

KINGDOM OF SAUDI ARABIA

CAPITAL MARKET AUTHORITY

MERGER AND ACQUISITION REGULATIONS

English Translation of the Official Arabic Text

Issued by the Board of the Capital Market Authority

Pursuant to its Resolution Number 1-50-2007

Dated 21/9/1428 H Corresponding to 3/10/2007

Based on the Capital Market Law

issued by Royal Decree No. M/30 dated 2/6/1424H

Amended by Resolution of the Board

Of the Capital Market Authority Number [●]

Dated [●]H Corresponding to [●]G

Arabic is the official language of the Capital Market Authority

**The current version of these Regulations, as may be amended, can be found at
the CMA website: www.cma.org.sa**

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PART 1
GENERAL PROVISIONS

Article 1 : Definitions

- a) Any reference to the “Capital Market Law” in these Regulations shall mean the Capital Market Law issued by Royal Decree No. M/30 dated 2/6/1424H and any reference to the “Companies Law” in these regulations shall mean the Companies Law issued by Royal Decree No. M/3 dated 28/1/1437H.
- b) Expressions and terms in these Regulations have the meaning which they bear in the Capital Market Law and in the Glossary of defined terms used in the Regulations and Rules of the Capital Market Authority, unless the contrary intention appears.

(The terms defined below shall be moved to the Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority)

- **Acquisition:** a transaction involving the sale and purchase of shares of any company listed on the Exchange through an offer or a private sale and purchase transaction.
- **Merger:** a transaction however consummated, involving an offeree company listed on the Exchange and resulting in any of the following:
 - 1) the absorption of that offeree company by another company listed on the Exchange.
 - 2) the absorption of that offeree company by a company that is not listed on the Exchange.
 - 3) the formation of a new legal entity into which the merging entities (including the offeree company) are merged.
- **Private Sale and Purchase Transaction:** transaction involving the sale and purchase of shares carrying voting rights in any company listed on the Exchange,

negotiated between the offeror and selling shareholder(s) of the offeree company without making an offer or involving the other shareholders of the offeree company.

- **Voting rights:** all the voting rights attributable to the shares of a company listed on the Exchange.
- **Offer:** means in the Merger & Acquisition Regulations, a general tender offer (excluding offers by the offeree company itself) that is subject to the Merger & Acquisition Regulations, made to all holders of the shares carrying voting rights in the offeree company for any of the following purposes:

(1) purchase shares carrying voting rights in the offeree company or

(2) to effect a merger of the offeree company.

Any reference in the Merger & Acquisition Regulations to an offer or potential offer includes any of the following:

(a) a merger or potential merger;

(b) a takeover offer or potential takeover offer; or

(c) partial offer or potential partial offer.

- **Takeover Offer:** an offer (other than by the offeree company itself) made to all holders of shares carrying voting rights in the offeree company which has as its objective the acquisition of controlling portion of the offeree company.
- **Partial Offer:** means an offer (excluding offers by the offeree company itself) that is subject to the Merger & Acquisition Regulations, made to all holders of the shares carrying voting rights in the offeree company to purchase a non-controlling portion carrying voting rights in the offeree company.
- **Control:** the ability to influence the actions or decisions of another person through, whether directly or indirectly (including indirect ownership of shares through swap arrangements or through an investment fund), alone or with a relative, an affiliate or

a person (a) holding (directly or indirectly) 30% or more of the voting rights in a company, or (b) having the right to appoint 30% or more of the members of the governing body; “controller” shall be construed accordingly.

- **Offeree Company:** means a company listed on the Exchange (or unlisted company in the case of reversed takeover) in respect of which an offer has been made or whose shares are subject to a private sale and purchase transaction. Any reference to an offeree company includes a potential offeree company.
- **Offeror:** means a person who makes or intends to make an offer or any person intends to enter into a private sale and purchase transaction as a buyer, each of which is subject to the Merger & Acquisition Regulations. Any reference to an offeror includes a potential offeror.
- **Offer Document:** means the offer document that the offeror is required to prepare and publish in relation to a takeover offer, a merger transaction or an offer that is not a takeover offer in accordance with Article 37 of the Merger & Acquisition Regulations.
- **Securities Exchange Offer:** means an offer in which the consideration includes securities of the offeror, other than debt instruments (unless such debt instruments carry substantially the same rights as any other securities of the offeror in issue or conversion or subscription rights into any such securities or into shares of the offeror).
- **Independent Advisor:** means in the Merger & Acquisition Regulations, an advisor that is not influenced or controlled in any way (directly or indirectly) by the offeror or the offeree company.
- **Connected Advisor:** means in the Merger & Acquisition Regulations:
 - 1) an advisor which is advising the offeror or the offeree company in relation to an acquisition (whether through a private sale and purchase transaction or an offer) or a merger; and

- 2) an authorised person acting for the benefit of the offeror or the offeree company; and
- 3) an advisor which is advising a person who is acting in concert with the offeror or the offeree company in relation to an acquisition (whether through a private sale and purchase transaction or an offer) or a merger; or in relation to the matter which is the reason for that person being a member of the relevant concert party.

Such references do not normally include an authorised person which is unable to act in connection with the offer because of a conflict of interest.

- **Acting in Concert:** means, in the sole discretion of the Authority, actively co-operating, pursuant to an agreement (whether binding or non-binding) or an understanding (whether formal or informal) between persons, to be controllers (whether directly or indirectly, including indirect ownership of shares through swap arrangements or through an investment fund) of a company, through the acquisition by any of them (whether through direct or indirect ownership) of voting rights in that company and concert parties shall be interpreted accordingly.

Without prejudice to the general application of this definition, the following persons will be presumed to be acting in concert with other person in the same category unless the contrary is established:

- 1) persons member of the same Group;
- 2) Two or more parties in a private sale and purchase transaction who appoint a joint financial advisor and/or legal advisor in relation to such private sale and purchase transaction;
- 3) a company with its directors and its senior executives (and their respective relatives);

- 4) a connected fund manager with the offeror or offeree company;
 - 5) relatives of a person;
 - 6) a connected advisor with its client; or
 - 7) shareholders in an unlisted company who sell their shares in that company in consideration for the issue of new shares in a company to which the Mergers and Acquisitions Regulations apply, or who, following the re-registration of that company as a public company in connection with an initial public offering or otherwise, become shareholders in a company to which the Mergers and Acquisitions Regulations apply; or
 - 8) partners in a limited liability company.
- **Related Party:** means in the Merger & Acquisition Regulations, a person (whether or not acting in concert with the offeror, the offeree company or with any of their affiliates) who directly or indirectly owns, or deals in, the shares of the offeror or offeree company in an acquisition (whether through a private sale and purchase transaction or an offer) or merger and who have (in addition to their normal interests as shareholders) an interest or potential interest, whether commercial, financial or personal, in the outcome of the acquisition or the merger or a person who is a connected person with both the offeror and the offeree. Without prejudice to the general application of this definition, the term “related party” generally includes:
- 1) In relation to the offeror or the offeree company, all persons that are members of their respective Groups;
 - 2) any person who has provided financial assistance (other than a bank in the ordinary course of business) to the offeror or the offeree company or any of the above for the purchase of voting rights;

- 3) the directors and senior executives of the offeror or the offeree company (and their respective relatives); or
 - 4) a connected fund manager with the offeror or offeree company.
- **Connected Fund Manager:** A fund manager of an investment fund will normally be connected with an offeror or the offeree company, as the case may be, if it is controlled by, controls or is under the same control as:
 - 1) an offeror or any person acting in concert with it;
 - 2) the offeree company or any person acting in concert with it; or
 - 3) any connected advisor to any person covered in (1) or (2).
 - **Regulatory Information Service Provider:** means the Exchange or an alternative communication channel or platform recognised by the Authority that allows persons with no access to the Exchange to make public announcements in accordance with the Merger & Acquisition Regulations.
 - **Carve Out:** is a type of Demerger transaction where the Listed Company sells off a portion of its assets, business or a subsidiary by transferring them as a whole, to one or several existing entities (acquiring legal entities) or to be newly formed, or to the public in return for cash or shares in the acquiring legal entity being granted to the Listed Company.
 - **Class Tests:** the tests set out in Annex 1 of these Regulations, which are used to determine whether a transaction constitutes a Reverse Takeover or a Demerger requiring shareholders' approval.
 - **Demerged Entity:** the entity that is the subject of a Demerger transaction resulting in it being spun-off, split-off or carved out from the Listed Company.
 - **Demerger:** a transaction where a Listed Company wishes to effect the separation or divestiture of a subsidiary, an asset or a business wholly or partly within its existing group whether through a separate listing of such subsidiary, asset or business on the

Exchange or without listing. A Demerger could take the form of a Spin-Off, a Split-Off or a Carve Out.

- **Percentage Ratio:** in relation to a transaction, the figure, expressed as a percentage, that results from applying a calculation under a Class Test to the transaction.
- **Reverse Takeover:** a transaction, whether effected by way of a direct acquisition by the Listed Company or a subsidiary, an acquisition by a new holding company of the Listed Company or otherwise, of a business, an unlisted company or assets:
 - 1) where any Percentage Ratio is 100% or more;
 - 2) which in substance results in a fundamental change in the business;
 - 3) where there is an increase in the Listed Company's capital through issuing new shares and offering these shares to the shareholders of an unlisted company in exchange for their shares and these new shares will represent more than 50% of the listed company voting shares after the acquisition; or
 - 4) where, in the opinion of the Authority, it constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of that business, unlisted company or assets to be acquired, without complying with the listing and registration requirements set out Capital Market Law and its Implementing Regulations.
- **Spin-Off:** a type of Demerger where all or a portion of the shares in the spun-off entity/new entity to be formed to hold the asset, are distributed on a pro-rata basis to the Listed Company's shareholders as dividend, resulting in a full separation of the two entities in a single transaction. In a Spin-Off transaction a portion of the shares of the spun-off entity/ new entity to be formed to hold the asset, may be offered to the public through a public offering and listing on the Exchange.
- **Split-Off:** a type of Demerger transaction where the Listed Company makes an offer to its shareholders to exchange their parent shares which will be acquired by

the Listed Company as treasury shares, in exchange for all or a portion of the shares of the spun-off entity/ new entity to be formed to hold the asset.

