



# **TAKEOVERS, MERGERS & ACQUISITIONS MODULE**

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<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-A: Introduction</b>

## 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.



<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-A: Introduction</b>

## **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.1.12 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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<b>CHAPTER</b>	<b>TMA-A: Introduction</b>

## **TMA-A.1 Purpose (continued)**

TMA-A.1.13 [This Paragraph was deleted in October 2019].

TMA-A.1.14 [This Paragraph was deleted in October 2019].

TMA-A.1.15 [This Paragraph was deleted in October 2019].

TMA-A.1.16 [This Paragraph was deleted in October 2019].

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-A: Introduction</b>

## TMA-A.2 Module History

TMA-A.2.1 This Module was first issued in December 2008. It is numbered as version 01. All subsequent changes to this Module are annotated with a sequential version number: UG-3 provides further details on Rulebook maintenance and version control.

TMA-A.2.1A A list of recent changes made to this Module is provided below:

Module Ref.	Change Date	Description of Changes
TMA-3.1.4	04/2013	Guidance Paragraph deleted on mandatory offer limit.
Module TMA	10/2019	Restructured the whole Module TMA (including moving definitions to the glossary and also the appendices under Part B of the CBB Rulebook Volume 6).
TMA-2.2	01/2022	Amended paragraphs in the Section.
TMA-2.3	01/2022	Amended paragraphs in the Section.
TMA-2.7.7	01/2022	Amended paragraph.
TMA-2.7.8	01/2022	Deleted paragraph.
TMA-2.8.1	01/2022	Amended paragraph.
TMA-2.11.1	01/2022	Amended paragraph.
TMA-2.14.1	01/2022	Deleted paragraph.
TMA-2.18.1	01/2022	Amended paragraph.
TMA-2.18.2	01/2022	Amended paragraph.
TMA-2.19	01/2022	Amended paragraphs in the Section.
TMA-2.20.6	01/2022	Amended paragraph.
TMA-3.4	01/2022	New revised Section.

### *Superseded Requirements*

TMA-A.2.2 This Module supersedes the following provisions contained in circulars or other regulatory instruments:

Circular/ other references	Provision	Subject

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-A: Introduction</b>

**TMA-A.3 [This Section was deleted in October 2019].**

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-B:</b>	<b>Scope of Application</b>

## TMA-B.1 Scope

- TMA-B.1.1** Module TMA applies to persons (“relevant persons”) involved in, engaging in or intending to engage in an offer for, takeover or merger or acquisition of a controlling interest in a company whose primary listing of its ordinary equity securities is on a licensed exchange in the Kingdom of Bahrain.
- TMA-B.1.2 The Module applies to take-overs, mergers, acquisitions and share repurchases affecting:
- Bahrain domiciled publicly listed company whose ordinary voting equity securities are listed on a licensed exchange in Bahrain are the potential targets for takeovers, mergers and acquisitions; or
  - Overseas company whose primary listing of its ordinary voting equity securities is on a licensed exchange in Bahrain.
- TMA-B.1.3 [This Paragraph was deleted in October 2019].
- TMA-B.1.4 [This Paragraph was deleted in October 2019].
- TMA-B.1.5 The TMA Module will not require holders of securities of 30% or more in a listed company at the effective date of this Module to make an offer under this Module. However, such holders shall comply with the requirements of this Module if they plan to increase their existing holdings by any method as per the requirements of this Module.
- TMA-B.1.6 “While the TMA Module applies to listed companies in which control may change, there are circumstances such as where an unlisted company is a target of a listed company (reverse takeover) in which it is necessary to consider the spirit, General Principles, standards and rules of this Module wherever it is applicable. When there is any doubt as to whether a proposed course of conduct accords with the spirit, General Principles, standards and rules of this Module, parties or their advisers should consult the CBB in advance.”
- TMA-B.1.7 [This Paragraph was deleted in October 2019].
- TMA-B.1.8 [This Paragraph was deleted in October 2019].

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-B:</b>	<b>Scope of Application</b>

## TMA-B.1 Scope (continued)

### *Exemptions*

#### TMA-B.1.9

Module TMA does not apply to offers of equity securities for the following:

- (a) Offers for non-voting, non-equity capital unless required by this Module;
- (b) An exempt share re-purchase;
- (c) An offer document filed with the CBB under Module OFS for the sole purpose of issuing or listing securities that are convertible to equity securities and do not confer, directly or indirectly, a voting right to the holder of such securities;
- (d) The relevant person has or had, at any time, financial instruments that are convertible to equity securities and do not confer, directly or indirectly, a voting right;
- (e) The relevant person is not subject to Module TMA under CBB Law;
- (f) An exempt fund manager or an exempt principal trader recognized as such by the CBB for the purposes of the Module; and
- (g) Acquisition of a controlling interest pursuant to an underwriting agreement subject to the timeline of the disposal of such acquisition being approved by the CBB.

TMA-B.1.10 [This Paragraph was moved to the Glossary under Part B of the CBB Rulebook Volume 6 in October 2019].

TMA-B.1.11 [This Paragraph was moved to the Glossary under Part B of the CBB Rulebook Volume 6 in October 2019].

TMA-B.1.12 [This Paragraph was moved to the Glossary under Part B of the CBB Rulebook Volume 6 in October 2019].

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-B:</b>	<b>Scope of Application</b>

## TMA-B.1 Scope (continued)

### *Compliance Responsibility*

**TMA-B.1.13** Each director of an offeror and of the offeree company as well as those acting in concert and their professional advisers has a responsibility to ensure, so far as he is reasonably able, that the requirements of this Module are complied with in the conduct of transactions which are the subject of the TMA Module.

TMA-B.1.14 [This Paragraph was deleted in October 2019].

**TMA-B.1.15** The primary responsibility for ensuring compliance with the Module rests with parties involved in a takeover, merger, acquisition, or share repurchase and their professional advisers as follows:

- (a) Persons or groups of persons who seek to gain or consolidate control of companies that are subject to the Module; and
- (b) Their brokers and other professional advisers; or parties who otherwise participate in, act in concert or are connected with, transactions to which the Module applies.

TMA-B.1.16 [This Paragraph was deleted in October 2019].

### *Penalty for Non Compliance*

**TMA-B.1.17** Without prejudice to any greater penalty prescribed under the Penal Code or any other law, including the relevant provisions of the CBB Law, any person who breaches any of the provisions of this module is liable to a fine and such other restrictions and prohibitions the CBB may choose to impose under the CBB Law.



<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-B:</b>	<b>Scope of Application</b>

**TMA-B.2** [This Section was moved to the Glossary under Part B of the CBB Rulebook Volume 6 in October 2010].

MODULE	TMA:	Takeovers, Mergers & Acquisitions
CHAPTER	TMA-1:	General Principles

## TMA-1.1 General Principles

### TMA-1.1.1

[This Paragraph was deleted in October 2019].

### TMA-1.1.2

**Equal Treatment to all Shareholders:** All relevant persons including any persons acting in concert in relation to an offer must treat all holders of each class of securities of an offeree company in a fair and equitable manner demonstrating no bias to a single, group or class of shareholders.

### TMA-1.1.3

**Duties of Directors with Personal Interests:** Directors of an offeror and the offeree company must always, in advising their shareholders, act only in their capacity as directors and not have regard to their personal or family shareholdings or to their personal relationships with the companies. They must only consider the shareholders' interests taken as a whole when they are giving advice to shareholders. Directors of the offeree company must give careful consideration before they enter into any commitment with an offeror which would restrict their freedom to advise their shareholders. Such commitments may give rise to conflicts of interest or result in a breach of the directors' fiduciary duties.

### TMA-1.1.4

**Minority interests must be protected:** Oppression of minority or non-controlling shareholders is not acceptable in any case. Therefore, rights of control must be exercised in good faith in the context of protecting minority shareholders.

### TMA-1.1.5

**Information to All Shareholders:** During the course of an offer, or when an offer is in contemplation, neither an offeror, nor the offeree company, nor any of their respective advisers may furnish information to some shareholders which is not made available to all shareholders. This principle does not apply to the furnishing of information in confidence by the offeree company to a bona fide potential offeror or vice versa.

### TMA-1.1.6

**Standards of Care in Documents:** All relevant persons including any persons acting in concert in relation to an offer must, as with a prospectus act with due skill, care and diligence in relation to all matters connected with an offer including but not limited to matters relating to standards of research and analysis, public announcements, documentation, information being given to shareholders and the appointment of advisers, among others.

MODULE	TMA: Takeovers, Mergers & Acquisitions
CHAPTER	TMA-1: General Principles

## TMA-1.1 General Principles (continued)

**TMA-1.1.7** Announcements: An offeror must announce an offer only after careful and responsible consideration. The same applies to making acquisitions which may lead to an obligation to make a mandatory offer. In either case the offeror and its advisers must be satisfied that it can and will continue to be able to implement the offer in full.

**TMA-1.1.8** Sufficient Information and Time to Shareholders: Shareholders must be given sufficient information, advice and time to reach an informed decision on an offer. No relevant information must be withheld. All documents must, as in the case with a prospectus, be prepared with the highest possible degree of care, responsibility and accuracy.

**TMA-1.1.9** Full and Prompt Disclosure and Prevention of a False Market: All relevant persons including any persons acting in concert in relation to an offer must ensure that all information provided in offer, announcements and related documentation is clear, fair and not misleading, and appropriate to the information needs of the readers. All persons concerned with offers must make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of a false market. Relevant persons and their professional adviser(s) involved in an offer covered by this Module must take care that statements are not made which may mislead shareholders or the market.

**TMA-1.1.10** No Frustration of Bona Fide Offer: At no time after a bona fide offer has been communicated to the board of the offeree company, or after the board of the offeree company has reason to believe that a bona fide offer might be imminent, may the board of the offeree company take any action in relation to the affairs of the company, without the approval of shareholders in a general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.

**TMA-1.1.11** Secrecy before Announcements: At any time before the offer or during the offer, the management of all relevant persons including any persons acting in concert in relation to an offer and professional adviser(s) must maintain secrecy and confidentiality of the offer.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
CHAPTER	TMA-1:	General Principles

## TMA-1 General Principles (continued)

- TMA-1.1.12** **Limitation On Directors' Actions:** The boards of an offeror and the offeree company and their respective advisers and associates have a duty to act in the best interests of the shareholders of the offeror and offeree company respectively, and these General Principles and the Rules may impinge on the freedom of action of boards and persons involved in offers. They must, therefore, accept that there are limitations, in connection with transactions which are the subject of the Modules, on the manner in which the pursuit of those interests can be carried out.
- Each director of an offeror and of the offeree company has a responsibility to ensure, so far as he is reasonably able, that this Module is complied with in the conduct of transactions which are the subject of this Module.
- TMA-1.1.13** **Acquisition or Consolidation of Control:** If control of a company changes or is acquired or is consolidated, a mandatory offer to all other shareholders is required. Where an acquisition is contemplated as a result of which a person may incur such an obligation, he must, before making the acquisition, ensure that he can and will continue to be able to implement such an offer.
- TMA-1.1.14** **Appointment of Professional Adviser(s):** An offeree board which receives an offer or is approached with a view to an offer being made, must in the interest of its shareholders, seek professional advice by a professional adviser(s).
- TMA-1.1.15** **Co-operation with the CBB:** All parties concerned with transactions subject to this Module are required to co-ordinate and co-operate to the fullest extent with the CBB's Capital Markets Supervision Directorate, and to provide all relevant information.
- TMA-1.1.16** **Validity of CBB Approval:** Where a transaction requires CBB prior approval, any execution or part thereof must take place within a period of 90 days (including any applicable lock-up period) from the date of the approval, unless otherwise stipulated in writing by the CBB.
- TMA-1.1.17** **Transactions to be concluded on a licensed exchange:** Except with the consent of the CBB, any transaction concluded in terms of this Module shall be executed on the relevant licensed exchange.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
CHAPTER	TMA-2:	Rules

## TMA-2.1 Communication of the Offer

**TMA-2.1.1** An offer must be put forward in the first instance to the board of directors (the “board”) of the offeree company in writing.

### *Identity of Offeror*

**TMA-2.1.2** If the offer or an approach with a view to an offer being made is not made by the ultimate offeror or potential offeror, the identity of that person must be disclosed at the outset to the board of the offeree company. When that person is a company, the identity of its ultimate controlling shareholder(s) and the identity of its ultimate parent company, or, where there is a listed company in the chain between such company and its ultimate parent company, the identity of such listed company must be disclosed.

### *Seriousness of Offeror*

**TMA-2.1.3** The board of the offeree company when approached is entitled to be satisfied that the offeror is, or will be, in a position to implement the offer in full. An offeror, upon receiving a request from the board of the offeree company, must provide reasonable information to verify that the offeror is, or will be, in a position to implement the offer in full.

### *Confidentiality*

**TMA-2.1.4** The confidentiality of the offer before an announcement must be maintained and all persons in possession of confidential information, and particularly price-sensitive information, concerning an offer or contemplated offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if the other person understands the need for secrecy.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
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 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.



