



<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>		<b>Appendices</b>

## **Appendix TMA-A:**

### **Information to be Included Supporting a Whitewash Resolution**

- (a) Details of the proposed issue of new securities or convertibles;
- (b) The dilution effect of issuing the new shares, or upon the exercise or conversion of the convertibles to be issued, to existing holders of voting rights;
- (c) The number and percentage of voting rights in the offeree company and the number of instruments convertible into, rights to subscribe for and option in respect of shares in the offeree company (other than the convertibles to be issued) held by the offeror and its concert parties as at the latest practicable date;
- (d) The number and percentage of voting rights to be issued to the offeror, or to be acquired by the offeror upon the exercise or conversion of the convertibles to be issued;
- (e) Where the proposal could result in the offeror holding shares carrying over 50% of the voting rights of the offeree company, there must be reference to this fact and to the fact that the offeror will be free to acquire further shares without incurring any obligation under TMA-3.1 to make a mandatory offer;
- (f) That shareholders, by voting for the whitewash resolution, are waiving their rights to a mandatory offer from the offeror at the highest price paid by the offeror and persons acting in concert with it for the shares of the offeree company in the past 6 months prior to the commencement;
- (g) That shareholders voting for the whitewash resolution could be foregoing the opportunity to receive a mandatory offer from another person who may be discouraged from making a mandatory offer due to the potential dilution effect of the convertibles;



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## Appendix TMA-B: Information Contents of the Public Announcement of Offer

The public announcement made by an offeror or offeree shall contain the following particulars:

- (a) The issued and paid up share capital of the offeree company, the number of fully paid up and partly paid up shares;
- (b) The total number and percentage of shares proposed to be acquired by the offeror
- (c) The minimum offer price for each fully paid-up or partly paid up share;
- (d) Mode of payment of consideration;
- (e) The identity of the offeror(s) and in case the offeror is a company or companies, the identity of the management and, or the persons having control over such company(ies) and the group, if any, to which the company(ies) belong;
- (f) The existing holding, if any, of the offeror in the shares of the offeree, including holdings of persons acting in concert with him;
- (g) The existing shareholding, if any, of the merchant banker in the offeree;
- (h) Salient features of the agreement, such as:
  - (i) The date;
  - (ii) The name of the seller;
  - (iii) The price at which the shares are being acquired;
  - (iv) The manner of payment of the consideration; and
  - (v) The number and percentage of shares in respect of which the offeror has entered into the agreement to acquire the shares; or
  - (vi) The consideration, monetary or otherwise, for the acquisition of control over the offeree company, as the case maybe;
- (i) The highest and the average price paid by the offeror or persons acting in concert with him for acquisition, if any, of shares of the offeree company made by him during the twelve month period prior to the date of public announcement;
- (j) Object and purpose of the acquisition of the shares and future plans, if any, of the offeror for the target company, including disclosures whether the offeror proposes to dispose of or otherwise encumber any assets of the offeree in the succeeding two years, except in the ordinary course of business of the offeree;
- (k) Where the future plans are set out, the public announcement shall also set out how the offeror propose to implement such future plans. The offeror shall not sell, dispose of or otherwise encumber any substantial asset of the offeree except with the prior approval of the shareholders.
- (l) The date by which individual letters of offer would be posted to each of the shareholders;
- (m) The date of opening and closure of the offer and the manner in which and the date by which the acceptance or rejection of the offer would be communicated to the shareholders;
- (n) The date by which the payment of consideration would be made for the shares in respect of which the offer has been accepted;
- (o) Disclosure to the effect that firm arrangement for financial resources required to implement the offer is already in place, including details regarding the sources of the funds whether domestic, i.e. from banks, financial institutions, or otherwise;
- (p) Regulatory and statutory approvals, if any, required to be obtained for the purpose of acquiring the shares under the Commercial Company Law 2001 and/or any other applicable laws;
- (q) Whether the offer is subject to a minimum level of acceptance from the shareholders; and
- (r) Such other information as is essential for the shareholders to make an informed decision in regard to the offer.

## Appendix TMA-C: Offer Document for Takeovers, Mergers and Acquisitions

### *Offer and Offeror*

The following details of the offeror must be included in the offer document:

- (a) Name and address of the offeror and any financial advisor or other person making the offer on behalf of the offeror, and the principal members of the offeror's concert group;
- (b) The place of incorporation, a description of their capital structures, group structures, business and assets accompanied by a structural chart depicting the structure of the company.
- (c) If the offeror or persons acting in concert is a company, then the identity of the ultimate controlling shareholders, and the names of the directors and the directors of their ultimate parent companies, or where there is a listed company in the chain between such companies and their ultimate parent companies, the directors of such listed company;
- (d) A statement as to whether or not any securities acquired in pursuance of the offer will be transferred to any other persons, including the names of the persons of any such arrangement. Additionally, the terms and conditions of such arrangement;
- (e) CBB may at its discretion waive the above stated requirement (d); and
- ~~(f) Offeror's intentions for the future of the company~~

Details regarding the offeror's intentions in relation to compulsory acquisition and offeree company's listing:

- (a) Whether the offeror intends to avail itself of any powers of compulsory acquisition with details in relation to:
  - the expected timeframe to undertake the compulsory acquisition; and
  - the terms applying to the dissenting shareholders, if the offer contains two or more alternative sets of considerations.
- (b) Whether the offeror intends to maintain the continued listing of the offeree company subsequent to the offer must be included in the offer document:
  - where the offeror intends to maintain the listing status of the offeree, the offeror is to state its plans in meeting the required free float, if the same is not met as a result of acceptances from the offer; and
  - where the offeror does not intend to maintain the listing status of the offeree, the offeror is to state its plans and the expected timeframe to effect such intention.