- **Target:** the subject of a Reverse Takeover, consisting of either businesses, assets or an unlisted company.

Article 2 : Extent & scope of the Regulations

- a) The purpose of these Regulations is to regulate the following:
 - a) Acquisitions activities, based on the Authority's powers as stated in the Capital Market Law.
 - b) Mergers activities, based on the Authority's powers as stated in the Companies Law.
 - c) Reverse takeover and demerger activities, based on the Authority's powers as stated in the Capital Market Law.
- b) The Regulations apply to any situation where there is:
 - 1) a sale and purchase of shares listed on the Exchange and which carry voting rights and as a consequence of such sale and purchase, ten percent (10%) or more of the shares carrying voting rights of the relevant offeree company is owned by, or under control of, the purchaser or those acting in concert with the purchaser; or
 - 2) an offer to purchase shares listed on the Exchange and which carry voting rights if the amount of shares carrying voting rights sought to be acquired by the offeror would increase its ownership or the ownership of those acting in concert with it, or the shares carrying voting rights under their control, to ten percent (10%) or more of the shares of the relevant offeree company of that same class.
- c) The parties to whom the Regulations apply include:

- 1) Exchange participants, including (without limitation) issuers, shareholders, authorised persons, private funds and any person involved directly or indirectly in, or giving an opinion on, any transaction regulated by these Regulations;
 - 2) directors of companies which are subject to these Regulations; and
 - 3) any person which seeks to or consolidate effective acquisition of any company subject to these Regulations.
- d) These Regulations should be read in conjunction with and in addition to the provisions of the Capital Market Law, its Implementing Regulations and the Listing Rules, as amended or substituted.
- e) Any reference to a person or persons in these Regulations applies to private fund or private funds.

Article 3 : General provisions

- a) An offeror, offeree company and/or selling shareholders who are party to a potential acquisition or a potential merger, must appoint their respective financial advisors who must be independent and authorised by the Authority and their respective legal advisors who must be independent and licensed to practice law in the Kingdom. The financial advisors of the offeror, offeree company and/or selling shareholders shall be the point of contact liaising with the Authority on behalf of the party each of them represents, in respect of all matters relating to the potential acquisition or the potential merger.
- b) Parties involved in acquisitions or mergers must take care that statements are not made in a way that may mislead shareholders or the Exchange.
- c) In the case of an offer, all shareholders of the same class of an offeree company must be treated equally by an offeror.
- d) Any document or advertisement related to an offer or potential offer, addressed by the offeror, the board of the offeree company or their respective advisors, to shareholders, must be true, fair and not misleading.

- e) 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 advisors may furnish information to some shareholders which is not readily made available to all shareholders. This principle does not apply to the following:
- 1) the furnishing of information in confidence by the offeree company to a *bona fide* potential offeror or vice versa in the context of an offer or
 - 2) the furnishing of information in confidence by the selling shareholder and/or offeree company to an offeror in the context of a private sale and purchase transaction.
- f) An offeror should only announce an offer after the most careful consideration in accordance with the provisions of these Regulations, and if it firmly believes that it can and will continue to be able to implement the offer; responsibility for advising the offeror and ensuring all reasonably steps are taken in this respect rests on the financial advisor to the offeror.
- g) In case of an offer, the board of directors of the offeror and the oferee must give sufficient information and advice to the shareholders of an offeree company to enable them to reach a properly informed decision and must have sufficient time to do so. No relevant information should be withheld from them.
- h) All persons privy to confidential information, and particularly those would have an effect on the price of the security, concerning an acquisition or any such contemplated transaction must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of a leak of confidential information and/or those would have an effect on the price of the security.
- i) At no time after the board of the offeree company has reason to believe that a *bona fide* offer might be imminent, may any action be taken by the board of the offeree company in relation to the affairs of the company, without the approval of the shareholders convened in a general assembly in accordance with the Companies Law, which could effectively

result in any *bona fide* offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.

- j) Where there are related parties to an acquisition to which these Regulations apply, there must be full disclosure of the related party's interest in the transaction to the affected shareholders prior to completion of that transaction. Any such transaction must be on arm's length terms.
- k) The board of an offeree company must always act in the best interests of its shareholders.
- l) Directors of the offeree company must always, in advising their shareholders, act only in their capacity as directors and not have regard to their personal or relative shareholdings, the shareholdings of the shareholders they represent in the board, or to their personal relationships with the offeror or offeree company, as applicable, and must at all times have regard to advice given in accordance with Article 18 of these Regulations. It is the shareholders' interests taken as a whole, together with those of employees and creditors, which should be considered when the directors are giving advice to shareholders. Directors of the offeree company should give careful consideration before they enter into any commitment with an offeror (or anyone else) which would restrict their freedom to advise their shareholders in the future.
- m) A director shall not vote at a meeting of board or of its committees or a general assembly meeting on any resolution concerning an acquisition subject to these Regulations or any other relevant matter where the director or any relative of his/her has a conflict of interest. In this context such a conflict of interest would arise if:
 - 1) the director has, directly or indirectly, an interest which conflicts or may conflict with the interests of the company.
 - 2) the director is a shareholder in the offeror and at the same time he/she is a director of the offeree company board, or vice versa.

- 3) the director is a director of the offeror company board and at the same time he/she is a director of, or a manager in the offeree company, or vice versa.
- n) For the purposes of these Regulations, an interest of a person who is a relative or an affiliate of a director shall be treated as an interest of the director.
- o) Where an acquisition is contemplated as a result of which a person may incur an obligation to extend a general offer to all shareholders, he/she must, before making the acquisition, ensure that he/she can and will continue to be able to implement such an offer.
- p) A false markets must not be created in the securities of the offeree company/merged company, of the offeror company/merging company or of any other company concerned by the acquisition/mergers or any other company concerned by the bid in such a way that the rise or fall of the prices of the relevant securities becomes artificial and the normal functioning of the markets is distorted.
- q) An offeree company activities must not be affected longer than reasonable as a consequence of an acquisition or a merger.

Article 4 : General Principles of Announcements

- a) Any announcement or advertisement related to an acquisition (including an offer), merger or potential acquisition or merger, required to be under these Regulations must be complete, clear, accurate and not misleading and must comply with the Instructions of Listed Companies' announcements and the requirements of these Regulations.
- b) Parties to an acquisition (including a private sale and purchase transaction) that are required to make a public announcement pursuant to these Regulations and which are not members of the Exchange may use the Exchange website to make such announcements upon obtaining the Authority's prior approval to do so, or use other Regulatory Information Service Providers.

Article 5 : Compliance with Competition Law

a) Notification

Where an offer would, if completed, be subject to the Competition Law, or requires other local or foreign regulatory approvals or clearances, the offeror must state that this is the case in its announcement. The offeree company and the offeror must notify the Competition Council pursuant to the provisions of the Competition Law.

b) Offer lapse

Where an offer would, if completed, be subject to the Competition Law, the offer will lapse if the Competition Council notifies the offeror or the offeree company in writing, or through any other formal means of notification, that it objects to the transaction or has placed it under study and review.

c) The end of offer period

When the offeror or the offeree company is notified of the Competition Council objection on the offer or potential offer, or that the offer or the potential offer is placed under study or review pursuant to paragraph (b) of this Article, the offer period will end, and any new offer must be announced within 21 days after the announcement of a final decision made that the transaction is permissible under the Competition Law. A new offer period will be deemed to begin on the date on which a final decision made that the transaction is permissible under the Competition Law. If there is no announcement of a new offer within 21 days after the announcement of a final decision made that the transaction is permissible under the Competition Law, this offer period will last until either the expiry of the 21 day period or the announcement by all relevant offerors (affected by the decision that the transaction is permissible under the Competition Law) that they do not intend to make an offer, whichever is earlier.

Article 6 : Waiver

The Authority may waive a provision of these Regulations in whole or in part as it applies to any person, upon his/her request or on its own initiative.

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PART 2
ACQUISITIONS

**Chapter 1: RULES OF PRIVATELY NEGOTIATED SALE AND PURCHASE
TRANSACTIONS**

Article 7 : Negotiation between selling shareholder and offeror

- a) Negotiations or discussions between a selling shareholder and an offeror regarding a private sale and purchase transaction must remain strictly confidential and be restricted to a limited number of concerned people within the selling shareholder and offeror and their immediate advisors. The financial advisors to the selling shareholder and the offeror must at the very beginning of the negotiations or discussions draw their clients' attention to the applicable provisions of the Merger & Acquisition Regulations and advise them the importance of secrecy and confidentiality.
- b) A selling shareholder and an offeror who are in negotiation or discussions regarding a private sale and purchase transaction must take adequate measures to limit any potential leakage or unlawful usage of confidential/price sensitive information.

Article 8 : Approaching the Offeree Company

- a) The parties involved in a private sale and purchase transaction (i.e. the selling shareholder and the offeror) may elect to inform the board of the offeree company or its advisors of the potential transaction, at their discretion in order to obtain price sensitive confidential information from it, absent any of the events requiring disclosure as per paragraph (d) of this Article.
- b) The offeree company is deemed to be informed of a potential private sale and purchase transaction upon formally notifying and informing its board of directors. Following its formal notification of a potential private sale and purchase transaction, the board of director of an offeree company shall act independently to serve the best long term interests of the offeree company and its shareholders. Knowledge by individual board members of a potential private sale and purchase transaction shall not be imputed to the

offeree company, unless the board of directors is formally notified of the potential private sale and purchase transaction.