MODULE	TMA: Takeovers, Mergers & Acquisitions
CHAPTER	TMA-2: Rules

## TMA-2.2 Independent Advice and Shareholder Approval (continued)

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 the professional advisor as to the merits of the offer or recommendation being made, then it must be 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-2.2.4 [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:

- (a) 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;
- (b) provides or has provided any audit and/or review services during the preceding 12 months from the beginning of the offer period;
- (c) 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;
- (d) has a representative on the board of the offeror or the offeree;
- (e) has a representative from either the offeror or the offeree on its board;
- (f) is or will be involved in the financing of the offer;
- (g) is a substantial creditor of either the offeror or the offeree, based on the latest financial statements; or
- (h) has a financial interest in the outcome of the offer other than as outlined in paragraphs TMA-2.2.5A(a)–(g) above.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
CHAPTER	TMA-2:	Rules

## 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.

### *Advice to Independent Shareholders*

**TMA-2.2.6** If there are shareholders who are not independent because they have an interest in the proposed offer other than their interest as a shareholder of the offeror or the offeree company, as the case may be, such conflict of interest must be declared and made clear to the other shareholders. The professional adviser must endeavour to represent the best interests of the offeror or the offeree company, respectively, by concerning itself only with the interests of the independent shareholders.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
CHAPTER	TMA-2:	Rules

## TMA-2.2 Independent Advice and Shareholder Approval (continued)

### *Independent Committee*

#### 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 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 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.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
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## TMA-2.2 Independent Advice and Shareholder Approval (continued)

### *Offers for Companies that Control the Offeror*

**TMA-2.2.11** Where an offeror is a listed company, and it or a subsidiary thereof proposes to make an offer for another company that, together with any persons acting in concert with the offeree company, controls, directly or indirectly, the offeror, the offeror's board must establish an independent committee to assess the proposed offer and the CBB should be consulted.

### *Conflicting Views*

**TMA-2.2.12** If the board of the offeree company is split in its views on an offer, the minority must provide their views and these must be recorded in the minutes of the meeting. CBB will require the offeree to circulate these views.

**TMA-2.2.13** 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 explained to the shareholders.



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## TMA-2.3 Announcement of Offer or Possible Offer

### *Announcement to be Made by Offeror*

#### TMA-2.3.1

Except in the case of a mandatory offer where any of the circumstances occurring in TMA-2.3.10, a brief announcement that a potential offeror is considering making an offer must be made after obtaining permission from the CBB.

#### TMA-2.3.2

Before the board of the offeree company is approached, the responsibility for making an announcement lies with the offeror or potential offeror. The offeror or potential offeror should, therefore, keep a close watch on the offeree company's share price and volume for signs of unusual movement.

### *Announcements to be Made by Potential Vendor*

#### TMA-2.3.3

The potential vendor must make an announcement when there are negotiations or discussions between a potential offeror and the holder, or group of holders, of shares carrying 30% or more of the voting rights of the company and the company is subject to rumour or speculation about a possible offer or there is unusual movement in its share price or in the volume of share turnover, and there are reasonable grounds for concluding that it is the potential vendor's actions which have led to the situation.



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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

#### *Suspension of Trading*

##### TMA-2.3.4

When an announcement is required under this Section, the listed company(ies) being the offeror or the offeree company, as the case may be, must notify the CBB and the licensed exchange immediately that an announcement is imminent and if there is any possibility that an uninformed market for shares of the offeror or the offeree company could develop prior to publication of the announcement, serious consideration must be given to requesting a suspension of trading in such shares pending publication of the announcement. A potential offeror must not attempt to prevent the board of the offeree company from making an announcement or requesting the licensed exchange to grant a temporary suspension of trading at any time the board thinks appropriate. The CBB or the licensed exchange may, at their discretion and irrespective of whether or not there is a request, suspend trading temporarily on the shares of a listed company being an offeree or offeror.

#### *Announcements of Certain Purchases*

##### TMA-2.3.5

Acquisitions of voting rights of the offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a cash offer, to increase an offer or to make a mandatory offer. Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of shares acquired and the price paid, together with the information required (to the extent that it has not previously been announced).

##### TMA-2.3.6

CBB should be consulted if an offeror is wishing to approach a wider group, for example in order to arrange financing for the offer, whether through equity or debt, or to organize a consortium to make the offer.

##### TMA-2.3.7

Where the offeror or offeree does not make an announcement when obliged to do so in terms of this Module, the CBB shall have the right to, without prejudice to any further action imposed by the CBB, instruct the offeror and the offeree to make an announcement in accordance with this Module and the offeror or offeree must comply with the time stipulated in the instruction.



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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

#### *Publication of an Announcement about an Offer or Possible Offer*

**TMA-2.3.8** When an offer or possible offer is announced, the announcement must be in accordance with Appendix B in Part B of the CBB Rulebook Volume 6 and be sent to the licensed exchange and published in two local daily newspapers in Bahrain, one in Arabic and the other in English.

TMA-2.3.9 [This Paragraph was deleted in October 2019].

**TMA-2.3.10** An offeror or potential offeror must make an announcement under the following conditions:

- (a) Before an approach has been made to the offeree company, the offeree company is in the subject of rumour or speculation about a possible offer;
- (b) There is unusual movement in the company's share price or in the volume of share turnover, and there are reasonable grounds for concluding that it is the actions of the potential offeror or persons acting in concert with it through inadequate security, which have led to the situation;
- (c) When negotiations or discussions are about to be extended to include more than a very restricted number of persons; outside those who need to know in the companies concerned and their immediate advisors; or
- (d) Immediately upon acquisition of voting rights which gives rise to an obligation to make a mandatory offer. The announcement that an obligation has arisen must not be delayed due to information being obtained, additional information can be the subject of a later supplementary announcement.



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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

#### *Announcement to be Made by Offeree*

##### TMA-2.3.11

Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company. The offeree company must, therefore, keep a close watch on its share price and volume.

The board of the offeree company must make an announcement to the licensed exchange and market and inform its shareholders immediately upon the occurrence of the following conditions:

- (a) A firm intention to make an offer has been notified to the board of the offeree company from an authorised source, irrespective of the attitude of the board of the offeree company;
- (b) When following an approach to the offeree company, whether there is a firm intention to make an offer or not, the offeree company is the subject of rumour or speculation about a possible offer or there is unusual movement in its share price or in the volume of share turnover;
- (c) When negotiations or discussions about a potential offer are about to be extended to include more than a very restricted number of persons;
- (d) When the board of a company is aware that there are negotiations or discussions between a potential offeror and the holder, or group of holders of shares carrying 30% or more of the voting rights of a company; or
- (e) When the board of a company is seeking potential offerors, and
  - (i) The company is the subject of rumour or speculation about a possible offer, or there is unusual movement in its share price or a significant increase in the volume of share turnover; or
  - (ii) More than a very restricted number of potential purchasers or offeror are about to be approached.

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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

**TMA-2.3.12** When a proposed offer is conditional on acceptances or undertakings to accept by one or more shareholders, the proposed announcement must include a statement by those shareholders who have accepted or undertaken to accept the offer, whether such acceptances or undertakings are revocable, and if so, the conditions under which such acceptances or undertakings may be revoked.

#### *Firm Intention to Make an Offer by Offeror*

**TMA-2.3.13** An offeror must announce a firm intention to make an offer where such offeror has every reason to believe that it can and will continue to be able to implement the offer.

**TMA-2.3.14** The announcement of a firm intention to make an offer must state the following:

- (a) Terms of the offer;
- (b) Identity of the offeror and, where the offeror is a company, the identity of its ultimate controlling shareholder and the identity of its ultimate parent company, or where there is a listed company in the chain between such company and its ultimate parent company, the identity of such listed company;
- (c) Details of any existing holding of shares and rights over shares in the offeree company:
  - (i) Which the offeror owns or over which it has control or direction;
  - (ii) Which is owned or controlled or directed by any person acting in concert with the offeror;
  - (iii) In respect of which the offeror or any person acting in concert with it has received an irrevocable commitment to accept the offer; and
  - (iv) In respect of which the offeror or any person acting in concert with it holds convertible securities, warrants or options;
- (d) Details of any outstanding derivative in respect of securities in the offeree company entered into by the offeror or any person acting in concert with it;

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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

- (e) All conditions (including normal conditions relating to acceptance, listing and change in capital) to which the offer is subject;
- (f) Details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company and which might be material to the offer. Details of any relevant securities of the offeree company in which the offeror or any person acting in concert with it has an interest or has a right to subscribe. In each case, the nature of the interests or rights concerned needs to be specified;
- (g) Details of any relevant securities of the offeree company which the offeror or any person acting in concert with it has borrowed or lent, save for any borrowed shares which have been either on-lent or sold;
- (h) All conditions (including normal conditions relating to acceptances, admission to listing, admission to trading and increase of capital) to which the offer or the posting of it is subject;
- (i) Details of any agreements or arrangements to which the offeror is party which relate to the circumstances in which it may or may not invoke or seek to invoke a pre-condition or the consequences of its doing so, including details of any break fees payable as a result; and
- (j) Details of any arrangement for the payment of an inducement fee or similar arrangement.

**TMA-2.3.15** Where the offer is for cash, or includes an element of cash, the announcement of firm intention must include a statement by an adviser, or another appropriate third-party, that they have carried out necessary assessment to confirm that sufficient resources are available to the offeror to satisfy the full implementation and acceptance of the offer.

**TMA-2.3.15A** For the purpose of Paragraph TMA-2.3.15, the CBB may require the appointed adviser or third party to provide evidence in support of the confirmation statement referred to in Paragraph TMA-2.3.15 confirming that sufficient resources are available to satisfy the offeror's obligation in respect of the offer.

**TMA-2.3.16** Except with the consent of the CBB, if an incorrect or misleading statement is made in an announcement by the potential offeror, or on behalf of the potential offeror, or its directors, or officials or advisors, and not immediately withdrawn, then the potential offeror will be bound by the statement if an offer for the offeree company is subsequently made.

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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

**TMA-2.3.17** Except with the consent of the CBB, where the incorrect or misleading statement concerned relates to the price of a possible offer (or a particular exchange ratio in the case of a proposed securities exchange offer), the potential offeror will not be allowed subsequently to make an offer for the offeree company at a lower price (taking the price of any securities concerned at the date of announcement of the firm intention to make the offer), unless there has occurred an event which the potential offeror specified in the statement as an event which would enable it to be set aside.

#### *Preconditions*

**TMA-2.3.18** Any pre-conditions included in an announcement to making a possible offer must be agreed in advance by the CBB and clearly state whether or not the pre-conditions must be satisfied before an offer can be made or whether they are waived.

#### *Announcement of the Progress of the Offer*

**TMA-2.3.19** Until a firm intention to make an offer has been notified a brief announcement by a potential offeror or the offeree company that talks are taking place or that a potential offeror is considering making an offer will normally satisfy the obligations under this Section.

If following the announcement of a possible offer no further announcement has been made in respect of that offer or possible offer within one month, an announcement must be made setting out the progress of the talks or the consideration of a possible offer. This obligation continues, and announcements will be required monthly, until announcement of firm intention to make an offer or of a decision not to proceed with an offer. When talks are terminated or a potential offeror decides not to proceed with an offer, clear and unambiguous announcement must be made to that effect.

#### *Statements of Intention Not to Make an Offer*

**TMA-2.3.20** A person making a statement that he does not intend to make an offer for a company must make a statement to the market that is very clear and unambiguous.

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### TMA-2.3 Announcement of Offer or Possible Offer (continued)

<b>TMA-2.3.21</b>	<p>Except with the consent of CBB, unless there has been a material change of circumstances or an event has occurred which the person specified in his statement as an event which would enable it to be set aside, neither the person making the statement, nor any person <u>acting in concert</u> with him, nor any person who is subsequently <u>acting in concert</u> with either of them, may within six months from the date of the statement:</p> <ol style="list-style-type: none"> <li>(a) Announce an <u>offer</u> or possible <u>offer</u> for the <u>offeree</u> company, including a <u>partial offer</u>;</li> <li>(b) Acquire any interest in shares of the <u>offeree</u> company if any such person is obliged under TMA-3.1 to make a <u>mandatory offer</u>;</li> <li>(c) Acquire any interest, or procure an irrevocable commitment in respect of, shares of the <u>offeree</u> company if the shares in which such person, together with any persons <u>acting in concert</u> with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the <u>voting rights</u> of the <u>offeree</u> company;</li> <li>(d) Make any statement which raises or confirms the possibility that an <u>offer</u> might be made for the <u>offeree</u> company; or</li> <li>(e) Proceed with actions to make a possible <u>offer</u>, for the <u>offeree</u> company, where knowledge of the possible <u>offer</u> might be extended outside the potential <u>offeror</u> and immediate advisors.</li> </ol>
TMA- 2.3.22	Failure to comply with this rule may lead to the period of six months set out to be extended.
TMA- 2.3.23	Any person considering issuing a statement of an intention not to make an <u>offer</u> should consult CBB; particularly when specific reservations are to be included or to be set aside.
TMA- 2.3.24	Restrictions imposed by TMA-2.3.21 on statements made will apply to any persons <u>acting in concert</u> with the person making the statement. Unless clear in the statement or at the time of the statement, the restrictions will not apply to the persons <u>acting in concert</u> and that they are continuing to consider making an <u>offer</u> .
TMA- 2.3.25	When a person is announcing in a statement an intention of not making an <u>offer</u> , CBB will take into account the manner of any public reporting following the statement. Advisors should advise the directors and officials of companies of the implications of TMA-2.3.21.

