



TAKEOVERS, MERGERS & ACQUISITIONS MODULE



MODULE:	TMA: Takeovers, Mergers & Acquisitions
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CHAPTER	TMA-A:	Introduction

TMA-A.1 Purpose

Executive Summary

- TMA-A.1.1 The Module provides an orderly framework within which takeovers, mergers or acquisitions and share repurchases are to be conducted and sets forth special requirements relating to timing and mode of offer, announcements, documentaton and disclosure of adequate information to enable shareholders to make an informed decision as to the merits of an offer relating to a takeover, merger or acquisition.
- TMA-A.1.2 The general principles contained in the Module represent the overarching principles relevant to takeovers, mergers and share repurchases. In addition to the general principles, each chapter contains a series of rules, some of which are effectively expansions of the general principles and examples of their application and others are rules of procedure designed to govern specific types of takeovers, mergers or share repurchases.
- TMA-A.1.3 [This Paragraph was deleted in October 2019].
- TMA-A.1.4 The CBB may modify or relax the application of a rule if it considers that in the specific circumstances of the case, strict application of a rule would operate in an unnecessarily restrictive or unduly burdensome, or otherwise inappropriate manner.
- TMA-A.1.5 The Module also seeks to ensure that the shareholders in the company subject to a takeover are given sufficient information, advice and time to consider and decide on the offer and in some instances an option to relinquish their holdings. The Module seeks to achieve fair treatment by requiring equality of treatment of shareholders of publicly listed companies which are targets in a takeover, merger or acquisition as defined in the Glossary in Part B of the CBB Rulebook Volume 6.
- TMA-A.1.6 Since the primary purpose of Module TMA is to facilitate fair treatment for all shareholders of publicly listed companies affected by TMA, it is not concerned with the financial or commercial advantages or disadvantages of a takeover, merger or acquisition which are matters for the company and its shareholders to decide on.

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TMA-A.1 Purpose (continued)

Legal Basis

- TMA-A.1.7 Article 3 of the Central Bank of Bahrain and Financial Institutions Law (the “CBB Law”) states that the objectives of the CBB are to, *inter alia*, develop the financial sector and enhance confidence therein and protect the interests of depositors and customers of financial institutions, and enhance the Kingdom’s credibility as an international financial centre.
- TMA-A.1.8 Parts 2 and 4 of the CBB Law empower the CBB to lay down rules for licensees, listed companies and others who undertake capital market and/or securities-related activity in the Kingdom;
- TMA-A.1.9 Article 38(a) of the CBB Law empowers the Governor of the CBB to issue Directives to ensure the implementation of the CBB Law, any regulations issued in accordance with that Law and the achievement of the objectives of the CBB.
- TMA-A.1.10 These rules are issued by way of a legally-binding Directive.
- TMA-A.1.11 Article (3) of Decree No. 64 of 2006 with respect to promulgating the Central Bank of Bahrain and Financial Institutions Law (CBB Law) states that the provisions of the Commercial Companies Law (CCL) issued by Decree No. 21 of 2001 shall apply on all matters that are not stipulated in the CBB Law.
- TMA-A.1.11A This Module should be read in conjunction with Resolution No.(54) of 2023 with respect to issuing a Regulation on the Rules and Procedures for Mergers and Acquisitions of Shares of Companies listed on Stock Exchanges Licensed by the Central Bank of Bahrain (as amended from time to time).
- TMA-A.1.12 Following is also list of relevant Articles of the CBB Law that apply to persons covered by Module TMA:

Circular/ other references	Provision	Subject
CBB Law 2006	Article 99-100 and Article 105	Restrictions of publishing market information and the use and disclosure of insider information.
CBB Law 2006	Article 167	Penalty for violating Article 100.
CBB Law 2006	Article 106	The offence of market manipulation.
CBB Law 2006	Article 168	Penalty for violating Article 106.
CBB Law 2006	Article 163	Penalty for concealing documents and information or providing false or misleading information or statements.
CBB Law 2006	Article 128	Imposing restrictions on licensees and listed companies.
CBB Law 2006	Article 132	Public censure on breaches committed by licensees and listed companies.
CBB Law 2006	Article 52-56	Nature and limits of control, procedures that must be undertaken and the regulations and conditions for granting approval of control
CBB Law 2006	Article 162	Penalty for violating Article 52-58.