- c) Upon formally approaching an offeree company in respect of a potential private sale and purchase transaction, an offeror or potential offeror must make clear the identity of its substantial shareholders.
- d) In the event of a leakage of confidential and/or price sensitive information about the offeree company or the potential private sale and purchase transaction or in the event of the offeree company becoming subject of rumours relating to the potential private sale and purchase transaction, the parties involved (i.e. the selling shareholder and offeror) should promptly notify the offeree company and the Authority of the transaction and announce the transaction to the public in accordance with Article 10 of these Regulations.

Article 9 : Access to Confidential Information of the Target Company

- a) A selling shareholder may share confidential/price sensitive information with a *bona fide* offeror to assist such offeror in conducting its due diligence over the offeree company to evaluate the merits of the potential private sale and purchase transaction, provided this is made in strict confidence.
- b) If and when an offeree company is formally approached in respect of a potential private sale and purchase transaction in accordance with paragraph (b) of Article 8 of these Regulations, such offeree company may share confidential/price sensitive information with a *bona fide* offeror, to assist such offeror in conducting its due diligence over the offeree company to evaluate the merits of the potential transaction, provided this is made in strict confidence.
- c) The offeree company (through its board of directors) shall have the discretion to determine the nature and extent of confidential/price sensitive information to be shared with a *bona fide* offeror. Any such determination shall be considered on a case by case basis and be made by the board of directors of the offeree company, taking into consideration the best long term interests of the offeree company and its shareholders.

The board of directors of the offeree company must also take adequate measures to limit any potential leakage or unlawful usage of confidential/price sensitive information.

Article 10 : Announcements

- a) An announcement to the public is required to be promptly made by each of the offeror and the selling shareholder when:
- 1) definitive agreements (including the share sale and purchase agreement and excluding entering into preliminary agreements such as memorandum of understanding) relating to a private sale and purchase transaction, are entered into by and between the offeror and the selling shareholder; or
 - 2) prior to formally notifying the offeree company of a potential private sale and purchase transaction in accordance with paragraph (b) of Article 8 of these Regulations, the offeree company is the subject of rumour and speculation or where there is an untoward price movement since the start of the negotiations between the selling shareholder and the offeror, of 10% or more within a single day or 20% or more of the lowest share price since the start of the negotiations between the selling shareholder and the offeror, and there are reasonable grounds for concluding that it is the potential transaction which have led to the situation.
- b) An announcement to the public is required to be promptly made by each of the offeree company, the offeror and/or the selling shareholder when, after the offeree company is formally notified of a potential private sale and purchase transaction in accordance with paragraph (b) of Article 8 of these Regulations and the offeree company is the subject of transaction related rumour and speculation or where there is an untoward price movement in the offeree company since the start of the negotiations between the selling shareholder and the offeror, of 10% or more within a single day or 20% or more of the lowest share price since the start of the negotiations between the selling shareholder and the offeror, and there are reasonable grounds for concluding that it is the potential transaction which have led to the situation.

Article 11 : Prohibited and Restricted on Dealings

a) Restrictions on dealings by the selling shareholder, the offeror, and parties acting in concert

No dealings of any kind in securities of the offeree company by the selling shareholder, the offeror or any party acting in concert with any of them, may take place between the time when a preliminary understanding regarding a private sale and purchase transaction (including entering into a memorandum of understanding or other agreements of the same nature) is reached between the selling shareholder and the offeror and the announcement of the closing of the transaction or termination of discussions and negotiations.

b) Prohibition on dealings by persons with access to confidential price sensitive information

1) No dealings of any kind in securities of the offeree company by any person, who is privy to confidential price-sensitive information concerning a private sale and purchase transaction, may take place between the time when a preliminary understanding regarding a private sale and purchase transaction (including entering into a memorandum of understanding or other agreements of the same nature) is reached between the selling shareholder and the offeror and the announcement of the closing of the transaction or termination of discussions and negotiations.

2) No person who is privy to confidential price-sensitive information concerning a private sale and purchase transaction or contemplated transaction may make any recommendation to any other person as to dealing in the relevant securities.

Article 12 : Appointment of Financial Advisors and Legal Advisors

a) Each offeror and selling shareholder that is party to a private sale and purchase transaction shall appoint its own independent financial advisor and legal advisor who shall be responsible for advising it on the requirements of these Regulations. Two or more selling shareholders (or two or more offerors) whose interests are aligned may

appoint a joint financial advisor and legal advisor in relation to a private sale and purchase transaction.

- b) An offeree company that is not formally approached and notified in respect of a private sale and purchase transaction is not required to appoint a financial advisor or a legal advisor.

Article 13 : Mandatory Offer and Permissive Offer Triggers

- a) An offeror who, in a private sale and purchase transaction which results in the purchase or an increase in an aggregate interest in shares so that such offeror or those with whom it is acting in concert, becomes the owner of (or otherwise have the ability to control) 30% or more of the voting rights of an offeree company becomes subject to Article 23 or Article 24 of these Regulations (as applicable).
- b) The provision set out in paragraph (a) of this Article shall also apply to any beneficiary on behalf of whom the selling shareholder or offeror is acting in the context of the private sale and purchase transaction. A person shall be treated as a beneficial owner of shares of the offeree company if he/she has the ultimate beneficial ownership or control of such shares, whether through multiple entities or a contractual arrangement.

Article 14 : Purchase Price

- a) The selling shareholder and offeror may agree, in a private sale and purchase transaction, on any purchase price they deem appropriate for the acquired shares by applying a premium or discount on the market price of the shares of the offeree company on the Exchange.
- b) The selling shareholder, offeror and/or offeree company (as applicable), must each disclose the agreed purchase price for the private sale and purchase transaction, in the announcement they are required to make in accordance with Article 10 of these Regulations.

Article 15 : Exemptions from the Offer of Securities Regulation

The solicitation by a selling shareholder of multiple potential offerors (through a bid process) to enter into a private sale and purchase transaction for the sale of part or all of its shares in the offeree company shall not constitute an offer of securities subject to the private placement requirements of the Offers of Securities Regulations, as long as the shares of the offeree company are listed in the Exchange.

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Chapter 2: RULES OF OFFERS

Article 16 : Approaching the Offeree Company

- a) An offer must be put forward to the board of the offeree company or to its advisors no later than it is made to the shareholders of the company. This requirement does not apply to an approach with a view to making an offer.
- b) Any offer, or an approach with a view to an offer being made, must make clear the identity of the substantial shareholders of the offeror or potential offeror.
- c) If the offer, or an approach with regard to a possible offer, is not made by the offeror or potential offeror, the identity of that offeror or potential offeror must be disclosed to the board of the offeree company at the outset of the offer or the approach with regard to a possible offer.

Article 17 : Announcement and Offer Timetable

a) When a public announcement is required

A public announcement is required to be promptly made in the following circumstances:

- 1) When firm intention to make an offer (the making of which is not, or has ceased to be, subject to any pre-condition, other than the Competition Council's clearance in accordance with Article 5 of these Regulations) is notified to the board of the offeree company in accordance with paragraph (e) of this Article, irrespective of the attitude of the board of directors of the offeree company to the offer;
- 2) upon an acquisition of shares by a person which gives rise to an obligation to make an offer under paragraph (a) of Article 23 of these Regulations or a permission to make an offer under Article 24 of these Regulations. The announcement shall not be delayed while full information is being obtained, as additional information can be the subject of a later supplementary announcement;

- 3) When, before a bid approach has been made, the offeree company is the subject of rumour and speculation or where there is an untoward price movement since the time of first active consideration by the offeror of 10% or more within a single day and there are reasonable grounds for concluding that it is the potential offeror's actions which have led to the situation;
- 4) When, following a bid approach, an offeree company is the subject of offer-related rumour and speculation or where there is an untoward price movement in the offeree company shares of 20% or more of the lowest share price since the time of the approach or a price movement of 10% or more in a single day;
- 5) When negotiations or discussions regarding an acquisition relating to shares listed on the Exchange carrying 30% or more of the voting rights of a company, or when the board of a listed company is seeking one or more potential offerors, are about to be extended with the consent of the Authority to include more than a very restricted number of people (outside those who need to know in the companies concerned and their immediate advisors).

b) **Responsibilities of offeror and the offeree company**

- 1) Before the board of the offeree company is approached, the responsibility for making the announcement required under paragraph (a) of this Article lies only with the offeror. The offeror should, therefore, keep a close watch on the offeree company's share price for any signs of untoward movements in the offeree company's share price or where the offeree company is the subject of offer-related rumour or speculation. The offeror is also responsible for making an announcement once an Article 23 of these Regulations obligation has been incurred or Article 24 of these Regulations applies to it.
- 2) Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making the announcement required under paragraph (a) of this Article will rest with the board of the offeree

company which must, therefore, keep a close watch on its share price for any untoward movement or if it is the subject of offer-related rumour or speculation.