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## TMA-2.4 No Frustrating Action

**TMA-2.4.1** Once a bona-fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona-fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular, the offeree company's board must not, without such approval, do or agree to do the following:

- (a) Issue any shares;
- (b) Create, issue or grant, or permit the creation, issue or grant of, any convertible securities, options or warrants in respect of shares of the offeree company;
- (c) Other than during the normal course of business, sell, dispose of or acquire assets of a material amount;
- (d) Enter into contracts, including service contracts, otherwise than in the ordinary course of business; or
- (e) Cause the offeree company or any subsidiary or associated company to purchase or redeem any shares in the offeree company or provide financial assistance for any such purchase.

**TMA-2.4.2** For purposes of Paragraph TMA-2.4.1, where the offeree company is under a prior contractual obligation to take any such action, or where there are other special circumstances, the CBB must be consulted at the earliest opportunity.



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## TMA-2.5 No Withdrawal of an Offer

### TMA-2.5.1

Except with the consent of the CBB, following an announcement of a firm intention to make an offer, the offeror cannot withdraw the offer and must continue to implement it unless the offer is subject to the fulfilment of a specified condition and the condition has not been met.

- TMA- 2.5.2 A change in general economic, industrial or political circumstances will not justify failure to proceed with an announced offer, unless circumstances of an exceptional and specific nature arise.
- TMA- 2.5.3 If a competitor has posted a higher offer to the one already made by the first offeror, the CBB may consent to the withdrawal of the announced offer. This should not carry any additional conditions other than those necessary for the implementation of such announced offer.
- TMA- 2.5.4 If an offeror is permitted to withdraw from an offer, or an offer is waived because of non-fulfilment of a condition, the offeror will be required to make an announcement giving reasons for the withdrawal.
- TMA- 2.5.5 The CBB may seek to hear views of the offeree company and its advisors, prior to consenting to a withdrawal of an announced offer.



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## TMA 2.6 Information to Offeror(s)

**TMA-2.6.1** Upon signing a confidentiality agreement to give access to any due diligence material, any information, including particulars of shareholders, given to one offeror or potential offeror must be furnished equally and promptly to any other bona fide offeror or potential offeror.

TMA-2.6.2 If the offer or potential offer is a management buy-out or similar transaction, the information which this Paragraph requires to be given to a competing or potential offeror is:

- (a) The information generated by the offeree company (including the management of the offeree company acting in their capacity as such) which is passed to external providers or potential providers of finance (whether equity or debt) to the offeror or potential offeror; and
- (b) Any other information that is material in the context of making an offer insofar as the board of the offeree company is aware that the management is in possession of such information.

This, however, does not include providing information on the offeree company's trade and business secrets. The CBB expects the directors of the offeree company who are involved in making the offer to cooperate with the independent directors of the offeree company and its advisers in the assembly of information.

TMA-2.6.3 The information related to an offer should be provided by the offeree company to the ultimate offeror or potential offeror, the identity of which must be disclosed to the directors of the offeree company.

### *Mutual Due Diligence Review*

TMA-2.6.4 Where the consideration under an offer includes exchange of securities, the offeror and the offeree company may, subject to such terms and conditions as may be agreed between the offeror and offeree company under a confidentiality agreement, undertake mutual due diligence (mutual due diligence review) of each other's business.

TMA-2.6.5 Where the CBB is of the opinion that mutual due diligence review as referred to in Paragraph TMA-2.6.4 is in the best interest of the shareholders, it may, at its sole discretion, by notice in writing, order the offeror and the offeree company to enter into a mutual due diligence review agreement.



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## TMA 2.7 Timing and Content of Documents

### *Equality of Information to Shareholders*

**TMA-2.7.1** All offeree company shareholders must be given sufficient information and advice about an offer. Information must be made equally available to all shareholders, at the earliest and in the same manner to enable them to reach an informed decision about the offer.

**TMA-2.7.2** Shareholders must, in accordance with Appendix C in Part B of the CBB Rulebook Volume 6, be given all the facts necessary to make an informed judgment on the merits or demerits of an offer. Such facts require accurate and fair presentation and must be given to the shareholders early enough to enable them to make a decision in good time. The obligation of the offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders. In particular, whether or not the offer consideration is cash, information must be given about the offeror.

**TMA-2.7.3** The offer document must include a heading stating: *"If you are in doubt about any aspect of this offer, you should consult a licensed securities dealer or licensed institution in securities, a bank manager, solicitor or attorney, professional accountant, or other professional advisor."*

**TMA-2.7.4** No new material must be released in meetings, interviews or discussions with the media. If any new information is made public as a result of meetings, interviews or discussions with the media, then a circular must be sent to shareholders and where appropriate newspaper space.

### *Subsequent Documents*

**TMA-2.7.5** Documents subsequently sent to shareholders of the offeree company must contain details of any material changes in information previously submitted or published by or on behalf of either party during the offer period. If there have been no such changes this must be stated. In particular, the following matters must be updated:

- (a) Changes or additions to material contracts;
- (b) Shareholdings and dealings;
- (c) Changes to directors' service contracts;
- (d) Special arrangements;
- (e) Ultimate owner of securities acquired under the offer; and
- (f) Arrangements in relation to dealings.



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## TMA 2.7 Timing and Content of Documents (continued)

### *Offer Document Time Limit*

#### TMA-2.7.6

The offer document must be sent to the offeree company by or on behalf of the offeror within 21 calendar days from the date of the announcement of the terms of the offer. The CBB's written approval is required if the offer document may not be sent to the offeree within this period.

### *Timing and Contents of Offeree Board Circular*

#### TMA-2.7.7

The offeree company must send the circular containing the information in Appendix D in Part B of the CBB Rulebook Volume 6, together with any other information it considers to be relevant to enable its shareholders to reach an informed decision on the offer accompanied by the offer document to all its shareholders within a maximum period of 21 calendar days from the date of receipt of the offer document. The CBB's written approval is required if the offeree board circular may not be sent to the shareholders within the abovementioned period. The offeree board circular must include the views of the offeree company's board or its independent committee on the offer and the written advice of its professional adviser as to whether the offer is, or is not, fair and reasonable and the reasons thereof.

#### TMA-2.7.8

[This Paragraph was deleted in January 2022]

### *Prospectus Standard*

#### TMA-2.7.9

Each document issued or statement made in relation to an offer or possible offer or during an offer period must, as is the case with a prospectus, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented. This applies whether the offeror, the offeree company, or any of their advisors or agents issues the document, advertisement, or announcement. Those who issue or make any such document or statement must ensure that it remains accurate and up-to-date throughout the offer period, and must notify shareholders of any material changes as soon as possible.



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## TMA 2.7 Timing and Content of Documents (continued)

### *Directors' Responsibility Statement*

**TMA-2.7.10** All documents must state on the inside cover page that: All directors of the company issuing the document, whose names appear therein, jointly and severally accept full responsibility for the accuracy of information contained in the document. To the best of the knowledge and belief of the directors, who have taken all reasonable care to ensure that such is the case, the information contained in the document is in accordance with the facts and contains no omissions likely to affect the importance and completeness of the document.

**TMA-2.7.11** If it is proposed that any director be excluded from the Director's Responsibility Statement, the CBB's consent is required. Such consent is given only in exceptional circumstances and in such cases the omission and the reasons for it must be stated in the document to which the Director's Responsibility Statement applies.

TMA-2.7.12 The directors of the offeree company should comment on the statement in the offer document regarding the offeror's intentions in respect of the offeree company and its employees.

### *Arabic/English Language*

**TMA-2.7.13** Each document must be written in Arabic and/ or English and shall include or be accompanied by a translation, as the case requires, in Arabic or English.

### *Documents to be on Display*

**TMA-2.7.14** Except with the consent of the CBB, the following documents must be available for inspection from the time that the offer document or the offeree board circular is published, until the end of the offer period. The offer document and the offeree board circular must state which documents are available and where, and the place where inspection can be made:

- (a) Memorandum and articles of association of the offeror or the offeree company or equivalent documents;



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### TMA-2.7 Timing and Content of Documents (continued)

- (b) Audited consolidated accounts of the offeror or the offeree company for the last two financial years for which these have been published in accordance with the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) or other accounting standards acceptable to the CBB;
- (c) All service contracts of offeree company directors;
- (d) Any report, letter, valuation or other document any part of which is exhibited or referred to in any document issued by or on behalf of the offeror or the offeree company;
- (e) Written consents of the professional advisers;
- (f) All material contracts in relation to the offer;
- (g) Where a profit forecast has been made, the reports of the auditors or consultant accountants and of the professional advisers in addition to the letters giving the consent of the auditors or consultant accountants and of the professional advisers to the issue of the relevant document with the report in the form and context in which it is included or, if appropriate, to the continued use of the report in a subsequent document;
- (h) Where an asset valuation has been made, the valuation certificate and associated report containing details of the aggregate valuation, in addition to a letter stating that the valuer has given and not withdrawn his consent to the publication of his name in the relevant document;
- (i) Any document evidencing an irrevocable commitment or a letter of intent which has been procured by the offeror or offeree company (as appropriate) or any of their respective associates;
- (j) Where the CBB has given consent to aggregation of dealings, a full list of all dealings;
- (k) Documents relating to the financing arrangements for the offer or a detailed statement from the professional advisor indicating that they have taken all reasonable steps to convince themselves that sufficient resources are available to implement the offer;
- (l) Documents relating to the payment of an inducement fee or similar arrangement;
- (m) Any agreements or arrangements, or, if not reduced to writing, a memorandum of all the terms of such agreements or arrangements, disclosed in the offer document; and
- (n) Any agreements or arrangements, or, if not reduced to writing, a memorandum of the terms of such agreements or arrangements.



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## TMA-2.8 The Offeree's Director Responsibilities

### TMA-2.8.1

The board of directors of the offeree company must ensure that proper arrangements are in place to enable it to monitor **all aspects relating to the offer** to ensure that:

- (a) The board is provided promptly with copies of all documents and announcements issued by or on behalf of **the offeree company** which bear on the offer; the board receives promptly details of all dealings in relevant securities made by **the offeree** company or its associates and details of any agreements, understandings, guarantees, expenditure (including fees) or other obligations entered into or incurred by or on behalf of **the offeree** company in the context of the offer which do not relate to routine administrative matters;
- (b) Those directors or committee members **(appointed in accordance with Paragraph TMA-2.2.7) who undertake** daily responsibilities for the offer are in a position to justify to the board all their actions and proposed courses of action;
- (c) The opinions of advisers, **including professional advisers**, are available to the board; and
- (d) The possible temporary insiders **(including members of the board themselves)** are identified and that the offeree company **(including its employees)** **comply with the relevant provisions of Insiders as stipulated in the CBB Law and in the offeree's policy on insiders.**

### TMA-2.8.2

The procedures identified in TMA-2.8.1 must be followed, and board meetings must be held, whenever necessary throughout the offer in order to ensure that all directors remain updated with events and with actions taken.

TMA-2.8.3 [This Paragraph was deleted in October 2019].

TMA-2.8.4 [This Paragraph was deleted in October 2019].

### TMA-2.8.5

Where directors (including their connected persons, related trusts and companies controlled by such directors, connected persons and related trusts) or shareholders or groups of shareholders acting collectively holding effective control, whether represented on the board or not, sell shares to a purchaser, as a result of which the purchaser is required to make an offer under TMA-3.1 (Mandatory Offer), the vendors must ensure that as a condition of the sale the purchaser undertakes his obligations in accordance with TMA-3.1.

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## TMA- 2.8 The Offeree's Director Responsibilities (continued)

### *Resignation of Directors of Offeree Company*

#### TMA-2.8.6

Once a bona-fide offer has been communicated to the board of the offeree company or the board of the offeree company has reason to believe that a bona-fide offer is imminent, except with the consent of the CBB, the directors of an offeree company or any of its subsidiaries ~~should~~ must not resign until the first closing date of the offer, or the date when the offer becomes or is declared unconditional, whichever is the later. Resignation of directors of the offeree company must be made in accordance with the offeree company's Memorandum and Articles of Association.

### *Prompt Registration of Transfers*

TMA-2.8.7 The board and officials and registrars of an offeree company should use their best endeavours to ensure the prompt registration of transfers during an offer period so that shareholders can freely exercise their voting and other rights.

