (b) the notice given to the shareholder under section 36-
 - (i) must give particulars of the choice and of the rights conferred by this subsection, and
 - (ii) may state which consideration specified in the offer will apply if he does not indicate a choice.

The reference in subsection (2) to the terms of the offer is to be read accordingly.

- (4) Subsection (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.
- (5) If the consideration offered to or (as the case may be) chosen by the shareholder-
- (a) is not cash and the bidder is no longer able to provide it, or

- (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration is to be taken to consist of an amount of cash, payable by the bidder, which at the date when the shareholder requires the bidder to acquire the shares is equivalent to the consideration offered or (as the case may be) chosen.

Supplementary

38. Applications to the Court

- (1) Where a notice is given under section 31 to a shareholder the Court may, on an application made by him, order-
- (a) that the bidder is not entitled and bound to acquire the shares to which the notice relates, or
- (b) that the terms on which the bidder is entitled and bound to acquire the shares shall be such as the Court thinks fit.

- (2) An application under subsection (1) must be made within six weeks from the date on which the notice referred to in that subsection was given.

If an application to the Court under subsection (1) is pending at the end of that period, section 33 does not have effect until the application has been disposed of.

- (3) Where a shareholder exercises his rights under section 35 in respect of any shares held by him, the Court may, on an application made by him or the bidder, order that the terms on which the bidder is entitled and bound to acquire the shares shall be such as the Court thinks fit.

- (4) On an application under subsection (1) or (3)-

- (a) the Court may not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair, and
- (b) the Court may not require consideration of a lower value than the offer value to be given for the shares.

- (5) No order for costs or expenses may be made against a shareholder making an application under subsection (1) or (3) unless the Court considers that-

- (a) the application was unnecessary, improper or vexatious,
- (b) there has been unreasonable delay in making the application, or
- (c) there has been unreasonable conduct on the shareholder’s part in conducting the proceedings on the application.

- (6) A shareholder who has made an application under subsection (1) or (3) must give notice of the application to the bidder.

- (7) A bidder who is given notice of an application under subsection (1) or (3) must give a copy of the notice to-
- (a) any person (other than the applicant) to whom a notice has been given under section 31,
 - (b) any person who has exercised his rights under section 35.
- (8) A bidder who makes an application under subsection (3) must give notice of the application to-
- (a) any person to whom a notice has been given under section 31,
 - (b) any person who has exercised his rights under section 35.
- (9) Where a takeover offer has not been accepted to the extent necessary for entitling the bidder to give notices under subsection (2) or (4) of section 31 the Court may, on an application made by him, make an order authorising him to give notices under that subsection if it is satisfied that-
- (a) the bidder has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
 - (b) the requirements of that subsection would have been met if the person, or all the persons, mentioned in paragraph (a) above had accepted the offer, and
 - (c) the consideration offered is fair and reasonable.

This is subject to subsection (11).

- (10) The Court may not make an order under subsection (9) unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

39. Joint offers

- (1) In the case of a takeover offer made by two or more persons jointly, this Chapter has effect as follows.
- (2) The conditions for the exercise of the rights conferred by section 31 are satisfied-
- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint bidders acquiring or unconditionally contracting to acquire the necessary shares jointly, and
 - (b) in other cases, by the joint bidders acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.
- (3) The conditions for the exercise of the rights conferred by section 35 are satisfied-
- (a) in the case of acquisitions by virtue of acceptances of the offer, by the joint bidders acquiring or unconditionally contracting to acquire the necessary shares jointly, and
 - (b) in other cases, by the joint bidders acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.
- (4) Subject to the following provisions, the rights and obligations of the bidder under sections 31 to 37 are respectively joint rights and joint and several obligations of the joint bidders.

- (5) A provision of sections 31 to 38 that requires or authorises a notice or other document to be given or sent by or to the joint bidders is complied with if the notice or document is given or sent by or to any of them (but see subsection (6)).
- (6) The statutory declaration required by section 32 must be made by all of the joint bidders and, where one or more of them is a company, signed by a director of that company.
- (7) In sections 26 to 29, 31,33, 35 and 40 references to the bidder are to be read as references to the joint bidders or any of them.
- (8) In section 33 and (8) references to the bidder are to be read as references to the joint bidders or such of them as they may determine.
- (9) In sections 33 and 37 references to the bidder being no longer able to provide the relevant consideration are to be read as references to none of the joint bidders being able to do so.
- (10) In section 38 references to the bidder are to be read as references to the joint bidders, except that-
 - (a) an application under subsection (3) or (9) may be made by any of them, and
 - (b) the reference in subsection (9)(a) to the bidder having been unable to trace one or more of the persons holding shares is to be read as a reference to none of the bidders having been able to do so.

Interpretation

40. Associates

- (1) In this Chapter “associate”, in relation to a bidder, means-
 - (a) a nominee of the bidder,
 - (b) a holding company, subsidiary or fellow subsidiary of the bidder or a nominee of such a holding company, subsidiary or fellow subsidiary,
 - (c) a body corporate in which the bidder is substantially interested,
 - (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the bidder, or
 - (e) (where the bidder is an individual) his spouse, any person with whom he shares a parent and any minor child or step-child of his.
- (2) For the purposes of subsection (1)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.
- (3) For the purposes of subsection (1)(c) a bidder has a substantial interest in a body corporate if-
 - (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
 - (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

Subsections (2) and (3) of section 755 (*Interest in shares: corporate interests*) of the Companies Regulations 2015 (which contain provision about when a person is treated as entitled to exercise or control the exercise of voting power) apply for the purposes of this subsection as they apply for the purposes of that section.

- (4) For the purposes of subsection (1)(d) an agreement is a share acquisition agreement if-
- (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates,
 - (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement (whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares), and
 - (c) it is not an excluded agreement (see subsection (5)).
- (5) An agreement is an “excluded agreement”-
- (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, or
 - (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- (6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (7) In this section-
- (a) “agreement” includes any agreement or arrangement, and
 - (b) references to provisions of an agreement include-
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

41. **Convertible securities**

- (1) For the purposes of this Chapter securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares.

References to the holder of shares or a shareholder are to be read accordingly.

- (2) Subsection (1) is not to be read as requiring any securities to be treated-
- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe, or

- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

42. Debentures carrying voting rights

- (1) For the purposes of this Chapter debentures issued by a company to which subsection (2) applies are treated as shares in the company if they carry voting rights.
- (2) This subsection applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.
- (3) In this Chapter, in relation to debentures treated as shares by virtue of subsection (1)-
 - (a) references to the holder of shares or a shareholder are to be read accordingly,
 - (b) references to shares being allotted are to be read as references to debentures being issued.

43. Interpretation

- (1) In this Chapter-

“the company” means a company formed or registered under the Companies Regulations 2015 whose shares are the subject of a takeover offer,

“date of the offer” means-

- (a) where the offer is published, the date of publication,
- (b) where the offer is not published, or where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given,

and references to the date of the offer are to be read in accordance with section 26 where that applies,

“non-voting shares” means shares that are not voting shares,

“bidder” means (subject to section 39) the person making a takeover offer,

“voting rights” means rights to vote at general meetings of the company, including rights that arise only in certain circumstances, and

“voting shares” means shares carrying voting rights.

- (2) For the purposes of this Chapter a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be read accordingly.