- 3) Where there is a recommendation to accept the offer and to submit an application to the Authority to grant a temporary suspension of trading, and the Authority has granted such suspension, the offeree company may use the temporary suspension and make the announcement afterwards as an alternative to the immediate announcement.
- 4) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement or requesting the Authority to grant a temporary suspension of trading.

c) **Offer timetable**

- 1) The offeror must approach the Authority for the purpose of submitting its proposed offer timetable by no later than the date of the announcement required under sub-paragraphs (1) or (2) of paragraph (a) of Article 17 of these Regulations. Without prejudice to the obligations of the parties to the offer contained in these Regulations, the Authority will review and adopt the offeror's proposed offer timetable in accordance with the provisions of these Regulations, and the following steps:
 - a. the delivery of the final offer document to the Authority for approval;
 - b. the publication of the offer document approved by the Authority and providing the same to the board and to the shareholders of the offeree company which shall take place no later than 3 days from obtaining the Authority's approval of the offer document;
 - c. the publication of the offeree company's board circular in accordance with Article 38 of these Regulations (if such information has not been published within the offer document), which shall take place no later than 14 days from step (b) of this sub-paragraph;

- d. offeror company shareholders' approval (if required), which shall take place no later than 28 days from step (b) of this sub-paragraph;
- e. offeree company shareholders' approval (if required) which shall take place no later than 28 days from step (b) of this sub-paragraph;
- f. the earliest permitted closing date of the offer, which shall be no earlier than 28 days from step (b) of this sub-paragraph;
- g. the last date on which the offeree company may announce profit or dividend forecasts, asset valuations or proposals for dividend payments, which shall be no later than 60 days from step (b) or (c) of this sub-paragraph;
- h. the last date on which the offeror may revise its offer or publish new information which shall be no later than 60 days from step (b) or (c) of this sub-paragraph;
- i. the withdrawal of acceptances if the offer has not become unconditional as to acceptances, which shall be no later than 14 days from the first closing date mentioned in (f) of this sub-paragraph;
- j. the last date on which the offer can be declared unconditional as to acceptances, which shall be no later than 60 days from step (b) or (c) of this sub-paragraph;
- k. the last date on which the offer must remain open for acceptance after it is declared unconditional as to acceptance, which shall be no earlier than 21 days from step (j) of this sub-paragraph;
- l. the last date for satisfaction of all other conditions, which shall be no later than 21 days from step (j) of this sub-paragraph; and

- m. the last date for cash or other consideration to be provided to the shareholders of the offeree company, which shall be no later than 10 days from step (I) of this sub-paragraph.
- 2) All Parties related to the offer must comply with the timetable as specified in sub-paragraph (1) of paragraph (c) of this Article.
 - 3) The Authority must be notified immediately if the offeror or the offeree company considers that it cannot comply with the adopted timetable as specified in sub-paragraph (1) of paragraph (c) of this Article. The Authority has discretion to take any appropriate action. The Authority may, in any circumstances, amend the adopted timetable referred to in accordance with sub-paragraph (1) of paragraph (c) of this Article.
 - 4) Simultaneously with approaching the Authority in accordance with sub-paragraph (1) of paragraph (c) of this Article, the offeror must provide the Authority with the offer document in the form prescribed in Article 37 of these Regulations.
 - 5) The offeror must notify the Authority if at any time after the approval of the transaction and before the meeting of the general assembly of any significant changes in the offering document or any other document required by these Regulations.
 - 6) The timetable as specified in sub-paragraph (1) of paragraph (c) of this Article must be published in such manner as the Authority may require.
- d) **The setting of deadline to make a firm offer announcement**

When an announcement has been made in accordance with paragraph (a) of this Article other than an announcement of a firm intention to make an offer, the offeree company may request that the Authority set a time limit for the offeror to clarify its intentions in respect of the offeree company. If such a time limit is imposed, at some time on or before the expiry of that limit the offeror must publicly announce either a firm intention to make an offer, or that it does not intend to make an offer.

e) **The announcement of a firm intention to make an offer**

- 1) The announcement of a firm intention to make an offer should be made only when an offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility for advising the offeror in this connection rests on the financial adviser to the offeror.
- 2) When a firm intention to make an offer is announced, the announcement must contain at least the following information:
 - a. the terms of the offer;
 - b. the identity of the offeror;
 - c. details of any existing holding in the offeree company:
 1. which the offeror owns or over which it has shareholding control;
 2. which is owned or where the shareholding is controlled by any person acting in concert with the offeror;
 3. in respect of which the offeror has received an irrevocable commitment to accept the offer;
 4. in respect of which the offeror or any person acting in concert with it holds an option to purchase;
 - d. all conditions (including any conditions relating to acceptances, listing and increase of capital and any consent or regulatory approval) to which the offer or the publication of the offer document is subject; and
 - e. details of any indemnity arrangement involving the offeror, the offeree company or any person acting in concert with any of them in relation to relevant securities.

3) The announcement of a firm intention to make an offer should include confirmation by the financial advisor or by another appropriate third party approved by the Authority that resources available to the offeror are sufficient to satisfy full acceptance of the offer. The party confirming that resources are available to the offeror must act responsibly in accordance with paragraph (f) Article 3 and paragraph (d) of Article 37 of these Regulations and take all reasonable steps to assure itself that resources are available.

f) **Obligation on the offeree company to circulate announcements**

Promptly after the commencement of an offer period, a copy of the relevant announcement, or a circular summarising the terms and conditions of the offer where the announcement contains a firm intention to make an offer, must be sent by the offeree company to its shareholders and to the Authority. Where necessary the offeree company board should explain the implications of the announcement.

g) **Consequences of a “firm announcement”**

When there has been an announcement of a firm intention to make an offer, the offeror must, except with the consent of the Authority, proceed with the offer unless the offer is subject to the prior fulfillment of a specific condition which has been made public and which has not been met. The offeror must proceed with the offer in accordance with the timetable adopted by the Authority in accordance with sub-paragraph (1) of paragraph (c) of this Article.

h) **Statements of intention not to make an offer**

A person making a statement that he/she does not intend to make an offer for a company should ensure that the statement is clear and unambiguous. Such a person, or any person acting in concert with him, will be bound by that statement for a period of six months unless there is a material change of circumstances related to the statement or there has occurred an event which the person specified in his statement as an event which would enable it to be set aside.

i) **Publication of an announcement about an offer or possible offer**

When an offer or possible offer is announced, the announcement must be published in typed format and sent to the Authority by any means as specified by the Authority.

Article 18 : Independent advice

The board of the offeror (if the offeror is a listed company) and the board of the offeree company must obtain competent independent advice from financial advisors, appointed in accordance with paragraph (a) of Article 3 of these Regulations, and inform their respective shareholders of the substances of such advice.

Article 19 : Prohibited and restricted dealings

a) **Prohibited dealings**

- 1) No dealings of any kind in securities of the offeree company by any person (including persons acting in concert), who is privy to confidential price-sensitive information concerning an offer or contemplated offer, from the time when there is reason to suppose that an approach or an offer is contemplated and the announcement of the approach or offer or of the termination of the discussions.
- 2) No person who is privy to confidential price-sensitive information concerning an offer or contemplated offer may make any recommendation to any other person as to dealing in the relevant securities.

b) **Restriction on dealings by the offeror and concert parties**

- 1) During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Authority, and in all circumstances, the sales must not be below the value of the offer.
- 2) During an offer period, the offeror and persons acting in concert with it must not deal in offeror securities where any information concerning an offer or possible

offer is considered by the offeror to be price sensitive in respect of those offeror securities.

c) **Gathering of irrevocable commitments**

- 1) The offeror's financial advisor shall inform the Authority before any offeree shareholder (or offeror shareholder, where offeror shareholder consent is required) is contacted with a view to seeking an irrevocable commitment to accept/approve or refrain from accepting/approving an offer.
- 2) Any person proposing to contact any shareholder (other than Sophisticated Investor) with a view to seeking an irrevocable commitment to accept or refrain from accepting an offer or contemplated offer must consult the Authority in advance, and the financial advisor of the offeree company must ensure that that such shareholder understands fully the nature of the commitment being requested.

d) **Dealings in offeree company's securities by certain persons**

During the offer period, no financial advisor or legal advisor (as applicable) (or any Affiliate of such advisor) to an offeree company (or any other person in its group, or any person acting in concert with it) shall:

- 1) either for its own account or on behalf of discretionary account, purchase offeree company shares or deal in derivatives referenced to such shares;
- 2) make any loan to a person to assist him in making any such purchases or carrying out any such dealings referred to in sub-paragraph (1) of this paragraph except for lending in the ordinary course of business and on normal commercial terms to persons with which they have an established client relationship and in accordance with the Authorised Persons Regulations; or
- 3) enter into any indemnity or option arrangement or any arrangement, agreement or understanding, formal or informal, of whatever nature, which may be an inducement for a person to retain, deal or refrain from dealing in relevant securities of the offeree company.

Article 20 : Purchases resulting in an obligation to offer a minimum level of payment

a) Purchases before a paragraph (e) of Article 17 announcement

When an offeror or any person acting in concert with it has purchased shares in the offeree company within the three month period prior to the commencement of the offer period, or prior to these three months (if required by the Authority), the offer to the shareholders of the same class shall not be on less favourable terms than the terms of the purchase made prior to the announcement of firm intention.

b) Purchases after a paragraph (e) of Article 17 announcement

- 1) If, during the period from the announcement made in accordance with subparagraphs (1) or (2) of paragraph (a) of Article 17 of these Regulations until the offer closes for acceptance, an offeror or any person acting in concert with it purchases shares at more than the offer price (being the then current value of the offer), or otherwise acquires any other interest in shares giving it control of the voting rights of such shares, it shall increase its offer to not less than the highest price paid for the shares so acquired during that period.
- 2) It must be announced, immediately after the purchase, that a revised offer will be made in accordance with this Article. The announcement should also state the number of shares purchased, or the interest otherwise acquired, and the price paid.