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## TMA-2.9 Profit Forecast and Other Financial Information

**TMA-2.9.1** The directors are responsible for ensuring that the profit forecasts are compiled with the highest standards, presentation and accuracy to shareholders in an offer. Professional advisors must ensure that the directors are preparing the forecasts with sufficient explanation on how the projection was calculated, taking into account all the assumptions and risk of failure in the projected result. Such project must be examined and reported on by independent reporting accountants, experts, or consultants in accordance with the applicable international standard (International Standard on Assurance Engagement – ISAE).

**TMA-2.9.2** Profit forecasts provided by the offeror and/or the offeree must include:

- (a) A profit forecast for the current financial year. If the forecast year is less than three months of the current financial year, then the period of the forecast will be the current financial year and the next immediate financial year;
- (b) The assumptions, in addition to the commercial assumptions, on which the forecasts are based must be included in documents sent to offeree shareholders with regards to an offer;
- (c) A statement with the consent of the relevant advisors, including the consultant accountant and professional advisor, that they have given and not withdrawn their consent to the publication of the profit forecast;
- (d) A statement by the directors that the forecast remains valid for the purpose of their offer and that the professional advisors and accountants who reported the forecast agree that their reports continue to apply;
- (e) The accounting policies and calculations of the forecasts which have been examined and reported on by the auditors, consultant accountants or any other professional advisor of the offeror or the offeree; and
- (f) When a profit forecast is made in relation to a period in which trading has already commenced, any previously published profit figures in respect of any expired part of that trading period, together with comparable figures for the same part of the preceding year.

**TMA-2.9.3** When income from land and buildings is a material element in a forecast, that part of the forecast must normally be examined and reported on by an independent valuer. Exceptional items must also be examined and reported on with special care.



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## TMA-2.9 Profit Forecast and Other Financial Information (continued)

**TMA-2.9.4** Except with the consent of the CBB, any profit forecast which has been made before the commencement of the offer period must be examined, reproduced and reported on in the document sent to shareholders.

TMA-2.9.5 Exceptionally, the CBB may accept that, because of the uncertainties involved, it is not possible for a forecast previously made to be reported on in accordance with this Module nor for a revised forecast to be made. In these circumstances, the CBB would insist on shareholders being given a full explanation as to why the requirements of this Module were not capable of being met.

### *Publication of Reports*

**TMA-2.9.6** When a profit forecast is made during an offer period, any documents sent to shareholders must include the forecast reports as required by TMA-2.9.2(e), TMA-2.9.3 and TMA-2.9.4. The reports must include a statement that consent has been given and has not been withdrawn to the circulation to shareholders.

**TMA-2.9.7** If a company's forecast is published first in a press announcement, it must be repeated in full, together with the reports required in TMA-2.9.2(e), TMA-2.9.3 and TMA-2.9.4, in the documents sent to shareholders. The reports must include a statement that consent has been given and has not been withdrawn to the publication.

### *Continuing Validity of Forecast*

**TMA-2.9.8** When a company includes a forecast in a document, any document subsequently sent out by that company in connection with that offer must, contain a statement by the directors that the forecast remains valid for the purpose of the offer and that the professional advisers and accountants who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

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## **TMA-2.9 Profit Forecast and Other Financial Information (continued)**

### *Statements Which Will Be Treated as Profit Forecasts*

TMA-2.9.9 When no particular figure is mentioned or even if the word “profit” is not used, certain forms of words may constitute a profit forecast, particularly when considered in context. Examples are “profits will be somewhat higher than last year” and “performance in the second half-year is expected to be similar to our performance and results in the first half-year” (when interim figures have already been published). Whenever a form of words puts a floor under, or a ceiling on, the likely profits of a particular period or contains the data necessary to calculate an approximate figure for future profits, it will be treated by the CBB as a profit forecast which must be reported on. In cases of doubt, the CBB should be consulted in advance.

TMA-2.9.10 [This Paragraph was deleted in October 2019].

TMA-2.9.11 [This Paragraph was deleted in October 2019].

TMA-2.9.12 [This Paragraph was deleted in October 2019].

### *When a Forecast Relates to a Period which has Commenced*

TMA-2.9.13 [This Paragraph was deleted in October 2019].

### *Merger Benefits Statements in Securities Exchange Offers*

**TMA-2.9.14** In a securities exchange offer, a quantified statement about the expected financial benefits of a proposed takeover or merger is deemed to be a profit forecast statement for the purpose of this Section. In addition to satisfying the existing standards of information and requirements under this Module, a person issuing such a statement must provide:

- (a) The basis of the belief (including sources of information) supporting the statement;
- (b) An analysis and explanation of the constituent elements sufficient to enable shareholders to understand the relative importance of these elements; and
- (c) A base figure for any comparison drawn.



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## TMA-2.10 Asset Valuation

**TMA-2.10.1** When a valuation of assets is given in connection with an offer, it must be supported by the opinion of a named independent valuer who has no connection with other parties to the transaction. Asset valuations by a professionally qualified independent valuer must be provided when asset values are a particularly significant factor in assessing the relevant takeover or merger transaction.

**TMA-2.10.2** Valuation of assets documents provided by the offeror or the offeree must include:

- (a) The professional qualifications and address of the independent valuer;
- (b) The basis of valuation;
- (c) The opinion of the independent valuer supporting the valuation;
- (d) The effective date at which the assets were valued. If a valuation is not current, the valuer must state that a current valuation would not be materially different and if this statement cannot be made, the valuation must be updated;
- (e) A statement with the consent of the valuer that he has given and not withdrawn his consent to the use of his valuation report.

**TMA-2.10.3** Valuation report addressed to shareholders must be made available for inspection together with an associated report containing details of the aggregate valuation. Where CBB is satisfied that such disclosure may be commercially disadvantageous to the company concerned, it will allow the report to be in a summarized form.

### *Basis of Valuation*

**TMA-2.10.4** In any valuation of an asset or business the basis of valuation must be clearly stated. Only in exceptional circumstances should it be qualified and in that event the valuer must explain the meaning of the words used. The material assumptions made in a valuation must be stated in the valuation.

TMA-2.10.5 [This Paragraph was deleted in October 2019].

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## **TMA-2.10 Asset Valuation (continued)**

TMA-2.10.6 In the case of land currently being developed or with immediate development potential, in addition to giving the open market value in the state existing at the date of valuation, the valuation should include:-

- (a) The value after the development has been completed;
- (b) The estimated total cost, including carrying charges, of completing the development and the anticipated dates of completion and of letting or occupation; and
- (c) A statement whether planning or other regulatory consent has been obtained and, if so, the date thereof and the nature of any conditions attaching to the consent which affect the value.

However, the value of the property should also be given as a net of any charges, levy, tax, etc.

### *Opinion and Consent Letters*

**TMA-2.10.7 Standards of care; A valuation must be made with due care and consideration by the valuer or professional adviser making the valuation.**

TMA-2.10.8 [This Paragraph was deleted in October 2019].

**TMA-2.10.9 When the valuer withdraws its written consent, the document must state such fact.**

TMA-2.10.10 [This Paragraph was deleted in October 2019].

TMA-2.10.11 [This Paragraph was deleted in October 2019].

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## TMA-2.11 Issuance of Documents

### *Filing of Documents for Comments*

**TMA-2.11.1** All documents must be filed with the CBB for **its feedback** prior to release or publication and must not be released or published until the CBB **has issued its written approval within 10 working days** thereon. The final **copy** of the documents must be filed with the CBB.

### *Publication of Documents*

**TMA-2.11.2** All announcements in respect of listed companies must be made in accordance with the requirements of the Disclosure Standards. All announcements in respect of unlisted companies must be circulated to their shareholders.

TMA-2.11.3 [This Paragraph was deleted in October 2019].

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## TMA-2.12 Offers for More than One Class of Equity Shares

TMA-2.12.1	<p>Where a company has more than one class of equity share capital, a comparable <u>offer</u> must be made for each class whether such capital carries <u>voting rights</u> or not. The comparable <u>offer</u> or proposal for each class of share capital required must be subject to similar conditions. Such a scheme must be considered at separate meetings for each class of the equity share capital, if required by law or the company's Memorandum and Articles of Association.</p>
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## TMA-2.13 Appropriate Offers for Convertibles

### *Offeree Companies with Convertible Securities*

**TMA-2.13.1** Where an offer is made for equity share capital and the offeree company has convertible securities outstanding, the offeror must make an appropriate offer or proposal to the holders of the convertible securities to ensure that their interests are safeguarded. Holders of convertible securities must be treated equally.

### *Professional Independent Advice*

**TMA-2.13.2** The board of the offeree company must obtain professional independent advice in writing on the offer or proposal to the holders of convertible securities and the substance of such advice must be made known to all holders of its securities, together with the board's views on the offer or proposal.

### *Dispatch of Appropriate Offers*

TMA-2.13.3 Whenever practicable the offer or proposal should be dispatched to the holders of convertible securities at the same time that the offer document is posted to other shareholders, but if this is not practicable the CBB should be consulted and the offer or proposal should be dispatched as soon as possible thereafter.

### *Conditions of Appropriate Offers*

TMA-2.13.4 The offer or proposal required by TMA-2.13.1 must be made conditional on the offer for equity share capital becoming or being declared unconditional and should not normally be subject to any other conditions. It may, however, be put by way of a scheme to be considered at a meeting of the holders of convertible securities in accordance with the Memorandum and Articles of Association and/or offer documents in respect of such securities, as the case may be.

### *Warrants, Options and Subscription Rights*

TMA-2.13.5 The provision of Paragraph TMA-2.13.1 applies also when an offeree company has warrants, options or subscription rights outstanding in respect of any class of equity share capital (including non-transferable options), with the appropriate amendments.

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## TMA-2.14 Offer Timetable

**TMA-2.14.1** [This Paragraph was moved to TMA-2.14.2A in October 2019].

### *Offering Period*

**TMA-2.14.2** Where an offer document and the offeree board circular are distributed on different dates, the offer must initially be open for acceptance for at least 15 calendar days following the date on the later date in respect of which the document is posted. In any announcement of an extension of an offer, the next closing date must be stated.

### *Offer to Remain Open for 15 Days*

**TMA-2.14.2A** Where a conditional offer becomes or is declared unconditional, it must remain open for acceptance for not less than 15 calendar days thereafter.

### *Final Day Rule*

**TMA-2.14.3** Except with the consent of the CBB, an offer (whether revised or not) must not become or be declared unconditional as to acceptances after the official working hours on the 60<sup>th</sup> day after the day the initial offer document was posted. The CBB's consent will normally be granted only if a competing offer has been announced (in which case both or all offerors will normally be bound by the timetable established by the posting of the competing offer document which is posted later). The consent of the CBB, in such cases, will only be given in very exceptional circumstances.

**TMA-2.14.4** [This Paragraph was deleted in January 2022].

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## TMA-2.14 Offer Timetable (continued)

### *Time for Fulfilment of all other Conditions*

TMA-2.14.5	<p>Except with the consent of the CBB, all conditions must be fulfilled or the <u>offer</u> must lapse within 15 calendar days of the first closing date or of the date the <u>offer</u> becomes or is declared unconditional as to acceptances, whichever is the later.</p>
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## TMA-2.15 Revised and Alternative Offers

### *Offer Open for 15 Calendar Days after Revision*

**TMA-2.15.1** If, in the course of an offer, the offeror revises its terms, all offeree company shareholders, whether or not they have already accepted the offer, will be entitled to the revised terms. A revised offer must be kept open for at least 15 calendar days following the date on which the revised offer document is posted. Therefore, no revised offer document may be posted in the 15 calendar days ending on the last day the offer is able to become unconditional as to acceptances.

### *New Conditions for Improved Offers*

TMA-2.15.2 An offeror may introduce new improved conditions to be attached to a revised offer, but only to the extent necessary to implement the revised offer and subject to the consent of the CBB.

### *Reintroduction of Alternative Offers*

TMA-2.15.4 Where a firm statement has been made that an alternative offer will not be extended or reintroduced, neither that alternative, nor any substantially similar alternative, may be extended or reintroduced. Where, however, such a statement has not been made and an alternative offer has closed, an offeror will not be precluded from reintroducing that alternative at a later date. Reintroduction constitutes a revision of the offer and is, therefore, subject to the requirements of, and only permitted as provided in, this Section.

**TMA-2.15.5** CBB must be consulted if a competitive situation continues to exist in the later stages of the offer period. CBB will normally consider applying a procedure to resolve the situation which is agreed between competing offerors and the board of the offeree company.

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## TMA 2.16 Acceptors' Right to Withdraw

<b>TMA-2.16.1</b>	<p>An acceptor will be entitled to withdraw his acceptance after 14 days from the first closing date of the <u>offer</u>, if the <u>offer</u> has not become unconditional as to acceptances by that date. Such entitlement to withdraw will be exercisable until the <u>offer</u> becomes unconditional as to acceptances. However, on the 60<sup>th</sup> day (or any date beyond which the <u>offeror</u> has stated that its <u>offer</u> will not be extended) the final time for the withdrawal must coincide with the final time for the lodgement of acceptances.</p>
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## TMA-2.17 Statements during Course of Offer

**TMA-2.17.1** Information, documents, advertisements or statements issued during an offer period must not be misleading and must be of the highest standard and accuracy. This is whether the information is issued directly by the offeror, offeree or by the advisors. All parties and their advisers are responsible for ensuring that any release of information abides with this rule.