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CHAPTER	TMA-2:	Rules

TMA-2.2 Independent Advice and Shareholder Approval

Appointment of Advisors by Offeree

TMA-2.2.1

~~Independent advice must be obtained as to whether or not the offer is in the interests of the shareholders.~~

A board which receives an offer or is approached with a view to an offer being made, must, in the interests of shareholders, appoint an independent professional adviser to advise the board as to whether the financial terms of the offer is, or is not, fair and reasonable. Such advice, including reasons, must be obtained in writing and made known to shareholders by including it in the offeree board circular along with the recommendation of the offeree company's board regarding acceptance and voting, where applicable, of the offer.

~~If any of the directors of an offeree company is faced with a conflict of interest, the offeree company's board must be notified of his/their interest and must not vote on the resolution to be adopted in regards of the offer, and if possible, establish an independent committee of the board to discharge the board's responsibilities in relation to the offer.~~

The board must announce the appointment of the professional adviser in the initial announcement of the offer or possible offer, or as soon thereafter as the appointment is made.

TMA-2.2.1A

For the purposes of Paragraph TMA-2.2.1, the offeree company's board, prior to appointment of an independent professional adviser, must ensure that the independent professional adviser has sufficient experience and a satisfactory work record in corporate finance or in a related field over the period of at least the past 5 years.

TMA-2.2.1B

For the purposes of Paragraph TMA-2.2.1A, a professional adviser is considered to have the relevant corporate finance experience if it has provided advice for any of the following:

- IPOs;
- Mergers and acquisitions involving listed companies;
- Fund-raising exercise through the capital market by listed companies; and/or
- Restructuring exercises involving listed companies.

TMA-2.2.2

[This Paragraph was deleted in October 2019].

TMA-2.2.3

When it is not possible to give a recommendation or there is a divergence of views amongst board members, and or between offeree board and the professional advisor, as to the merits of the offer or recommendation being made, then it must be stated in the offeree board circular and an explanation given, including the arguments for the recommendation to shareholders with regards to acceptance or rejection of the offer. The views of any directors who are in a minority



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TMA-2.2 Independent Advice and Shareholder Approval (continued)

must also be included in the offeree board circular. ~~drawn to the shareholders attention. A written advice (as mentioned in TMA-2.2.1) must be made available and known to shareholders, including the arguments for acceptance or rejection, emphasising the important factors.~~

TMA-2.2.3A If a director has a conflict of interest, he must not be joined with the rest of the board in the expression of their views on the offer. The conflict must be disclosed, in the offeree board circular, to the shareholders.

TMA-2.2.4 [This Paragraph was deleted in October 2019].

In-Eligible Professional Adviser(s)

TMA-2.2.5 A person shall not be appointed as an independent professional adviser if the person is a related company to the offeror or offeree or who has, or had, a significant connection, financial or otherwise, with either the offeror or the offeree company, or the controlling shareholder(s) of either of them, of a kind likely to create, or to create the perception of, a conflict of interest, or reasonably likely to affect the objectivity of his advice.

- TMA-2.2.5A For the purposes of Paragraph TMA-2.2.5, a professional adviser would not generally be considered independent if the professional adviser:
- holds voting rights in the offeror or the offeree at any time during the preceding 12 months from the beginning of the offer period. While determining the voting rights, shares held under trust arrangement, discretionary managed funds or other form of non-beneficial ownership by the professional adviser in the offeror or offeree company are not to be taken into consideration;
 - provides or has provided any audit and/or review services during the preceding 12 months from the beginning of the offer period;
 - has a business relationship with the offeror or the offeree, at any time during the preceding 12 months from the beginning of the offer period that contributes to more than 10 per cent in revenue or profit of the adviser, based on the latest financial statements;
 - has a representative on the board of the offeror or the offeree;
 - has a representative from either the offeror or the offeree on its board;
 - is or will be involved in the financing of the offer;
 - is a substantial creditor of either the offeror or the offeree, based on the latest financial statements; or
 - has a financial interest in the outcome of the offer other than as outlined in paragraphs TMA-2.2.5A(a)–(g) above.