Article 21 : Consequences of certain dealings

An offeror or any person acting in concert with it who purchase shares in an offeree company must fulfill any obligations raised under Article 23, Article 24 or Article 26 of these Regulations. An announcement shall be made immediately after such a purchase, or immediately upon a purchaser becoming a substantial shareholder of the offeree, and shall include the number of shares purchased and the price paid.

Article 22 : Disclosure of dealings during the offer period, indemnity and other arrangements

a) **Dealings by offer parties and by persons acting in concert**

Dealings in relevant securities by an offeror or the offeree company, and by any person acting in concert with an offeror or the offeree company, for their own account during an offer period must be publicly disclosed by the end of the trading day of the relevant dealing.

b) **Dealings by parties and by persons acting in concert for non-discretionary account**

Dealings in relevant securities during an offer period by an offeror or the offeree company, and by any person acting in concert with such persons, for the account of clients when acting in a solely client serving capacity must be privately disclosed to the Authority by the end of the trading day of the relevant dealing.

c) **Dealings by shareholders holding 1% or more**

- 1) A person who (alone or with any person acting in concert with it), during an offer period, owns or otherwise has an interest in securities representing 1% or more of any class of relevant securities of the offeree company (or offeror securities, in the case of an offer potentially including offeror securities as consideration) or as a result of any transaction will own 1% or more, has a reportable interest.
- 2) Any reportable interest, and any change in the level of any reportable interest, must be reported to the Authority at the end of each trading day.
- 3) Reports made under this Article may be made public by the Authority.

Article 23 : The mandatory offer

a) **The mandatory offer**

Where a person or a group of persons acting in concert increase an aggregate interest in shares so that such person or those with whom such person is acting in concert become

the owner of (or otherwise have the ability to control) 50% or more of a given class of shares listed on the Exchange carrying voting right, the Board shall have the right to exercise its discretionary power in accordance with Article 54 of the Capital Market Law to order such person or such group of persons acting in concert to offer to purchase the shares of the same class it does/they do not own (or otherwise control) on the terms set out in this Article and in accordance with the other relevant provisions of these Regulations. When an obligation to make a general offer is incurred under this Article, it is not necessary for the offer to extend to shares in the offeree company held in treasury.

b) **Conditions, third party consents and regulatory approvals**

Except with the consent of the Authority, no acquisition of shares which would give rise to a requirement for an offer under this Article, may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any general assembly of shareholders of the offeror or upon any other conditions, consents or arrangements, including the approval of the Competition Council or other relevant regulatory approvals.

c) **Payment and Consideration**

- 1) An offer made under this Article must, in respect of each class of share capital of the offeree company, be in cash or be 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 that class during the offer period and within 12 months prior to its commencement. The Authority should be consulted where there is more than one class of share capital involved.
- 2) If the offeror considers that the highest price as specified in sub-paragraph (1) of paragraph (c) of this Article should not apply in a particular case, the offeror should approach the Authority which has discretion to agree on an adjusted price.
- 3) In no case will the offeror be compelled under this Article to offer to purchase the remaining shares at a price exceeding the highest price it or a party acting in concert with it paid to purchase (or otherwise gain control of) any of the shares of

that company during the 12 months preceding the date of the Board order in accordance with paragraph (a) of this Article.

d) **Restrictions on exercise of rights by an offeror**

From the time when the offeror announces the firm intention to make a takeover offer (including effecting a merger transaction), no person who formally represents the interests of an offeror or persons acting in concert with it may be appointed to the board of directors of the offeree company, nor may an offeror and persons acting in concert with it exercise the votes attaching to any shares held by them in the offeree company until the offer document has been published.

e) **Filing with the Authority**

When an offer to which this Article applies is to be made, the offeror must file a report with the Authority detailing all relevant purchases of the offeree company's shares in the prior 12 month period no later than the end of the trading day on which the announcement of the mandatory offer is made.

Article 24 : The permissive offer

a) **The permissive offer**

- 1) When any person acquires (or otherwise has an ability to control the voting rights in), whether by a transaction or a series of transactions, shares which (taken together with shares held, acquired or where shareholding control is vested in persons acting in concert with him) carry 30% or more of the voting rights of a company listed on the Exchange; or
- 2) When any person who, together with persons acting in concert with him, holds (or otherwise has an ability to control the voting rights in) not more than 30% of the voting rights of a company listed on the Exchange and such person, or any person acting in concert with him, acquires additional shares which increase his percentage of control over the voting rights of a company to more than 30%,

such persons may extend an offer, in accordance with the relevant provisions of these Regulations, to the holders of each class of equity share capital, whether voting or non-voting, and also to the holders of any class of voting non-equity share capital of the offeree company. An offer for different classes of equity share capital must be comparable; the Authority should be consulted in advance in such cases.

b) Obligations of other persons

In addition to the person specified in paragraph (a) of this Article and without prejudice to the requirements of this Article, each of the principal Affiliates or Subsidiaries of the relevant group of persons acting in concert with that person, according to the circumstances of the case, extend an offer.

c) Conditions and consents to a permissive offer under paragraph (a) of Article 24

- 1) A person to whom paragraph (a) of this Article applies may at any time elect to make an offer.
- 2) If a person to whom the requirements of this Article apply, elects not to make an offer; that person may not – for a period of two years following the acquisition which caused this Article to apply to him - without prior consent of the Authority and subject to conditions which the Authority considers appropriate effect any of the following:
 - a. acquire any further shares in the relevant offeree company;
 - b. dispose of any shares in the relevant offeree company; and
 - c. co-operate with any other person in respect of a bid for the relevant offeree company,

d) Consolidation Transactions

- 1) Following the expiry (or waiver by the Authority) of the period stated in subparagraph (2) of paragraph (c) of this Article, a person who, together with persons

acting in concert with it, holds (or otherwise has an ability to control) 30% or more and below 50% of the voting rights of an offeree company, may acquire (through the Exchange, or a private sale and purchase transaction) additional shares of the offeree company carrying no more than 2% of the voting rights of such offeree company, without being subject to the conditions of paragraph (c) of this Article, provided such person's total ownership in the offeree company (together with persons acting in concert with it) is below 50% of the voting rights of an offeree company.

- 2) Additional shares of the same class may not be acquired pursuant to this paragraph more than once in a 6-month period ending on the date of the latest purchase.
- 3) Any additional acquisition of shares of the same class that does not comply with the requirements of this paragraph, is subject to the provisions of Article 23 and/or Article 24 of these Regulations (as applicable).

Article 25 : The acceptance condition

- a) Without prejudice to paragraph (a) of Article 26 of these Regulations, it must be a condition of any takeover offer to which Article 23 and Article 24 of these Regulations apply, for shares carrying voting rights which, if accepted in full, would result in the offeror holding shares carrying over 90% of the voting rights of the offeree company (including a merger of the offeree company), that the offer will not become or be declared unconditional as to acceptances unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) shares carrying over 50% of the voting rights attributable to any class of shares of the offeree company.
- b) Any announcement made pursuant to Article 31 of these Regulations must state whether the offer has reached its acceptance level so as to be declared unconditional as to acceptances, whether the offer is to remain open for acceptance (if permitted by the offer timetable) and whether the offeror shall maintain or reduce the acceptance level (which shall, in accordance with paragraph (a) of this Article be no less than the offeror having

acquired or agreed to acquire (either pursuant to the offer or otherwise) shares carrying over 50% of the voting rights of the offeree company).

- c) It is permitted to an offeree company to not accept a takeover offer in respect of treasury shares until after the offer is unconditional as to acceptances.

Article 26 : Other Offers

- a) A person to whom neither Article 23 nor Article 24 of these Regulations applies, may elect to make an offer at any time in accordance with the applicable provisions of these Regulations.
- b) An offer made under this Article must be conditional only (provided that no other regulatory approvals are required to implement the offer) upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with it holding shares carrying more than 30% of the total number of those shares to which the offer relates (other than shares already held by the offeror in the offeree company).
- c) Partial offers:
 - 1) An offeror may, subject to obtaining the Authority's prior approval, offer to shareholders of an offeree company to buy a specified number (but not all) of their shares in an offeree company not already held by the offeror and persons acting in concert with it.
 - 2) The condition mentioned in paragraph (b) of this Article shall apply to partial offers. If the offeror receives a level of acceptance that is higher than the one initially planned it may, subject to obtaining the Authority's prior approval allocate the shares to the accepting shareholders in proportion to each accepting shareholder's current ownership stake in the offeree company. A partial offer may be made if it does not result in the offeror and persons acting in concert with it, holding more than 50% of the voting rights of an offeree company.

A partial offer is subject to the provisions of these Regulations including Article 23 and Article 24 of these Regulations.

Article 27 : Nature of payment to be offered

a) **Cash Offer**

A cash offer is required where shares of any class under offer in the offeree company are purchased for cash by an offeror or any person acting in concert with it during the offer period or in the 12 months prior to it, in which case the offer for that class shall 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 that class during the offer period or in the 12 months prior to it.

b) **Dispensation from highest price**

If the offeror considers that the highest price (for the purpose of paragraph (a) of this Article) should not apply in a particular case, the offeror should approach the Authority, which has discretion to agree on an adjusted price.

c) **Non-cash payment**

1) If the offeror is a company, it may make an offer that includes in whole or in part non-cash consideration (which may include offeror's shares issued to the shareholders of the offeree company) provided that:

- a. all shareholders of the same class of the offeree company are treated equally by the offeror; and
- b. where the offeree company's shareholders are offered shares in the offeror or other non-cash consideration which is not valuable by reference to a listing of securities on the Exchange, or another stock exchange acceptable to the Authority, the offeror must provide a valuation report of the non-cash consideration prepared by the offeror's financial advisor and which

shall be required to be published in accordance with paragraph (f) of Article 37.