**TMA-2.17.2** Any parties of an offer or potential offer and their advisors must take care not to issue any statements which, while not factually inaccurate, may mislead shareholders and the market and cause uncertainty. Statements regarding an offeror improving his offer without committing itself to doing so must not be made.

**TMA-2.17.3** Documents issued to shareholders or advertisements published in relation to an offer by, or on behalf of, the offeror or the offeree company, must state where appropriate, that the directors of the offeror and/or the offeree company accept full responsibility for the information contained in the documents and advertisements, to the best of their knowledge, that the information contained in the document or advertisement is in accordance with the facts and that it contains no omissions likely to affect the importance and consistencies of the document.

### *No Extension Statements*

TMA-2.17.4 If statements in relation to the duration of an offer such as “the offer will not be extended beyond a specified date unless it is unconditional as to acceptances” (“no extension statements”) are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in extremely exceptional circumstances will the offeror be allowed subsequently to extend its offer beyond the stated date except where the right to do so has been specifically reserved.

### *No Increase Statements*

TMA-2.17.5 If statements in relation to the value or type of consideration such as “the offer will not be further increased” or “our offer remains at BHD X per share and it will not be raised” (“no increase statements”) are included in documents sent to offeree company shareholders, or are made by or on behalf of an offeror, its directors, officials or advisers, and not withdrawn immediately if incorrect, only in extremely exceptional circumstances will the offeror be allowed subsequently to amend the terms of its offer in any way even if the amendment would not result in an increase of the value of the offer (e.g. the introduction of a lower paper alternative) except where the right to do so has been specifically reserved.

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## TMA-2.17 Statements during Course of Offer (continued)

**TMA-2.17.6** An offeror or offeree company must not make statements about the level of support received from shareholders or other persons, unless they have clearly stated their intentions to the offeror or offeree company, or advisors, as appropriate. CBB will require statements made to be verified, which could include the shareholder confirming their support in writing to the offeror or its advisors, which will then be treated as a letter of intent/consent, as the case may be.

**TMA-2.17.7** Shareholders must not be pressured by any means or by any party involved in an offer to accept or reject such offer through information, documents, advertisements or statements.

### *Advertisements*

**TMA-2.17.8** Any advertisements published in terms of the Module must obtain the prior approval of the CBB. The publication of advertisements in relation to an offer or potential offer is prohibited unless they fall within the following categories:

- (a) Product advertisements not having an effect on an offer or potential offer, CBB must be consulted if there is any doubt;
- (b) Corporate image advertisements not having an effect on an offer or potential offer;
- (c) Advertisements in relation to non-controversial information about an offer, such as the value of an offer or closing dates;
- (d) Advertisements in relation to preliminary or interim results;
- (e) Advertisements comprising a tender offer; or
- (f) [This Subparagraph was deleted in October 2019];
- (g) Advertisements published with the specific prior consent of CBB.

**TMA-2.17.9** Any forms connected with an offer, including acceptance forms, withdrawal forms, proxy cards must not be published in newspapers or any form of advertisement.

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## TMA-2.17 Statements during Course of Offer (continued)

### *Telephone Campaigns*

**TMA-2.17.10** Campaigns relating to contacting shareholders or persons interested in the offer by telephone must be conducted only by the professional advisor and his staff, who are fully aware of the responsibilities and requirements of this Module. Information passed to such persons must be accurate, already published and not misleading. Persons contacted must not be pressured and must be encouraged to consult their advisors.

TMA-2.17.11 [This Paragraph was deleted in October 2019].

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## TMA-2.18 Announcement of Result of Offer

### *Timing and Contents*

- TMA-2.18.1** An offeror must publish an announcement on the business day following the day on which the offer will expire, or becomes or is declared unconditional (whether as to acceptances or in all respects), or is revised or extended.
- TMA-2.18.2** For the purpose of Paragraph TMA-2.18.1, the offeror must forward such announcement to the CBB and the licensed exchange and offeree company and publish the announcement on the website of the licensed exchange before trading hours at the licensed exchange in Bahrain.
- TMA-2.18.3** The announcement must state the number of shares and rights over shares:
- For which acceptances of the offer have been received;
  - Held, controlled, or directed by the offeror or persons acting in concert with it before the offer period; and
  - Acquired or agreed to be acquired during the offer period by the offeror or any persons acting in concert with it.
- TMA-2.18.4** The announcement must include a prominent statement of the total numbers of shares which the offeror may count towards the satisfaction of its acceptance condition and must specify the percentages of each class of relevant securities represented by these figures. CBB must be consulted if the offeror wishes to make any other statement about acceptance levels in any announcement made.
- TMA-2.18.5** The offeror must send copies of the certificate issued by the designated receiving bank to the CBB, the licensed exchange and the offeree company's financial professional advisor as soon as possible after it is issued.
- TMA-2.18.6** If statements are made during an offer by an offeror or its advisors, either orally or written, about level of acceptances of the offer or number or percentages of shareholders who have accepted the offer, then an immediate announcement must be made.
- TMA-2.18.7** Companies whose securities are not admitted to listing or trading that are a party to the offer will normally not be required to make a public announcement, however it will be required to inform all shareholders about the result of the offer.

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## TMA-2.18 Announcement of Result of Offer (continued)

**TMA-2.18.8** When the offeree company has the intention to make an announcement on the level of withdrawals of acceptance of an offer, CBB must be consulted before any announcement is made.

### *Consequences of Failure to Announce*

**TMA-2.18.9** [This Paragraph was deleted in October 2019].

**TMA-2.18.10** If the offeror is unable to comply with any of the requirements of this Section, within the time limit granted, the CBB shall have the right to request the licensed exchange to suspend dealings in the offeree company's shares and, where appropriate, in the offeror's shares until the relevant information and documents are provided.

**TMA-2.18.11** If an offer has been declared unconditional as to acceptance, but the offeror fails to comply with any of the requirements of this Section by the close of trading at the licensed exchange in Bahrain on the relevant day, the CBB shall have the right to grant the acceptors the right of withdrawal from the offer.

**TMA-2.18.12** This right of withdrawal may be terminated not less than 8 days after the relevant date in the case that the offeror confirms that the offer is still unconditional as to acceptances and complies with this Section.

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## TMA-2.19 Settlement of Consideration and Share Transfer

### *Timing of Acquisition and Payment*

**TMA-2.19.1** Shares represented by acceptances in any offer must not be accepted by the offeror until the offer has become or has been declared unconditional. Such shares must be paid by the offeror in accordance with the terms of payment as stipulated in the offer document.

### *Withdrawn or Lapsed Offers*

**TMA-2.19.2** If an offer is withdrawn or lapses, the offeror must, as soon as possible but in any event within 7 calendar days thereof, post the share certificates or transfer documents lodged with acceptance forms to, or make such share certificates or transfer documents available for collection by, those offeree company shareholders who accepted the offer.

**TMA-2.19.3** [This Paragraph was deleted in January 2022].

**TMA-2.19.4** [This Paragraph was deleted in January 2022].

**TMA-2.19.5** [This Paragraph was deleted in January 2022].

### *Payment of Consideration*

**TMA-2.19.6** An offeror must complete payment of consideration whether in the form of cash, in form of securities, or a combination of cash and securities, as the case may be, to all shareholders by crediting the shareholders bank account and/or the shareholders' securities account, as the case may be, who have accepted the offer, within 10 calendar days from the last closing date of the offer.

**TMA-2.19.7** [This Paragraph was deleted in January 2022].

**TMA-2.19.8** An offeror must deposit the unclaimed balances, if any, in an escrow account with a licensed bank within 15 calendar days from the last closing date of the offer.

**TMA-2.19.9** An offeror, on its own or together with person acting in concert, must not exercise the voting rights attached to the shares received through acceptances of the take-over offer prior to full settlement of the consideration.

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## TMA- 2.20 Restrictions on Dealings before and during the Offer

### *Restrictions on Dealings before the Offer*

**TMA-2.20.1** No dealings of any kind in the securities of the offeree company (including convertible securities, warrants, options and derivatives in respect of such securities) may be transacted by any person, not being the offeror, who is engaged in the offer and who has confidential price-sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to suppose that an approach or an offer or revised offer is contemplated and the announcement of the approach, the offer, the revised offer, or of the termination of the discussions where an announcement of the offer has been made public.

TMA-2.20.2 Such restrictions do not apply to persons acting in concert with an offeror in respect of dealings where the securities of such dealings are excluded from the offer or where there are no-profit arrangements in place.

**TMA-2.20.3** No person who is engaged in the offer and who has access to the price-sensitive information may deal in securities of the offeror except where the proposed offer is not price-sensitive in relation to such securities.

**TMA-2.20.4** No person who is engaged in the offer and who has access to the price-sensitive information may make any recommendations to any other person as to dealing in the relevant securities.

**TMA-2.20.5** CBB must be consulted before acquisitions of interests in offeree company securities are made by members or potential members of a consortium. If there are existing interests in such securities, it will be necessary to satisfy the CBB that they were acquired before the consortium was formed.

**TMA-2.20.6** A person **is considered** to have access to confidential price-sensitive information concerning an offer or contemplated offer if the **person**:

- (a) **Is a** director or employee of one of the companies or entities concerned or engaged in the offer or potential offer including, but not limited to, the offeror, the offeree or any person acting in concert with the offeror or offeree;
- (b) **An advisor, including** professional adviser, to one of the companies or persons concerned or engaged in **the offer or potential offer**;
- (c) In a position to have received and has actually received information through a confidential relationship;

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## **TMA-2.20 Restrictions on Dealings before and during the Offer (continued)**

- (d) Connected persons and companies controlled by the offeror and those described in (a), (b) and (c); or
- (e) **Is considered as having or had access to price sensitive information by virtue of the relevant facts and circumstances.**

### *No-profit Arrangement*

TMA-2.20.7 Arrangements made by a potential offeror with a person acting in concert, where securities in the offeree company are acquired by the person acting in concert and the offeror will bear all the risks and receive all the benefits are not prohibited by TMA-2.20.1. Arrangements which have benefits or potential benefits to the person acting in concert, beyond normal expenses and carrying costs, are normally prohibited. In cases of doubt, CBB should be consulted.

### *Restrictions on Dealings during an Offer*

**TMA-2.20.8** The offeror and persons acting in concert with it must not sell any securities in the offeree company during the offer period except with the prior consent of the CBB, after 24 hour's advance notice by public announcement of the intention to sell.

TMA-2.20.9 The CBB will not provide its consent for the sale of securities by an offeror and persons acting in concert with it where a mandatory offer is being made.

**TMA-2.20.10** After an announcement of an intention to sell the securities of the offeree company has been made, neither the offeror nor persons acting in concert with it can make further purchases and only in exceptional circumstances will the CBB allow the offeror to raise the offer price.

**TMA-2.20.11** Subject to TMA-2.20.8 in respect of the conditions applicable, the sale of any shares in the offeree company must not be below the offer price.

**TMA-2.20.12** An offeror or other persons are restricted from dealing or procuring other persons to deal, if the offeror has been supplied by the offeree company with confidential price sensitive information during offer discussions.

TMA-2.20.13 The consent of the CBB is not required for placing or underwriting arrangements made during an offer in order to achieve the minimum public shareholding to maintain the listing of the offeree company's shares provided that such arrangements are not effective prior to the date when the offer becomes or is declared unconditional. If an offeror wishes to make such arrangements in order to hold less than 75% (or such percentage as may be relevant in the event that the licensed exchange has accepted that a percentage other than 20% of the offeree company's shares needs to be in public hands to maintain the listing of the offeree company's shares) of the offeree company's shares, the consent of the CBB is required.

MODULE	TMA: Takeovers, Mergers & Acquisitions
CHAPTER	TMA-2: Rules

## TMA- 2.20 Restrictions on Dealings before and during the Offer (continued)

**TMA-2.20.14** Directors and professional advisers to a company who have interests in securities in that company that is party to an offer, must not deal in such securities contrary to any advice they have given to shareholder, or which it can be reasonably assumed that they were associated, without giving a 24 hours advance public notice of their intentions with an explanation.

### *Restriction on Dealings by Offeror during Non-Cash Offers*

**TMA-2.20.15** Where the consideration under an offer includes securities of the offeror or a person acting in concert with it, neither the offeror nor any person acting in concert with it may deal in any such securities during the offer period.

### *Restrictions on Dealings by a Competing Offeror*

**TMA-2.20.16** Except with the consent of the CBB, where two competing offers have been made and one of the offers has lapsed, then neither that offeror nor any person acting in concert with that offeror may acquire any interest in shares in the offeree company at a price higher than that made available under its lapsed offer.

**TMA-2.20.17** Paragraph TMA-2.20.16 shall not apply where each of the competing offers has either been declared unconditional in all respects or has itself lapsed.