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TMA-2.2 Independent Advice and Shareholder Approval (continued)

TMA-2.2.5B For the purposes of Paragraph TMA-2.2.5A(g), a professional adviser would be considered to be a “substantial creditor”, if:

- (a) the loan (including hire purchase, leasing, corporate bonds and Islamic financing) extended by the professional adviser to the offeror or the offeree represents more than 10 per cent of the loan outstanding in the offeror or the offeree; or
- (b) the loan (including hire purchase, leasing, corporate bonds and Islamic financing) extended by the professional adviser to the offeror or the offeree represents more than 10 per cent of the latest audited shareholders’ funds of the professional adviser; or
- (c) the professional adviser is a lead banker in a syndicated loan (including Islamic financing) extended to the offeror or the offeree, at any time during the period of 12 months preceding the beginning of the offer period.

TMA-2.2.5C Paragraph TMA-2.2.1 requires the professional adviser to have a sufficient degree of independence to ensure that the advice given is proper and objective. Accordingly, in certain circumstances it may not be appropriate for a professional adviser who has had a recent advisory relationship with an offeror or offeree to give advice. In such cases, the CBB should be consulted. Also, a professional adviser may conduct functions such as corporate finance, lending, stockbroking, fund management and corporate advisory activities on a day-to-day basis quite separately within the same organisation, but it is necessary for the professional adviser to satisfy the CBB that it arranges its affairs to ensure that there is total and effective segregation of those operations (Chinese wall), and those operations are conducted without regard for the interests of other parts of the same organisation or of its clients.

TMA-2.2.6

[This Paragraph was deleted in XX 2023]

Independent Committee

TMA-2.2.6A If any of the directors of an offeree company is faced with a conflict of interest, then such directors must notify the offeree company’s board and their interest and they must not vote on the resolution to be adopted in regards of the offer, and if possible, the offeree company board should establish an independent committee of the board to discharge the board’s responsibilities in relation to the offer. If it is not possible to form an independent committee, responsibility for representing the interests of independent shareholders must reside primarily with the professional adviser. In case of doubt the CBB must be consulted.



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TMA-2.2 Independent Advice and Shareholder Approval (continued)

TMA-2.2.7

Members of an independent committee of a company's board of directors (established to discharge the board's responsibilities in relation to the offer) must consist of **non-executive** directors of the company who have no direct or indirect interest in any offer or possible offer for consideration by the independent committee other than, in the case of a director of the offeree company, as a shareholder of the offeree company. ~~For this purpose, it is presumed that employees of an offeree company that is an associated company of the offeror have an indirect interest in an offer and are therefore not independent. The same presumption is applicable to employees, directors, agents, partners, connected persons and affiliates of any person that exercises control or direction over the business and operations of any offeror or the offeree company respectively if such person has a direct or indirect interest in the offer. If it is not possible to form an independent committee, responsibility for representing the interests of any independent shareholders must reside primarily with the professional adviser. In case of doubt the CBB must be consulted.~~

Shareholder Votes to be Conducted by Way of a Poll

TMA-2.2.8

Whenever this Module requires a matter to be approved by shareholders or any class or group thereof in general meeting the vote must be conducted by way of a poll. The results of the poll must be announced.

TMA-2.2.9

[This Paragraph was deleted in January 2022].

Board of Offeror Company

TMA-2.2.10

Where an offeror is a listed company, and the offer being made is a reverse takeover or when the directors of the offeror are faced with a conflict of interest, the board of the offeror must **appoint an independent adviser and** obtain professional independent advice as to whether the making of the offer is in the interests of the offeror's shareholders. The advice must be obtained before announcing an offer or revised offer. The offer or revised offer must also be made subject to the approval of the shareholders of the offeror in a general meeting. The advice must be in writing and sent to the shareholders with the notice of the meeting. If an offeror considers that these requirements should not apply, where for example the offer is not material to the offeror, it may apply to the CBB for a waiver of these requirements.



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TMA-2.2 Independent Advice and Shareholder Approval (continued)

TMA-2.2.10A For the purposes of TMA-2.2.10, a conflict of interests, amongst others, includes:

- a) significant cross shareholdings (10% or more) between an offeror and the offeree company;
- b) a number of directors common to both companies; or
- c) a common controlling shareholder in both companies is a director of or has a nominee director in either company.

TMA-2.2.11 [This Paragraph was deleted in XX 2023].

TMA-2.2.12 [This Paragraph was deleted in XX 2023].

TMA-2.2.13 [This Paragraph was deleted in XX 2023].