- 2) Notwithstanding the conditions in sub-paragraph (1/b) of paragraph (c) of this Article, the offeror (whose shares are listed on the Exchange) may not make only a non-cash offer consisting entirely of shares issued to the shareholders of the offeree company, unless the offeror can demonstrate that the shareholders who individually or acting in concert hold at least 5% of the voting rights in the offeree company have undertaken not to sell or otherwise dispose of their shareholdings in the offeror for at least 12 months following the date the shares are registered with the Exchange.

Article 28 : Subjective and financing conditions

- a) An offer must not be subject to conditions which depend solely on subjective judgements by the offeror or the offeree company or in either case, by their respective directors or the fulfilment of which is in their control.
- b) An offer must not be made subject to conditions relating to financing.

Article 29 : Offer to a company with more than one class of shares

- a) Where an offeree company has more than one class of share capital, a comparable offer must be made for each class whether such classes of shares carry voting rights or not; and the Authority should be consulted in advance. An offer for non-voting shares shall not be made conditional on any particular level of acceptances in respect of that class unless the offer for the voting shares is also conditional on the success of the offer for the non-voting shares.
- b) Provisions of this Article shall apply to an offeree company which has options or subscription rights that are outstanding.

Article 30 : Special deals with favourable conditions

An offeror or persons acting in concert with it may not make any arrangements with shareholders and may not deal or enter into arrangements to deal in shares of the offeree company, or enter into arrangements which involve acceptance of an offer, either during an offer period or when one is reasonably in contemplation, if there are favourable conditions attached which are not being extended to all shareholders.

Article 31 : Announcement of acceptance results

a) Timing and contents

An offeror must make an announcement regarding the offer acceptance result no later than half an hour before the time on which the Exchange is due to open and not exceeding the day following the time on which an offer is due to expire or become, or is declared unconditional as to acceptances, or is revised or extended. The announcement must state the total number of shares and rights over shares as follows:

- 1) Shares which acceptances of the offer have been received;
- 2) Shares held by the offeror before the offer period; and
- 3) Shares acquired or agreed to be acquired during the offer period,

Such announcement must specify the percentages of the relevant classes of shares represented by these figures.

b) Consequences of failure to announce

- 1) If an offeror, having announced the offer to be unconditional as to acceptances, fails to comply with any of the requirements of paragraph (a) of this Article, immediately after that, any shareholder having accepted the offer will be entitled to withdraw his acceptance, unless the Authority requires otherwise.

- 2) If an offeror fails to make an announcement as required by paragraph (a) of this Article, the Authority may suspend the listing of the offeree company until an appropriate announcement has been made.

Article 32 : The use of proxies and other authorities in relation to acceptances

An offeror may not require a shareholder as a term of his acceptance of an offer to appoint a proxy to vote in respect of his shares in the offeree company or to exercise any other rights or take any other action in relation to those shares, other than as may be required following the offer being declared unconditional as to acceptances and a power of attorney being granted in favour of the offeror in respect of the transfer of the offeree shares.

Article 33 : Information relating to an offer

a) **Standards of care**

- 1) Each announcement, or document, or statement related to an offer issued during the course of an offer must, as is the case with a prospectus issued in accordance with the Capital Market Law, its Implementing Regulations and the Listing Rules, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented. This applies whether it is issued by the offeree company or the offeror directly or by an advisor on its behalf.
- 2) If any announcement, document, or statement published in connection with an offer includes an advice, opinion, report or an independent valuation prepared by third party advisors then such a document or announcement must include a statement that each of the parties giving these particulars (such as financial advisor(s), the auditor and/or the independent valuer) has given and not withdrawn its consent to the inclusion of its advice, report or opinion (as applicable) in the relevant document in the form and context in which it is included.

b) **Inaccurate statements**

Parties to an offer, merger or potential offer (including a takeover offer) and their advisors must not issue inaccurate or imprecise statements which, may mislead shareholders or the Exchange.

c) **Distribution and availability of documents and announcements**

Copies of all documents and announcements bearing on an offer and of advertisements and any material released to the media must at the time of release be lodged with the Authority and the financial advisors to all other parties to the offer. When the release is outside normal business hours, such financial advisors must be informed of the release immediately; special arrangements may need to be made to ensure that the material is delivered directly to them and to the Authority. No party to an offer should be put at a disadvantage through delay in the release of new information to it.

Article 34 : Equality of information

a) **Equality of information to shareholders**

Information about the offer, including announcements, s, presentations, circulars and information concerning companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner, including publication on the website of the offeror and/or offeree company and the Exchange, or other Regulatory Information Service Providers, as applicable, no later than the end of the trading day. In case of information released on a non-trading day, then such publication must be made immediately following the release of the information.

b) **Equality of information to competing offerors**

Any information, including particulars of shareholders, given to one offeror or potential offeror must, upon request, be given equally and promptly to another offeror or *bona fide* potential offeror. This requirement shall only apply when there has been an announcement of the existence of the offeror or potential offeror to which information has been given.

Article 35 : Restrictions on frustrating actions

a) Shareholders' consent in the general assembly

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, the board must not, except in pursuance of a binding contract entered into earlier, without the approval of the shareholders convened in a general assembly, effect any of the following:

- 1) issue or grant options in respect of any unissued shares;
- 2) create or issue, or permit the creation or issue of, any securities carrying rights of conversion into or subscription for shares;
- 3) sell, dispose of or acquire, or agree to sell, dispose of or acquire, assets of a value equal to or greater than 10% of the net asset of the offeree company according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later;
- 4) resolve a buy-back of shares; or
- 5) enter into contracts otherwise than in the ordinary course of business.

The notice convening such a general assembly of shareholders must include information about the offer, merger or potential offer (including a takeover offer).

b) Break-up fees

- 1) For the purposes of these Regulations a break-up fee is an arrangement which may, with the consent of the Authority, be entered into between an offeror or a potential offeror and the offeree company pursuant to which a cash sum will be payable by the offeree company if certain specified events occur which have the effect of preventing the offer from proceeding or causing it to fail, including, without limitation, a recommendation by the offeree company board of a higher competing offer.

- 2) Any break-up fee that is proposed must be of a minimal size (no more than 1% of the offer value) and the offeree company board of directors and its financial advisor must confirm to the Authority in writing that the fee is in the best interests of the offeree company's shareholders. Any break-up fee arrangement must be fully disclosed in the offer document and in the announcement made under paragraph (e) of Article 17.

Article 36 : Responsibilities of the offeree company to update its shareholders' register

The board of the offeree company shall keep the Depository Center and/or the Exchange informed of an offer to ensure that its shareholder register is kept up to date during the offer period in accordance with the relevant laws and regulations.

Article 37 : Offer document

a) **Financial and other information on the offeror, the offeree company and the offer**

- 1) The offer document (including, where relevant, any revised offer document) must include the following:
 - a. a heading stating that an independent financial advisor authorised by the Authority must be consulted if there is any doubt about the offer;
 - b. the date when the document is published, the name and address of the offeror and, if any, of the person making the offer on behalf of the offeror;
 - c. details of the securities for which the offer is made, including whether they will be transferred with or without any dividend;
 - d. the total payment proffered;
 - e. particulars of all documents required, and procedures to be followed, for acceptance of the offer;
 - f. the closing market price for the securities to be acquired, and the closing market price for the securities offered (in the case of a merger or exchange

of listed securities of the offeror), for the first day in each of the six months immediately before the date of the publication of the offer document, for the last day before the commencement of the offer period and for the latest available date before the publication of the offer document (quotations stated in respect of securities listed on the Exchange should be taken from the Exchange and, if any of the securities are not so listed, any information available as to the number and price of transactions which have taken place during the preceding six months should be stated together with the source, or an appropriate negative statement);

- g. in the case of a merger or a securities exchange offer, particulars of the first dividend or interest payment in which the new securities will participate and how the securities will rank for dividends or interest, capital and redemption and a statement indicating the effect of acceptance on the capital and income position of the offeree company's shareholders. If the new securities are not to be identical with an existing security listed on the Exchange, full particulars of the rights attaching to the securities must also be included together with a statement of whether an application for listing has been or will be made to the Authority; and
- h. in the case of a merger or a securities exchange offer, the effect of full acceptance of the takeover offer on the offeror's assets, profits and business which may be significant for a proper appraisal of the offer.

- 2) The offer document must contain a prominent disclaimer in the form set out below:

“The Capital Market Authority and the Saudi Stock Exchange do not take any responsibility for the contents of this offer document, do not make any representation as to its accuracy or completeness, and expressly disclaim any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of this offer document.”