TMA-2.20.18 For the purpose of Paragraph TMA-2.20.16, the price of the lapsed offer shall be calculated as at the day the offer lapsed.

### *Dealings after Termination of Discussions*

**TMA-2.20.19** If following an announcement that offer discussions are taking place, or that an approach or offer is being contemplated, discussions are then terminated or the offeror then decides not to proceed with an offer, an announcement of the position must take place before any dealings in securities of the offeree company take place by any person privy to confidential information.

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<b>CHAPTER</b>	<b>TMA-2: Rules</b>

## TMA- 2.20 Restrictions on Dealings before and during the Offer (continued)

### *Dealings in Offeree Company Securities by Certain Offeree Company Associates*

- TMA-2.20.20** During the offer period, professional advisers or stockbrokers (or any person controlling, controlled by or under the same control as any such adviser or stockbroker) to an offeree company (or any of its parents, subsidiaries or fellow subsidiaries, or their associated companies or companies of which such companies are associated companies) must not, except with the consent of CBB:
- (a) Purchase offeree company securities or deal in convertible securities, warrants, options or derivatives in respect of such securities for its own account or for its discretionary clients;
  - (b) Make any loan to a person to assist in making any such purchases; or
  - (c) Enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, or in any other nature, which may be an inducement for a person to retain, deal or refrain from dealing in relevant securities of the offeree company.

TMA-2.20.21 Paragraph TMA-2.20.20 does not apply to fund managers and principal traders that are exempt by CBB who are dealing for any of their investment accounts managed on a discretionary basis.

### *Gathering Irrevocable Commitments*

TMA-2.20.22 Any person proposing to contact a private individual or a corporate shareholder with the aim of obtaining an irrevocable commitment should consult CBB in advance.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
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## TMA-2.21 Disclosure of Dealings during Offer Period

### *Dealings by Parties and by Associates for Themselves or for Discretionary Clients*

**TMA-2.21.1** Dealings in relevant securities by an offeror or the offeree company, and by any associates, for their own account or for the account of discretionary investment clients during an offer period must be publicly disclosed.

TMA-2.21.2 [This Paragraph was deleted in October 2019].

**TMA-2.21.3** Except with the consent of the CBB, dealings in relevant securities during an offer period for the account of discretionary investment clients by an associate which is an exempt fund manager connected with an offeror or the offeree company must be privately disclosed. If, however, the Exempt fund manager is an associate by virtue of sub-paragraph (f) of the definition of associate, the exempt fund manager must disclose publicly, in addition to disclosing privately.

### *Dealings by Parties and by Associates for Non-Discretionary Clients*

**TMA-2.21.4** Except with the consent of the CBB, dealings in relevant securities during an offer period by an offeror or the offeree company, and by any associates, for the account of non-discretionary investment clients (other than an offeror, the offeree company and any associates) must be privately disclosed.

### *Discretionary Accounts*

**TMA-2.21.5** If a person manages investment accounts on a discretionary basis, relevant securities so managed will be treated, for the purpose of this rule, as controlled by that person and not by the person on whose behalf the relevant securities are managed. Except with the consent of the CBB, where more than one discretionary investment management operation is conducted in the same group, relevant securities controlled by all such operations will be treated for the purpose of this rule as those of a single person and must be aggregated.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
CHAPTER	TMA-2:	Rules

## TMA-2.21 Disclosure of Dealings during Offer Period (continued)

### *Connected Exempt Principal Traders*

#### TMA-2.21.6

Dealings in relevant securities by an exempt principal trader connected with an offeror or the offeree company must be aggregated and disclosed to the licensed exchange before trading hours at the licensed exchange in Bahrain on the business day following the date of the transactions.

In the case of dealings in options or derivatives, full details must be given so that the nature of the dealings can be fully understood.

#### TMA-2.21.7

For the purposes of this Section, the disclosure shall consider the following:

- (a) Disclosure shall be made before trading hours at the licensed exchange in Bahrain on the business day following the date of the transaction. CBB should be consulted on any practical difficulties;
- (b) In the case of a public disclosure, dealings should be disclosed in writing to all offerors and the offeree company or their respective professional advisers while also disclosing to the CBB and also, in respect of dealings in listed securities, to the licensed exchange; and
- (c) The disclosure shall include the following:
  - (i) The total number of securities purchased or sold;
  - (ii) Prices paid or received. In the case of an average price bargain each underlying trade should be disclosed;
  - (iii) Identity of the associate or any other person dealing if different from the owner or controller;
  - (iv) If dealing with an associate, an explanation of how that status arises.
  - (v) If disclosure is made by a 5 percent shareholder or group of shareholders, a statement to that effect;
  - (vi) The resultant total number of relevant securities owner or controlled by the associate and percentage which it represents; and
  - (vii) If relevant, details of any arrangements required in the context of indemnity and other arrangements.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
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## TMA-2.22 When Cash Offer is Required

- TMA-2.22.1** Except with the CBB's consent, a cash offer is required where:
- (a) The offeror and any person acting in concert with it has bought for cash during the offer period and within 6 months prior to its commencement, an interest in shares of any class under offer in the offeree company carrying 10% or more of the voting rights of that class; or
  - (b) In the view of the CBB there are circumstances which render such a course necessary.

The offer for each class of shares must be in cash or accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for shares of the class during the offer period and within 6 months prior to the commencement.



MODULE	TMA:	Takeovers, Mergers & Acquisitions
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## TMA-2.23 Purchases at Above Offer Price

### *Highest Price Paid*

**TMA-2.23.1** [This Paragraph was deleted in October 2019].

TMA-2.23.2 [This Paragraph was moved to Paragraph TMA-2.23.5A in October 2019].

### *Acquisitions before Announcement of a Firm Intention to Make an Offer*

**TMA-2.23.3** The offer to the holders of shares of the same class shall not be on less favourable terms, when an offeror or any person acting in concert with it has acquired an interest in shares in the offeree company:

- (a) Within the three-month period prior to the commencement of the offer period; or
- (b) During the period, if any, between an announcement made by the offeror and the commencement of the offer period.

### *Acquisitions after Announcement of a Firm Intention to Make an Offer*

**TMA-2.23.4** After an announcement of a firm's intention to make an offer and before the offer closes for acceptance, an offeror or any person acting in concert with it acquires any interest in shares at above the offer price, it shall increase its offer to not less than the highest price paid for the interest in shares acquired in such circumstances.

**TMA-2.23.5** Immediately after the acquisition of shares at above the offer price, the offeror must announce that a revised offer will be made in accordance with this Section. This announcement must state the number of shares concerned and the price paid.

TMA-2.23.5A Subscription for new securities at a price above the offer price will be treated as a purchase for the purposes of Paragraph TMA-2.23.4.

### *Offers Involving a Further Issue of Listed Securities*

TMA-2.23.6 If the offer involves a further issue of securities of a class already listed on a licensed exchange, the current value of the offer on a given day should normally be established by reference to the weighted average traded price of board lots (excluding special bargains and odd lots) of such securities traded during the immediately preceding trading day. If the offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-2:</b>	<b>Rules</b>

**TMA-2.24** [This Section was moved to Section TMA-2.19 in October 2019]

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-2: Rules</b>

## **TMA-2.25 No Special Deals or Arrangements with Selected Shareholders**

**TMA-2.25.1** Except with the CBB's consent, the offeror or persons acting in concert with it may not make any arrangements with selected shareholders; and may not deal or enter into arrangements to deal; or make purchases or sales of shares of the offeree company; or enter into arrangements concerning acceptance of an offer either during an offer or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

TMA-2.25.2 An arrangement with special conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer, revised offer or successful competing offer. An irrevocable commitment to accept an offer combined with an option to put the shares to the offeror should the offer fail will also be regarded as such an arrangement.

TMA-2.25.3 Two-tier offers where shareholders who accept the offer before a stipulated cut-off date would receive a higher consideration than those who accept the offer after the cut-off date will be regarded as arrangements with special conditions. A two-tier offer that offers to pay a higher offer price if a certain level of acceptances is reached will not be regarded as an arrangement with special conditions if the higher offer price is payable to all accepting shareholders.

TMA-2.25.4 Paragraph TMA-2.25.1 also covers cases where a shareholder in an offeree company is to be remunerated for playing a part in promoting an offer. The CBB will normally consent to such remuneration, provided that the shareholding is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been a shareholder, would be entitled to receive no less remuneration.

TMA-2.25.5 The CBB should be consulted if the management of the offeree company is to remain financially interested in the business after the offer is completed. The methods by which this may be achieved vary but the principle which the CBB is concerned to safeguard is that the risks as well as the rewards associated with an equity shareholding should apply to the management's retained interest.

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-2: Rules</b>

## TMA-2.26 Proxies

- TMA-2.26.1** A shareholder must not appoint a person as his proxy to vote in respect of his shares in the offeree company; or to exercise any other rights; or to take any other action in relation to those shares unless the appointment is under the following conditions:
- (a) The offer is unconditional in all respects;
  - (b) The votes are to be cast as far as possible to satisfy any outstanding condition to the offer, where relevant;
  - (c) The appointment ceases to be valid if the acceptance is withdrawn; and
  - (d) The appointment only applies to shares assented to the offer.
- TMA-2.26.2** The terms for the appointment of a proxy must be set out in the offer document.

MODULE	TMA: Takeovers, Mergers & Acquisitions
CHAPTER	TMA-3: Types of Offer

## TMA-3.1 Mandatory Offer

### *Conditions for a Mandatory Offer*

- TMA-3.1.1** A mandatory offer is required when:
- (a) Any person acquires, whether by series of transactions over a period of time or not, 30% or more of the voting rights of a company;
  - (b) Two or more persons are acting in concert and they collectively hold less than 30% of the voting rights of a company, and any one or more of them acquires voting rights which increases to 30% or more of the voting rights of the company; or
  - (c) Any person holds not less than 30% of the voting rights of a company but does not hold shares carrying more than 50% of such voting rights acquires additional shares carrying more than 1% of the voting rights in any period of 6 months; or
  - (d) Two or more persons are acting in concert, and they collectively hold not less than 30%, but not more than 50% of the voting rights of a company, and any one or more of them acquires additional voting rights carrying more than 1% of the voting rights in any period of 6 months.

**TMA-3.1.2** The person making the mandatory offer is required to extend offers to all holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares.

TMA-3.1.3 Offers for different classes of equity share capital should be comparable; CBB should be consulted in advance in such cases.

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-3:</b>	<b>Types of Offer</b>

## TMA-3.1 Mandatory Offer Continued

### *Creeping Provision*

#### *Acquisition and Disposal*

**TMA-3.1.3A** Any person, or together with persons acting in concert, holding not less than 30% but not more than 50% of the voting rights of a company may be permitted to acquire additional shares carrying not more than 1% of such voting rights in any period of 6 months without incurring an obligation to make a mandatory offer. Within this 1% band, dispositions of voting rights may be netted off against acquisitions thereof. If such person, or together with persons acting in concert, intend to acquire such additional shares, the CBB must be consulted in advance.

#### *Effect of Disposal*

**TMA-3.1.3B** Any person, or together with persons acting in concert, holding not less than 30% of the voting rights of a company disposes of voting rights in circumstances other than those mentioned in Paragraph TMA-3.1.3A, then the provisions of TMA-3.1 shall apply to the reduced holding. As a result, an obligation to make a mandatory offer will arise if:

- the reduced holding is 30% and more and is increased by acquisition of voting shares by more than 1% in any period of 6 months; or
- following a reduction of the holding to less than 30%, it is increased to 30% or more.

In this context, disposal of voting rights may not be netted off against acquisitions thereof.

#### *Holding between 49% and 50%*

**TMA-3.1.3C** The restriction in Rule TMA-3.1.1 (c) applies to any person, or group of persons acting in concert, holding 50% or less of the voting rights. Thus, a person or group of persons holding between 49% and 50% of the voting rights of a company will be restricted from acquiring more than a further 1% of the offeree company's voting rights for any period of 6 months thereafter.

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-3:</b>	<b>Types of Offer</b>

## TMA-3.1 Mandatory Offer Continued

TMA-3.1.3D A person or group of persons acting in concert, holding more than 50% of the voting rights of a company will normally be free to acquire further shares without incurring any obligation under TMA-3.1 to make a mandatory offer subject to Paragraph TMA-3.1.3E.

### *Acquisition of voting rights by members of a group acting in concert*

TMA-3.1.3E An obligation to make a mandatory offer will normally arise whenever a group of persons acting in concert collectively hold 30% or more of the voting rights of a company and as a result of an acquisition of the voting rights from another member of the group or from non-members, a single member comes to hold 30% or more of the voting rights of the company or, if holding between 30% and 50%, has acquired more than 1% of the voting rights in any period of 6 months.

### *Placing and other Arrangements*

TMA-3.1.4 [This Paragraph was deleted in April 2013].