Details regarding the offeror's intentions for the future of the company must be included in the offer document:

- (a) Continuation of the business of the offeree company;
- (b) Strategic plans for the offeree company, and its repercussions on employment;
- (c) Any major changes to be introduced in the business, including redeployment of the fixed assets of the offeree company;
- (d) Long term commercial justification for the proposed offer; and
- (e) Continued employment of the employees and management of the offeree company and of its subsidiaries.

### *Shareholdings and Dealings*

The following details of the offeror's shareholding in the offeree company and other material information must be included in the offer document:

- (a) The shareholdings of the offeror in the offeree company;
- (b) In the case of securities exchange offers the shareholdings in the offeror and in the offeree company:
  - (i) In which directors of the offeror are interested; and
  - (ii) Which any persons acting in concert with the offeror own or control and the names of such persons;
- (c) By any persons who, prior to the posting of the offer document, have committed themselves to accept or reject the offer and the names of such persons;
- (d) Owned or controlled by a person with whom the offeror or any person acting in concert with the offeror has any arrangements involving rights over shares, and any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing; and
- (e) Dealings in offeror's shareholding during 6 months prior to offer period including prices, dates and volume.

## **Appendix TMA-C: Offer Document for Takeovers, Mergers and Acquisitions (continued)**

All ~~conditions~~ ~~terms~~ of the offer must be stated, including:

- (a) The price and other considerations to be paid for the securities.
- (b) Whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional to acceptances.
- (c) ~~This must include particulars~~ **Particulars** of all documents required, and procedures to be followed for acceptances of an offer; and
- ~~(e) A statement by the offeror regarding the intentions of availing of any powers of compulsory acquisition.~~

### ***Market Prices of Offeree Company***

The closing price of the securities of the offeree company which are listed on the licensed Exchange, and are subject of the offer must be included in the offer document, as they stand:

- (a) On the latest practicable date prior to publication of the offer document;
- (b) On the last business day prior to the date of the initial announcement, if any;
- (c) On the last business day prior to the date of the announcement of a firm intention to make an offer; and
- (d) At the end of each of the calendar months during the period commencing 6 months prior to the commencement of the offer period and ending on the latest practicable date prior to the posting of the offer document.

If any of the securities of the offeree company which are subject of the offer are not listed, any information available as to the number and price of transactions which have taken place during the period stated above should be stated along with the source.

The highest and lowest closing market prices with the relevant dates during the period commencing 6 months prior the commencement of the offer period and ending on the latest practicable date prior to the posting of the offer document must be included in the offer document.

Comparisons issued by the offeror between the value of the offer and previous prices of the offeree company's securities, then a comparison between the current value of the offer and the price of the offeree company's securities on the last business day prior to the commencement of the offer period must be included.

Information should also be provided for securities of the offeror if the consideration for the offer involves such securities.

### ***Offeror's Business***

Except with the consent of CBB, the following must be included in the offer document for all types of offers:

- (a) The nature of the offeror's business, its principal activities and its financial and trading prospects;

## **Appendix TMA-C: Offer Document for Takeovers, Mergers and Acquisitions (continued)**

- (b) Details of the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax (where applicable), extraordinary items, minority interests, the amount absorbed by dividends and earnings and dividends per share;
- (c) A statement of the assets and liabilities shown in the last published audited accounts;
- (d) If provided in the last published audited accounts, a cash flow statement and any other primary statement shown;
- (e) All material changes in the financial or trading position or outlook of the offeror, following the last published audited accounts or a statement that there are no material changes;
- (f) Significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the figures;
- (g) If, due to a change in an accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated;
- (h) ~~Except for cash offer seeking to privatize the offeree company, all offer documents must contain a~~ A description of how the offer is to be financed and the source of the finance. The principal lenders or arrangers of such finance must be named; and
- (i) If any arrangements are made where the offeror intends that the payment of interest on repayment of or security for any liability will depend to an extent on the business of the offeree company, then a description of the arrangements must be included.

### ***Financial Information***

Where the offer includes an element of cash or any other asset except new securities to be issued by the offeror company, then an independent financial advisor must include a confirmation that sufficient resources are available to satisfy full implementation of the offer.

When an offer involves issuance of unlisted securities, the value of such securities estimated by an advisor, including the assumptions and method used to arrive at that value must be stated.

The offer document must contain a statement to the effect that settlement of the consideration to which any shareholder is entitled under the offer will be implemented in full in accordance with the terms of the offer.