- 3) In the case of a securities exchange offer where the offeror is a company whose shares are not listed on the Exchange, or where the takeover offer will result in a merger, the offer document must contain:
- a. for the last 3 financial years for which the information has been published, turnover, net profit or loss before and after taxation or Zakat, the charge for tax or Zakat, extraordinary items, minority interests, the amount absorbed by dividends and earnings and dividends per share;
 - b. a statement of the assets and liabilities shown in the last published audited accounts;
 - c. a cash flow statement if provided in the last published audited accounts;
 - d. all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - e. details relating to items referred to in sub-paragraph (a/3) of this paragraph in respect of any interim statement or preliminary announcement made since the last published audited accounts;
 - f. inflation-adjusted information if any of the above has been published in that form;
 - g. significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures, including those relating to inflation-adjusted information; where, because of a change in accounting policy, figures are not comparable, this should be disclosed and the approximate amount of the resultant variation should be stated;
 - h. the names of the offeror's directors and their shareholding in the offeror and offeree company;

- i. the nature of the offeror's business and its financial and trading prospects; and
 - j. a summary of the principal contents of each material contract entered into by the offeror or any of its subsidiaries out of the ordinary course of business during the period beginning two years before the commencement of the offer period, including particulars of dates, parties, terms and conditions and any payment passing to or from the offeror or any of its subsidiaries.
- 4) All offer documents must contain a description of how the offer is to be financed and the source of the finance. The principal lenders or arrangers of such finance must be named. Where the offeror intends that the payment of commission on, repayment of or security for any liability (contingent or otherwise) will depend to any significant extent on the business of the offeree company, a description of the arrangements contemplated will be required. Where this is not the case, a negative statement to this effect must be made.
- 5) If any document issued to shareholders of the offeree company in connection with an offer includes a recommendation or an opinion of a financial advisor for or against acceptance of the offer, the document must, unless issued by the financial advisor in question, include a statement that the financial advisor has given and not withdrawn his consent to the issue of the document with the inclusion of his recommendation or opinion in the form and context in which it is included.
- 6) In a merger or a securities exchange offer relating to securities which are to be admitted to trading on the Exchange, or includes securities issued by a company whose shares are listed on the Exchange, a circular in respect of the new securities which would allow the offeror's shareholders to make an informed voting decision on the securities exchange must be prepared. Such circular that will be published and submitted by the board of directors of the offeror to its shareholders convened in general assembly meeting to allow them to vote on the proposed

capital increase of the Offeror for the purpose of the securities exchange offer or merger, must include at least the following particulars :

- a. The potential risks associated with the proposed transaction.
- b. a transaction overview, including a description of the following:
 1. the transaction structure;
 2. the valuation of the offeree company and method of payment proposed;
 3. any approval required;
 4. the expected date of closing;
 5. employee consideration, if any;
 6. any proposed new management; and
 7. any proposed new board members;
- c. the offeror's rationale for the proposed acquisition, especially:
 1. a strength, weakness, opportunities and threats analysis; and
 2. a description of any synergies believed to be realisable by virtue of the acquisition;
- d. an overview of the offeree company and the industry of which it forms a part, including a description of the following:
 1. products;
 2. location;
 3. history;

4. sales;
 5. market share; and
 6. combination;
- e. financial highlights:
1. of the offeree company (revenues, net income, asset and dividends) for the past three financial years;
 2. of the offeror (revenues, net income, asset and dividends) for the past three financial years;
 3. contribution analysis;
 4. earnings per share analysis of the offeree (to the extent known); and
 5. accretion & dilution analysis, to the extent known;
 6. growth outlook and next steps, and
 7. reviewed pro-forma financials post- closing of the proposed transaction.
- f. legal information relating to the proposed transaction; and
- g. any other information as the Authority may require.
- 7) The application for registration of the new securities – in accordance with the Capital Market Law and its Implementing Regulations – must have been approved by the Authority in advance of presenting the circular to the Offeror’s shareholders.

b) **Shareholdings and dealings**

- 1) The offer document must state:
 - a. the shareholdings, and the size of any substantial shareholding, of the offeror in the offeree company;
 - b. the shareholdings, and the size of any substantial shareholding, in the offeror (in the case of a merger or exchange of listed securities of the offeror) and in the offeree company in which directors of the offeror are interested;
 - c. the shareholdings, and the size of any substantial shareholding, in the offeror (in the case of a merger or exchange of listed securities of the offeror) and in the offeree company in which any persons acting in concert with the offeror own or have controlling shareholding (with the names of such persons acting in concert);
 - d. the shareholdings, and the size of any substantial shareholding, in the offeror (in the case of a merger or exchange of listed securities of the offeror) and in the offeree company owned or have controlling shareholding of any persons who, prior to the publication of the offer document, have irrevocably committed themselves to accept the offer, together with the names of such persons; and
 - e. the shareholdings, and the size of any substantial shareholding, in the offeror (in the case of a merger or exchange of listed securities of the offeror) and in the offeree company owned or have controlling shareholding of a person with whom the offeror or any person acting in concert with the offeror has an arrangement of the kind referred to in subparagraph (3) of paragraph (d) of Article 19 of these Regulations.
- 2) In the event there are no such shareholdings or controlling shareholdings as prescribed above, this fact should be stated in the offer document. This will not

apply to categories described in (d) and (e) of sub-paragraph (b/1) of this Article if there are no such irrevocable commitments or arrangements.

- 3) If any person whose shareholdings are required by this Article to be disclosed (whether there is an existing holding or not) has dealt in the shares in question during the period beginning 12 months prior to the offer period and ending with the latest day prior to the publication of the offer document, the details, including dates and prices, must be stated in the offer document. If no such dealings have taken place, this fact should be stated in the offer document.

c) **Special arrangements or conditions**

- 1) The offer document must contain a statement as to whether or not any agreement, arrangement or understanding (including any compensation arrangement) exists between the offeror or any person acting in concert with it and any of the current directors or shareholders of the offeree company or any person who had been a director or shareholder of the offeree company within the last 12 months prior to the date of publication of the offer document, and essential particulars of any such agreement, arrangement or understanding.
- 2) The offer document must contain a statement as to whether or not the offeror intends to avail itself of powers of compulsory acquisition to be exercised in accordance with Part 4 of these Regulations.

d) **Cash sufficiency confirmation**

When the offer is for cash or includes cash, the offer document must contain a bank guarantee issued by a local bank guaranteeing the offeror's ability to satisfy full acceptance of the cash offer.

e) **Ultimate owner of securities acquired and controlling shareholders in the Offeror**

The offer document must contain a description of any person(s) owning or having the ability to control 30% or more of the share capital of the offeror or otherwise able to direct and manage the offeror, and a statement as to whether or not any securities

acquired in pursuance of the offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.

f) **Estimated value of unlisted securities payment**

When the offer involves the issue of unlisted securities as consideration which are intended to remain unlisted or any other non-cash consideration, the offer document and any subsequent circular from the offeror must contain an estimate of the value of such securities or the other non-cash consideration by a financial advisor.

g) **Information not applicable to other offers**

The information set out in sub-paragraphs (g/1) and (h/1), and sub-paragraphs (3) and (7) of paragraph (a) of this Article do not apply to partial offers for less than 30% of the offeree company shares.

Article 38 : Offeree board circular

a) **Views of the board**

The board of the offeree company must circulate its views on the offer to the shareholders, including any alternative offers, and must, at the same time, make known to its shareholders the substance of the advice given to it by the independent financial advisor appointed pursuant to Article 18 of these Regulations. An offeree company board circulars shall be published in accordance with the offer timetable announced by the Authority pursuant to paragraph (c) of Article 17 of these Regulations.

b) **Views of the board on the offeror's plans for the company and its employees**

The circular of the board of the offeree company required under paragraph (a) of this Article should, insofar as relevant, include its views on the offeror's plans in respect of the offeree company and its employees.

c) **Shareholdings and dealings**

- 1) The first circular from the board of the offeree company advising shareholders on an offer (whether recommending acceptance or rejection of the offer) must state:
 - a. the shareholdings, and the size of any substantial shareholding, of the offeree company in the offeror;
 - b. the shareholdings, and the size of any substantial shareholding of directors of the offeree company, in the offeree company and in the offeror (or in which the directors of the offeree company are interested).
 - c. the shareholdings, and the size of any substantial shareholding, in the offeree company and (in the case of a merger or securities exchange offer) in the offeror owned or subject to shareholder control by a subsidiary of the offeree company, by a pension fund of the offeree company or of a subsidiary of the offeree company, or by an advisor to the offeree company, or by any person acting in concert with the offeree company;
 - d. the shareholdings, and the size of any substantial shareholding, in the offeree company and (in the case of a merger or a securities exchange offer) in the offeror owned or subject to shareholder control by a person who has an arrangement of the kind referred to in sub-paragraph (3) of paragraph (d) of Article 19 of these Regulations with the offeree company or with any person who is acting in concert with the offeree company;
 - e. unless the Authority consents or otherwise, the shareholdings in the offeree company and (in the case of a merger or a securities exchange offer) in the offeror which are managed on a discretionary basis by a connected fund manager; and
 - f. whether the directors of the offeree company intend, in respect of their own shareholdings, to accept or reject the offer.

- 2) If there are no shareholdings or controlled shareholdings as prescribed above, then this fact shall be stated.
- 3) If any person whose shareholdings or substantial shareholdings are required by sub-paragraphs (1/a) or (1/b) of paragraph (c) of this Article to be disclosed (whether there is an existing holding or not) has dealt in the shares in question during the period beginning 12 months prior to the offer period and ending with the last day prior to the publication of the circular, the details, including dates and prices, must be stated. In all cases, if no such dealings have taken place this fact should be stated.
- 4) If any person whose shareholdings or substantial shareholdings are required by sub-paragraphs (c/1), (d/1) or (e/1) of paragraph (c) of this Article to be disclosed (whether there is an existing holding or not) has dealt in the shares in question during the offer period and ending with the last day prior to the publication of the circular, details of such dealing, including dates and prices, must be stated. In all cases, if no such dealings have taken place this fact shall be stated.

f) **Material contracts**

The first circular from the board of the offeree company advising shareholders on an offer must contain a summary of the principal contents of each material contract entered into by the offeree company (or any of its subsidiary companies) out of the ordinary course of business during the period beginning two years before the commencement of the offer period where the total amount of consideration for such contract is 10% or more of the offeree company's annual revenues according to the latest reviewed interim financial statements or latest audited annual financial statements, whichever is later. Such summary must include particulars of dates, parties, terms and conditions and any consideration passing to or from the offeree company or any of its subsidiaries.