TMA-3.1.5 An agreement between a shareholder and financial institutions and lending institutions, where the shareholder borrows money for the acquisition of shares which gives rise to an obligation under Paragraph TMA- 3.1.1 will not normally result in such institution becoming a concert party.

**TMA-3.1.6** An offer will not be required under Paragraph TMA-3.1.1 where control of the offeree company is acquired as a result of a voluntary offer made in accordance with Module TMA to all the holders of voting equity share capital and other transferable securities carrying voting rights.

MODULE	TMA: Takeovers, Mergers & Acquisitions
CHAPTER	TMA-3: Types of Offer

### TMA-3.1 Mandatory Offer (continued)

**TMA-3.1.7** If a person acquires shares other than through trading on the licensed exchange (exempted transaction) which makes the aggregate number of shares carrying voting rights in which he is interested to 30% or more then the CBB must be consulted.

**TMA-3.1.8** If a person borrows or lends shares he will be treated as holding the voting rights of such shares save for any borrowed shares which he has either on-lent or sold. CBB must be consulted in such cases before borrowing shares when taken together with shares he or any person acting in concert is interested in and shares already borrowed or lent by him or any person acting in concert would result in a mandatory offer.

#### *Conditions and Consents*

**TMA- 3.1.9** Except with the consent of CBB:

- (a) An offeror shall not include any other condition in a mandatory offer other than the condition that the offer is subject to the offeror having received acceptances which would result in the offeror and all persons acting in concert with the offeror holding in aggregate more than 50% of the voting rights; and
- (b) No acquisition of any voting rights which would give rise to a requirement for a mandatory offer may be made, if it is dependent on the passing of a resolution at any meeting of the shareholders of the offeror or upon any other conditions, consents or arrangements.

TMA-3.1.9A An offer made under TMA-3.1 should normally be unconditional when the offeror and persons acting in concert with it hold more than 50% of the voting rights before the offer.

#### *Nature of Consideration*

**TMA-3.1.10** The consideration to be paid, or provided, for the acquisition of the voting rights to which the mandatory offer relates shall consist solely of cash, securities, or a combination thereof at not less than the highest price paid by the offeror or any person acting in concert with it for shares of that class of the offeree company during the offer period and within 6 months prior to its commencement

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-3: Types of Offer</b>

### TMA-3.1 Mandatory Offer (continued)

**TMA-3.1.11** The cash offer, securities or a combination thereof for the purpose of Paragraph TMA-3.1.10 must remain open after the offer has become or is declared unconditional for not less than 15 days thereafter.

**TMA- 3.1.12** When directors sell shares to an offeror which result in the offeror having to make a mandatory offer, the directors must ensure that the offeror fulfils his obligation under this Module.

**TMA-3.1.13** Such directors must not resign, except with the consent of CBB, from the board of directors until the first closing date of the takeover offer or the date when the takeover offer becomes or is declared unconditional as to acceptances, whichever is the later.

**TMA-3.1.14** Until the offer document has been posted, no offeror, or persons acting in concert, may be appointed to the board of the offeree company or any of its subsidiaries, or exercise or procure the exercise of the votes attaching to any shares in the offeree company.

#### *Whitewash Resolution/Exemption from Mandatory Offer*

**TMA- 3.1.15** Relevant persons in an offer subject to the mandatory offer requirement may apply to the CBB to waive the obligation under the procedure set out for mandatory offers, if the mandatory offer is required as a result of:

- (a) Issuing new securities as consideration for an acquisition, cash injection or subsidiary loan;
- (b) Fulfilment of obligations in respect of underwriting the issue of securities; or
- (c) Any other circumstance with CBB's approval.

**TMA-3.1.16** For purposes of Paragraph TMA-3.1.15, any application for an exemption from a mandatory offer obligation must be submitted to the CBB before the obligation is triggered.

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-3: Types of Offer</b>

## TMA-3.1 Mandatory Offer (continued)

TMA-3.1.17 The waiver will be subject to the following conditions:

- (a) Obtaining an independent vote at a shareholders meeting of the offeree company (the Whitewash Resolution) to waive their right to receive a general offer from the offeror and parties acting in concert with the offeror. For this purpose, “independent vote” means a vote by shareholders who are not involved in, or interested in, the transaction in question;
- (b) The whitewash resolution is separate from other resolutions;
- (c) The offeror, parties acting in concert, and parties not independent from them must abstain from voting on the whitewash resolution;
- (d) The offeror, and parties acting in concert, have not acquired and will not acquire any shares or instruments convertible into options, in respect of shares of the offeree company:
  - (i) During the period between the proposal announcement and the date shareholders approve the whitewash resolution; and
  - (ii) In the 6 months prior to the announcement of the proposal to issue new securities but subsequent to negotiations, discussions or the reaching of understandings or agreements with the directors of the company in relation to such issue;
- (e) An independent professional adviser must be appointed by the offeree company to provide its independent shareholders with advice on the whitewash resolution;
- (f) The offeree company must provide a circular to shareholders giving the particulars, at a minimum, information included in Appendix A under Part B of the CBB Rulebook Volume 6; and
- (g) The offeror must obtain the CBB's approval in advance.

TMA-3.1.18 The CBB waiver cannot be transferred or assigned to another person.

**TMA-3.1.19** In the case of underwriting or placing of offeree company securities, the CBB must be furnished with details of all proposed underwriters or placees.

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
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### **TMA-3.1 Mandatory Offer (continued)**

**TMA-3.1.20** An announcement must be made by the offeree company giving the result of the meeting and the number and percentage of offeree company shares that the offeror has become entitled to as a result subsequent to the meeting at which the proposals are considered by shareholders.

TMA-3.1.21 Immediately following the approval of the proposals at the shareholders' meeting, the offeror will be free to acquire shares in the offeree company, subject to provisions under Module TMA.

TMA-3.1.22 [This Paragraph was moved to Paragraph TMA-2.8.7 in October 2019].

<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-3:</b>	<b>Types of Offer</b>

## TMA-3.2 Partial Offer

### *CBB's Consent Required*

**TMA-3.2.1** CBB's consent is required for any partial offer. CBB will normally grant consent in the case of an offer which could not result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of a company.

TMA-3.2.2 Consent will not normally be granted in the case of an offer which could result in the offeror holding not less than 30%, and which must result in a holding of not more than 50% of the voting rights of a company.

### *Acquisition Prior to the Offer*

TMA-3.2.3 In the case of partial offer which could result in the offeror and persons acting in concert with it holding 30% or more, but which must result in their holding less than 100%, of the voting rights of a company, such consent will not normally be granted if the offeror or persons acting in concert with it have acquired, selectively or in significant numbers, voting rights in the offeree company during the 6 months preceding the application for consent or if voting rights have been acquired at any time after the partial offer was reasonably in contemplation.

### *Acquisitions During and After the Offer*

**TMA-3.2.4** In all partial offers, the offeror and persons acting in concert with it must not acquire any interest in shares in the offeree company during the offer period.

**TMA-3.2.5** The offeror or any person acting in concert with the offeror, or any person who is subsequently acting in concert with any of them in the course of the partial offer, must not acquire any interest in shares during the 12-month period following the end of the offer period, except with the consent of CBB.

### *Offer for between 30% and 50%*

**TMA-3.2.6** Any partial offer which could result in the offeror holding 30% or more of the voting rights of a company must normally be conditional, not only on the specified number of acceptances being received, but also on approval of the offer, signified by means of a separate box on the form of acceptance, being given by shareholders holding over 50% of the voting rights not held by the offeror and persons acting in concert with it. This requirement may be waived if over 50% of the voting rights of the offeree company are held by one independent shareholder who has indicated his approval.

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## TMA-3.2 Partial Offer (continued)

### *Control Position Warning*

**TMA-3.2.7** In the case of partial offer which could result in the offeror holding more than 50% of the voting rights of the offeree company, then this must be included in a prominent manner in the offer document.

**TMA-3.2.8** Where a partial offer made for a company with more than one class of equity share capital could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights, a comparable offer must be made for each class.

### *Precise Number of Shares to Be Stated*

**TMA-3.2.9** A partial offer must be made for a precise number of shares, such number must be stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.

### *Pro Rata Entitlement*

**TMA-3.2.10** Partial offers must be made to all shareholders of the class and arrangements must be made for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable him to obtain the total number of shares for which he has offered.

**TMA-3.2.11** [This Paragraph was moved to Section TMA-2.26 in October 2019].

**TMA-3.2.12** [This Paragraph was moved to Section TMA-2.26 in October 2019].

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### TMA-3.3 Voluntary Offer

**TMA-3.3.1** A voluntary offer is a takeover offer for the voting shares of a company made by a person when he has not incurred an obligation to make a mandatory offer for the offeree company under TMA-3.1.1.

**TMA-3.3.2** A voluntary offer must be conditional upon the offeror receiving acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and person acting in concert with it holding more than 50% of the voting rights.

**TMA-3.3.3** A voluntary offer must not be made subject to conditions whose fulfilment depends on the subjective interpretation or judgement by the offeror or lies in the offeror's hands.

TMA-3.3.4 Normal conditions, such as level of acceptance, approval of shareholders for the issue of new shares and listing, may be attached without reference to the CBB. The CBB should be consulted where other conditions would be attached.

TMA-3.3.5 Where any condition states that the approval of a regulatory authority is required and where such approval is given subject to certain terms and conditions which substantially change the terms and circumstances of the offer, the offeror may, with the consent of the CBB, be permitted to withdraw its offer.

TMA-3.3.6 Subject to Paragraph TMA-3.1.6, if during an offer period of a non-mandatory offer, the offeror is obliged under Paragraph TMA-3.1.1 to make a mandatory offer, CBB should be consulted in advance. Under such circumstances, the offeror is required to make an announcement.

**TMA-3.3.7** Voluntary offers made must, in respect of each class of equity securities involved, be in cash or securities or a combination thereof at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company during the offer period and within 6 months prior to its commencement.

#### *Pre-Condition in Firm Offer Announcements and Offer Conditions*

**TMA-3.3.8** An offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by the directors of the offeror or of the offeree company (as the case may be) or the fulfilment of which is in their hands.

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### TMA-3.3 Voluntary Offer (continued)

TMA-3.3.9 The CBB may be prepared to accept an element of subjectivity in certain circumstances especially in cases involving official authorisations or regulatory clearances, the granting of which may be subject to additional material obligations for the offeror or the offeree company (as the case may be).

TMA-3.3.10 [This Paragraph was deleted in October 2019].

#### *Acceptability of Pre-Conditions*

**TMA-3.3.11** Except with the consent of the CBB, an offer must not be announced subject to a pre-condition unless the pre-condition involves:

- (a) A material official authorisation; or
- (b) A regulatory clearance; and
- (c) The offer is publicly recommended by the board of the offeree company; or
- (d) The CBB is satisfied that it is likely to prove impossible to obtain the authorisation or clearance within the timetable.

The CBB must be consulted in advance if a person proposes to include a pre-condition to which the posting of the offer will be subject.

TMA-3.3.12 [This Paragraph has been deleted].

#### *Invoking Conditions and Pre-Conditions*

**TMA-3.3.13** An offeror must not invoke any condition or pre-condition so as to cause the offer not to proceed, to lapse or to be withdrawn unless the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of the offer. The acceptance condition is not subject to this provision.

**TMA-3.3.14** Following the announcement of a firm intention to make an offer, an offeror must use all reasonable efforts to ensure the satisfaction of any conditions or pre-conditions to which the offer is subject.

#### *Invoking Offeree Protection Conditions*

**TMA-3.3.15** An offeree company must not invoke, or cause or permit the offeror to invoke, any condition to an offer unless the circumstances which give rise to the right to invoke the condition are of material significance to the shareholders in the offeree company in the context of the offer.



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#### TMA-3.4 Compulsory Acquisitions (Squeeze-Out), Sell-Out and Delisting

*Compulsory acquisition (squeeze-out) - Right of offeror to buy-out minority shareholders*

TMA-3.4.1

[This Paragraph was deleted in January 2022].

TMA-3.4.2

[This Paragraph was deleted in January 2022].

TMA-3.4.3

[This Paragraph was deleted in January 2022].

TMA-3.4.4

Where an offeror or offeror and persons acting in concert:  
(a) made an offer for all the shares in an offeree company; and  
(b) have received acceptances of 90% or more of the offer shares of the offeree company,  
the offeror, may within three months beginning immediately after the day on which the offer receives 90% or more acceptances, acquire the remaining shares of the offeree company, by issuing a notice for compulsory acquisition, in the form or manner specified by the CBB (Appendix E of Part B of Volume 6), to all the dissenting shareholders subject to TMA-3.4.9.

TMA-3.4.5

Where the offeror or offeree and persons acting in concert, pursuant to an offer, intends to exercise the compulsory acquisition right, the offeror must state in the offer document its intention to exercise its power of compulsory acquisition in the event that the conditions under TMA-3.4.4 are satisfied.



MODULE	TMA: Takeovers, Mergers & Acquisitions
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#### TMA-3.4 Compulsory Acquisitions (Squeeze-Out), Sell-Out and Delisting (continued)

**TMA-3.4.6** For the purpose of Paragraph TMA-3.4.4(b), the acceptances must not include shares already held on the date of the offer by the offeror and persons acting in concert.