### ***Arrangements***

If any arrangement involving rights over shares, any indemnity arrangement, and any agreement or understanding, formal or informal, relating to relevant securities which may be an inducement to deal or refrain from dealing exist between the offeror or any person acting in concert should be stated, otherwise it should be stated that no such arrangements have been made.

## **Appendix TMA-C: Offer Document for Takeovers, Mergers and Acquisitions (continued)**

The following regarding any arrangements or agreements made between the offeror and another party should be included in the offer document:

- (a) Details of compensation arrangements to be given to any directors of the offeree company in connection with the offer; and
- (b) A statement to whether any agreement, arrangement or understanding, including any compensation agreement exists; including its details, in connection with the offer, between the offeror or any person acting in concert with it and the directors or shareholders of the offeree company.

### ***Offering of Securities***

The offeror company should include the following in the offer document when the offeror is offering its securities in exchange for the securities of the offeree company:

- (a) The nature of its business and its financial and trading prospects;
- (b) The date and country of its incorporation;
- (c) The address of its head office;
- (d) The authorized and issued share capital and the rights of the shareholders in respect of capital, dividends and voting;
- (e) A precise description of the rights of the holders of the securities, including as to ranking for dividends and capital;
- (f) Details of shares issued and shares repurchased starting the end of the last financial year of the offeror;
- (g) Details of options, warrants and conversion rights affecting shares in the offeror.
- (h) Details of any reorganisation of capital during the 2 financial years previous to the commencement of the offer period;
- (i) Details of any bank overdrafts or loans, or other similar transactions, mortgages, charges, guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect. Details should be not more than 3 months preceding the latest practicable date prior to the posting of the document;
- (j) Details of any material litigation to which the offeror is, or may become, a party;
- (k) Details of every material contract entered into 2 years prior to the commencement of the offer period;
- (l) When and how the documents of title to the securities will be issued;
- (m) The effect of the offer on the directors of the offeror. If there will be no effect, this must be stated; and
- (n) The effect of full acceptance of the offer upon the offeror's assets, liabilities, profits and business which may be significant for a proper appraisal of the offer. This does not require a profit forecast to be made.



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## Appendix TMA-D: Offeree Board Circular

The offeree board circular must include the following regarding the view of the board:

- (a) The names of the directors of the offeree company;
- (b) The recommendation of the directors as to whether **they** **shareholders should** accept or reject the offer, or a statement that the directors are unable to make a recommendation, in addition to their reasons for giving the recommendation or for making no recommendation; and
- (c) A copy of the written advice of the offeree company's **financial** **professional** advisors.

### *Shareholdings and Dealings*

The **offeree board circular** **document of the offeree company advising its shareholders on an offer** **(whether recommending acceptance or rejection of the offer)** must state:

- (a) The shareholdings of the offeree company in the offeror;
- (b) The shareholdings in the offeree company and in the offeror in which directors of the offeree company are interested;
- (c) The shareholdings in the offeree company and in the offeror (in the case of a securities exchange offer only):
  - (i) Owned or controlled by the independent professional adviser to the offeree company;  
or
  - (ii) By funds whose investments are managed by the adviser on a discretionary basis; and
- (d) Whether the directors of the offeree company intend, in respect of their own beneficial shareholdings, to accept or reject the offer.

If in any of the above categories there are no shareholdings, then this fact should be stated. Where the persons mentioned above have dealt for value in shares during the six months prior to the offer period, the same should be disclosed (whether there is an existing holding or not).

The above disclosure details must include dates and prices of the transaction.

### *Share Capital of Offeree Company*

The following information about the offeree should be disclosed:

- (a) The authorised and issued capital, and the rights of the shareholders in respect of capital, dividends and voting;
- (b) The number of shares issued since the end of the last financial year; and
- (c) Details of options, warrants and conversion rights affecting shares in the offeree company.



## **Appendix TMA-D: Offeree Board Circular (continued)**

### ***Financial Information***

The offeree board circular must include the following information about the offeree company:

- (a) The financial information of the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, exceptional items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
- (b) A statement of the assets and liabilities shown in the last published audited accounts;
- (c) A cash flow statement if provided in the last published audited accounts;
- (d) Any other primary statement shown in the last published audited accounts;
- (e) All material changes in the financial or trading position or outlook of the offeree company subsequent to the last published audited accounts or a statement that there are no known material changes;
- (f) Details relating to items referred to (a) above in respect of any interim statement or preliminary announcement made since the last published audited accounts;
- (g) Significant accounting policies together with any points from the notes to the relevant published accounts which are of major relevance to an appreciation of the information contained above (a) to (f);
- (h) Details of any qualification contained in the auditors' report in respect of each of the last 3 financial years or a statement that there is no such qualification; and
- (i) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

### ***Director's Service Agreements***

The offeree board circular must contain particulars of all service contracts of any director:

- (a) Which, have been entered into or amended within 6 months before the commencement of the offer period;
- (b) Which are continuous contracts with a notice period of 12 months or more; or
- (c) Which are fixed term contracts with more than 12 months to run irrespective of the notice period.

The particulars must be given of the earlier contracts, if any, which have been replaced or amended as well as the current contracts. If no disclosures are required to be made under this paragraph, this should be stated.