**TMA-3.4.7** The notice for compulsory acquisition referred to in Paragraph TMA-3.4.4 must be:

- (a) issued within 15 calendar days from the date the offer is declared unconditional in all respects;
- (b) accompanied by a copy of a declaration by the offeror that the conditions for giving the notice are satisfied; and
- (c) delivered to the dissenting shareholders in person or by registered post.

**TMA-3.4.8** Where the offeror, despite best efforts, fails to deliver the compulsory acquisition notice, either in person or by registered post to dissenting shareholders, and therefore the offeror contemplates alternative methods to serve the notice, including by electronic means, the offeror must consult the CBB prior to initiating any measures to serve the notice by an alternative method.

**TMA-3.4.9** Where a notice for compulsory acquisition is issued by an offeror to dissenting shareholders, and dissenting shareholder(s) do not accept the notice for compulsory acquisition, such dissenting shareholder may, within sixty days from the date of the notice for compulsory acquisition, approach a competent court.

**TMA-3.4.10** If pursuant to Paragraph TMA-3.4.9, an application to a competent court has been made by a dissenting shareholder(s), and where the case is pending (i.e. no ruling is issued on the subject matter), the offeror must pay, allot or transfer to all the dissenting shareholders, the funds or other consideration for the shares to which the notice for compulsory acquisition relates.

**TMA-3.4.11** The offeror must complete the compulsory acquisition settlement process for the dissenting shareholders after the sixty days period (duration during which dissenting shareholders may approach a competent court) but before the end of the three months period, beginning immediately after the day on which the offer receives 90% or more acceptances.



MODULE	TMA: Takeovers, Mergers & Acquisitions
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#### TMA-3.4 Compulsory Acquisitions (Squeeze-Out), Sell-Out and Delisting (continued)

**TMA-3.4.12** The offeror must acquire the shares to which the notice for compulsory acquisition relates on the same terms as the offer.

**TMA-3.4.13** Where alternative considerations were offered to shareholders, an offeror must provide the dissenting shareholders the right to select their preferred consideration and specify the time period available to make the selection. While offering alternative considerations to the dissenting shareholders, the offeror must state in the offer document which of those considerations will apply to the shares of dissenting shareholders in the event the dissenting shareholders fails to make the selection within the specified time.

##### *Right of Sell-Out by Dissenting Shareholders*

**TMA-3.4.14** Where an offeror or offeree and persons acting in concert:  
(a) made an offer for all the shares in an offeree company; and  
(b) in pursuance to the offer having received 90% or higher level of acceptance of the offer shares to which the offer relates, dissenting shareholders may, send a request to the offeror, requiring the offeror to acquire his/her shares within three months beginning immediately after the day on which the offer receives 90% or more acceptances. The offeror is bound to acquire those shares on the terms of the take-over offer within three months from the date of receiving the request from the dissenting shareholders.

**TMA-3.4.15** For the purposes of calculating 90% or more level of acceptances referred to in Paragraph TMA-3.4.14(b), shares already held by the offeror and persons acting in concert on the date of the offer must not be taken into consideration.

**TMA-3.4.16** An offeror, upon achieving 90% or higher acceptance level specified in Paragraph TMA-3.4.14(b), must give all dissenting shareholders who have not accepted the offer, a notice in the manner specified by the CBB (Appendix-F of Part B of Volume 6) regarding the sell-out rights that are exercisable by the dissenting shareholders.

**TMA-3.4.17** The sell-out right notice, referred to in Paragraph TMA-3.4.16, must be issued within 15 calendar days from the date the offer is declared unconditional in all respects.



MODULE	TMA: Takeovers, Mergers & Acquisitions
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#### TMA-3.4 Compulsory Acquisitions (Squeeze-Out), Sell-Out and Delisting (continued)

**TMA-3.4.18** The sell-out right notice referred to in Paragraph TMA-3.4.16 must be:

- (a) accompanied by a copy of a declaration by the offeror that the conditions for giving the notice are satisfied; and
- (b) delivered to the dissenting shareholders in person or by registered post.

**TMA-3.4.19** Where the offeror, despite best efforts, fails to deliver the sell-out right notice, either in person or by registered post to dissenting shareholders, and therefore the offeror contemplates alternative methods to serve the notice, including by electronic means, the offeror must consult the CBB prior to initiating any measures to serve the sell out right notice by alternative method.

**TMA-3.4.20** A sell-out right notice under Paragraph TMA-3.4.16 must specify the period within which the sell-out right is exercisable and that such rights cannot be exercised after the end of that period.

**TMA-3.4.21** The sell-out right conferred on a dissenting shareholder under Paragraph TMA-3.4.14 is exercisable by a written request addressed to the offeror.

**TMA-3.4.22** Sell-out right does not apply if the offeror has given the dissenting shareholders a notice for compulsory acquisition pursuant to Paragraph TMA-3.4.4.

#### *Acknowledgement of Compulsory Acquisition or Sell-Out Right Notice*

**TMA-3.4.23** Pursuant to the provisions of compulsory acquisition and sell-out right, where a notice is served to dissenting shareholders by the offeror, either to exercise the right of compulsory acquisition or to inform about the sell-out right of the dissenting shareholders, the offeror should put in place necessary measures to ensure that dissenting shareholders who receive the letter duly acknowledge its receipt.

MODULE	TMA:	Takeovers, Mergers & Acquisitions
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#### TMA-3.4 Compulsory Acquisitions (Squeeze-Out), Sell-Out and Delisting (continued)

##### *Delisting in Relation to a Takeover Offer*

**TMA-3.4.24** Upon completion of the acquisition of the remaining shares pursuant to a compulsory acquisition by the offeror or sell out right exercised by dissenting shareholders, the offeree company must apply to the CBB to delist from the licensed exchange.

**TMA-3.4.25** In cases where the offeror and persons acting in concert do not receive acceptances of 90% or more of the offer shares of the offeree company, the CBB may approve an application to delist the offeree company after the offer subject to the following:

(a) the offeree company convenes a general meeting to obtain shareholders approval on the delisting of the shares of the offeree company; and

(b) the resolution to delist has been approved by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at the meeting. The offeror and any persons acting in concert with the offeror must abstain from voting on the resolution.



<b>MODULE</b>	<b>TMA:</b>	<b>Takeovers, Mergers &amp; Acquisitions</b>
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**TMA-3.5** [This Section was deleted in October 2019].



MODULE	TMA: Takeovers, Mergers & Acquisitions
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## TMA-3.6 Restrictions Following an Offer

### *Delay of 12 Months before a Subsequent Offer*

#### TMA-3.6.1

Except with the consent of the CBB, where an offer has been announced or posted but has not become or been declared wholly unconditional and has been withdrawn or has lapsed, neither the offeror, nor any person who acted in concert with the offeror in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either:

- (a) Announce an offer or possible offer for the offeree company (including a partial offer which could result in the offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);
- (b) Acquire any interest in shares of the offeree company if the offeror or any such person would thereby become obliged to make an offer as per Section TMA-3.1;
- (c) Acquire any interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;
- (d) Make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or
- (e) Take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the offeror and its immediate advisers.

### *Restrictions on a Partial Offer*

#### TMA-3.6.2

The restrictions in Paragraph TMA-3.6.1 will also apply following a partial offer:

- (a) Which could result in the offeror and persons acting in concert with it being interested in shares carrying not less than 30% but not holding shares carrying more than 50% of the voting rights of the offeree company whether or not the offer has become or been declared wholly unconditional. When such an offer has become or been declared wholly unconditional, the period of 12 months runs from that date; and
- (b) For more than 50% of the voting rights of the offeree company which has not become or been declared wholly unconditional.



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### TMA-3.6 Restrictions Following an Offer (continued)

**TMA-3.6.3** The restrictions in Paragraph TMA-3.6.1 will not normally apply following a partial offer which could only result in the offeror and persons acting in concert with it being interested in shares carrying less than 30% of the voting rights of the offeree company.

#### *Delay of 6 Months*

**TMA-3.6.4** Except with the consent of the CBB, if a person, together with any person acting in concert with him, holds shares carrying more than 50% of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous offer made by him to the shareholders of that company which became or was declared wholly unconditional, make a second offer to any shareholder in that company, or acquire any interest in shares in that company, on more favourable terms than those made available under the previous offer. For this purpose, the value of a securities exchange offer shall be calculated as at the date the offer closed. In addition, special deals with favourable conditions attached may not be entered into during this 6-month period.

#### *Restrictions on Dealings by a Competing Offeror*

**TMA-3.6.5** Except with the consent of the CBB, where an offer has been one of two or more competing offers and has lapsed, neither that offeror, nor any person acting in concert with that offeror, may acquire any interest in shares in the offeree company on more favourable terms than those made available under its lapsed offer until each of the competing offers has either been declared unconditional in all respects or has itself lapsed. For these purposes, the value of the lapsed offer shall be calculated as at the day the offer lapsed.

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-4: Share Repurchases</b>

## TMA-4.1 Share Repurchases

### *Increase in Shareholding Deemed to be Acquisitions*

- TMA-4.1.1 If as a result of a share repurchase a shareholder's proportionate interest in the voting rights of the repurchasing company increases, such increase will be treated as an acquisition of voting rights for purposes of this Module.
- TMA-4.1.2 As a result, a shareholder, or group of shareholders acting in concert, could obtain or consolidate control of a repurchasing company and thereby become obliged to make a mandatory offer. If so the CBB should be consulted at the earliest opportunity.
- TMA-4.1.3 In the case of a share repurchase by general offer, the CBB will treat an application for a waiver from the requirement to make a mandatory offer as if it were an application for a whitewash waiver. The CBB will normally grant such a waiver if:
- The TMA Module implications of the share repurchase are disclosed in the repurchasing company's offer document;
  - The share repurchase is approved in accordance with applicable shareholder approval requirements by those shareholders who could not become obliged to make a mandatory offer as a result of the share repurchase; and
  - For the purpose of this Section, dealings in relevant securities include share repurchases of the relevant securities of a repurchasing company.

### *Shareholders' Approval*

- TMA-4.1.4** During the course of an offer, or even before the date of the offer if the board of the offeree company has reason to believe that a bona fide offer might be imminent, no redemption or purchase by the offeree company of its own securities may, except in pursuance of a contract entered into earlier, be effected without the approval of the shareholders at a general meeting. The notice convening the meeting must include information about the offer or anticipated offer. Where an obligation or other special circumstance exists without a formal contract, the CBB must be consulted and its consent to proceed without a shareholders' meeting obtained.

MODULE	TMA: Takeovers, Mergers & Acquisitions
CHAPTER	TMA-4: Share Repurchases

## TMA-4.1 Share Repurchases (continued)

### *Disclosure*

#### TMA-4.1.5

Dealings in relevant securities include the purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company. Shares repurchased by the offeree company are not considered outstanding for the purposes of voting, dividend or earnings per share calculations. Shares repurchased shall not be shown in the financial statements of the offeree company as a direct deduction from the outstanding shares or paid up share capital but must be represented as a deduction from other reserves and retained earnings. Therefore, listed companies shall not be entitled to repurchase its own shares unless it has sufficient distributable reserves or retained earnings. The total amount of securities of the relevant class remaining in issue following the redemption or purchase must also be disclosed.

### *Disclosure in the Offeree Board Circular*

#### TMA-4.1.6

The offeree board circular must state the amount of relevant securities of the offeree company which the offeree company has purchased during the period commencing 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the document, and the details of any such redemptions and purchases, including dates and prices.

### *Redemption or Purchase of Securities by the Offeror Company*

#### TMA-4.1.7

The offer document must state (in the case of a securities exchange offer only) the amount of relevant securities of the offeror which the offeror has purchased during the period commencing 6 months prior to the offer period and the details of any such purchases, including dates and prices.

<b>MODULE</b>	<b>TMA: Takeovers, Mergers &amp; Acquisitions</b>
<b>CHAPTER</b>	<b>TMA-4: Share Repurchases</b>

## TMA-4.1 Share Repurchases (continued)

### *Repurchase Limit*

- TMA-4.1.8** A company listed on a licensed exchange may repurchase its own shares, after obtaining shareholder approval up to a maximum of 10% of its issued and paid-up share capital. The CBB's prior approval must be sought before the company can repurchase its own shares.
- TMA-4.1.9** The shares repurchase can be used by the company for the purpose of:
- (a) Employee Stock Option Plan;
  - (b) Capital reorganisation schemes;
  - (c) Reselling such shares in order to support its share price and liquidity on a licensed exchange; or
  - (d) For any other purpose with CBB approval
- TMA-4.1.10** If the shares repurchased are not utilised for the purpose outlined in Paragraph TMA-4.1.9 for a period of 12 months without the consent of the CBB, such shares shall be considered redeemed and must be resold within the specified period.

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

[Appendices were moved to Part B of the CBB Rulebook Volume 6 in October 2019]