Article 39 : Documents Available for Inspection

- a) Copies of the following documents must be made available for inspection as well as on the website of the offeror and/or offeree company from the date the offer document or offeree company board circular is published until the end of the offer period:
- 1) memorandum and articles of association of the offeror (if it is a legal entity) and the offeree company or equivalent documents;
 - 2) audited consolidated accounts of the offeror (if it is a legal person) and the offeree company for the last two financial years for which these have been published;
 - 3) any report, letter, valuation or other document which is exhibited or referred to in any document issued by or on behalf of the offeror and the offeree company;
 - 4) written consents of the financial advisors given in accordance with sub-paragraph (5) of paragraph (a) of Article 37 of these Regulations;
 - 5) any document evidencing an irrevocable commitment to accept an offer;
 - 6) documents relating to the financing arrangements for the offer where such arrangements are described in the offer document in compliance with sub-paragraph (4) of paragraph (a) of Article 37 of these Regulations; and
 - 7) documents relating to break-up fees or similar arrangements.
- b) The offer document or offeree company board circular must state the place (being the registered address of the offeror company or the offeree company respectively or such other place as the Authority may agree) where document required to be on display in accordance with paragraph (a) of this Article, can be inspected.
- c) A copy of each document required to be on display in accordance with paragraph (a) of this Article must, upon request, promptly be made available by the offeror or the offeree company to the other party and to any competing offeror or potential offeror.

Article 40 : Profit forecasts

a) Standards of care

A profit forecast must be compiled with due care and consideration by the relevant board of directors with the assistance of such professional advice as they may require, whose sole responsibility it is; the financial advisors must satisfy themselves that the forecast has been prepared in this manner by the board of directors.

b) Assumptions

When a profit forecast appears in a document addressed to shareholders in connection with an offer, or in a press announcement, any assumptions on which the forecast is based should be included.

c) Publication of a profit forecast

Unless the Authority consents otherwise, if, during an offer period (or in an announcement which commences an offer period), the offeree company or the offeror in a securities exchange publishes a profit forecast, the document or announcement in which the forecast or statement is first published must include the following:

- 1) a report from the auditor of the offeree company or the offeror (as applicable) stating that, in their opinion, the forecast or statement has been properly compiled on the basis stated and (in the case of a profit forecast only) that the basis of accounting used is consistent with the company's accounting policies; and
- 2) a report from the financial advisor(s) of the offeree company or the offeror (as applicable) stating that, in its (or their) opinion, the forecast or statement has been prepared with due care and consideration.

d) Statements which will be treated as profit forecasts

- 1) An estimate of profit for a period which has already expired shall be treated as a profit forecast.

- 2) Unless the Authority consents or otherwise, any unaudited profit figures published during an offer period must be prepared based on the same standards as a profit forecast, except the following:
 - a. unaudited statements of annual or interim results which have been published prior to the commencement of the offer period; and
 - b. any other unaudited statements of results which comply with the Capital Market Law, its Implementing Regulations.
- 3) A profit forecast for a limited period (such as the following quarter) is subject to this Article.
- 4) The Authority must be consulted in advance of publishing guaranteed profits in connection with an offer.
- 5) Earnings enhancement and offer benefits statements:
 - a. Parties related to an offer wishing to make earnings enhancement statements which are not intended to be profit forecasts must include within the statement an explicit and clear disclaimer to the effect that such statements should not be interpreted to mean that earnings per share will necessarily be greater than those for the relevant preceding financial period.
 - b. Parties related to an offer should consult the Authority in advance if they are in any doubt about earnings enhancement and offer benefits statements.

Article 41 : Asset valuations

a) Valuation Report

When a value of real or intangible property assets is stated in connection with an offer, it shall be supported at the time of publication by a valuation report containing the opinion

of a named independent licensed valuator, and the basis of valuation must be clearly stated. The document containing the valuation must also state that the valuer has given and not withdrawn his consent to the publication of his valuation report.

b) **Validity of Valuation**

A valuation report related to the offer made in accordance with this Article must state the effective date as at which the assets were valued, the address of the valuator and his professional qualifications. If a valuation is not current, the valuator must state that a current valuation would not be materially different. If this statement cannot be made, the valuation must be updated.

Article 42 : Publication of the offer document and the offeree company board circular

a) **Approval of the offer document**

- 1) The offeror must submit the offer document to the Authority for its consent.
- 2) An offer document may not be published without the prior consent of the Authority.
- 3) The Authority will grant its consent to the offer document within 30 days of receiving all information and documentation required under these Regulations.
- 4) If the Authority considers that the proposed offer may not be in the interest of investors or may result in a breach of the Capital Market Law or its Implementing Regulations, then it may take any of the following actions:
 - a. carry out any investigation which it considers appropriate including requiring the concerned person or its representative to appear before the Authority to answer the questions of the Authority and to explain any matters that the Authority considers relevant to the offer;

- b. require the concerned person or third parties to provide additional information or documents, or to confirm, in such manner as the Authority may specify, that the information provided is accurate; or
 - c. defer making any decision for such period as may be reasonably necessary to carry out a further study and examination or to allow for additional information to be provided.
- 5) If, having taken actions pursuant to sub-paragraph (4) of paragraph (a) of this Article, the Authority determines that the offer to be made pursuant to the offer document is still not in the interest of investors or may result in a breach of the Capital Market Law or its Implementing Regulations, the Authority shall, after giving the offeror a suitable opportunity to be heard, issue a notification to the offeror stating that the consent of the Authority to the offer document is not granted. A notification under this sub-paragraph may include a prohibition on a further offer for the offeree company on such terms as the Authority sees appropriate.
- 6) On receipt of a notification under sub-paragraph (5) of paragraph (a) of this Article, an offeror must notify the offeree company of, and publicly announce, the rejection of its offer document forthwith.

b) **Publication of the offer document**

The offer document must be published by, or on behalf of, the offeror in accordance with the timetable adopted by the Authority in accordance with sub-paragraph (1) of paragraph (c) of Article 17 of these Regulations.

c) **The offeree company board circular**

The board of the offeree company shall publish the circular containing its advise to shareholders regarding the offer in accordance with the offer timetable adopted by the Authority in accordance with sub-paragraph (1) of paragraph (c) of Article 17 of these Regulations.

d) **Material changes**

- 1) Unless the Authority consents otherwise, following the publication of the initial offer document or offeree board circular (as applicable) and until the end of the offer period, the offeror or the offeree company (as applicable) must promptly announce the following:
 - a. any material changes in information disclosed in any document or announcement published in connection with the offer which are material in the context of that document or announcement; and
 - b. any material new information which would have been required to have been disclosed in any previous document or announcement published during the offer period, had it been known at the time.
- 2) Where an announcement is required to be made under sub-paragraph (1) of paragraph (d) of this Article, the Authority may, in addition, require:
 - a. a document setting out the relevant information to be sent to shareholders in the offeree company and persons with information rights; and
 - b. made the documents including relevant information available to the offeree company's employee representatives (or, where there are no employee representatives, to the employees themselves); and
 - c. the offeror to publish an updated offer timetable, as adopted by the Authority.

e) **Subsequent documents**

If, following the publication of the initial offer document or offeree board circular (as applicable) and before the end of the offer period, an offeror or the offeree company publishes any subsequent document in connection with the offer, that document must include any material changes in information (relating to the offeror, offeree company or the offer), intentions or opinions disclosed in any previous document published by it in

connection with the offer which are material in the context of that document, or a statement that there have been no such material changes.

Article 43 : Timing of the offer

a) The offer period

- 1) All periods relating to an offer (whether revised or not) must be in accordance with the timetable proposed by the offeror and adopted by the Authority under sub-paragraph (1) of paragraph (c) of Article 17 of these Regulations including the period during which the offer will be open, and the period when the offer may become or be declared unconditional as to acceptances.
- 2) Where an offer is subject to the Competition Law, the offer may not become or be declared unconditional as to acceptances after the end of the period prescribed in the offer timetable in accordance with sub-paragraph (1/j) of paragraph (c) of Article 17 of these Regulations.
- 3) Where an offeror has stated that its offer will not be extended beyond a particular day, that offer may not become or be declared unconditional as to acceptances after that day.
- 4) After an offer has become or is declared unconditional as to acceptances, the offer must remain open for acceptance for not less than the period prescribed in sub-paragraph (k/1) of paragraph (c) of Article 17 of these Regulations. When, however, an offer is unconditional as to acceptances from the outset, an extension is not required providing that the position should be set out clearly in the offer document.

b) Announcement that offer is unconditional as to acceptances

On the last business day on which an offer may be declared unconditional as to acceptances an announcement shall be made immediately after closing of trading in the Exchange as to whether the offer is unconditional as to acceptances or has lapsed. Such announcement shall include, if possible, the details required by paragraph (a) of Article

31 of these Regulations, and must include a statement as to the current position in the count.

c) **Extension of Offer**

- 1) There is no obligation to extend an offer the conditions of which are not met by the first or any subsequent closing date.
- 2) In any announcement of an extension of an offer, either the next closing date must be stated or, if the offer is unconditional as to acceptances, a statement may be made that the offer will remain open until further notice in accordance with sub-paragraph (k/1) of paragraph (c) of Article 17 of these Regulations.

d) **Time for fulfillment of all other conditions**

All conditions must be fulfilled or the offer must lapse within the period prescribed in the timetable adopted in accordance with sub-paragraph (l/1) of paragraph (c) of Article 17 of these Regulations.

e) **Settlement of payment**

The offer payment must be made within the period prescribed in the timetable adopted in accordance with sub-paragraph (m/1) of paragraph (c) of Article 17 of these Regulations.

f) **Offeree company announcements**

The board of the offeree company should not announce any material new information including trading results, profit or dividend forecasts, asset valuations or proposals for dividend payments after the date prescribed in the timetable adopted by the Authority in accordance with sub-paragraph (1/g) of paragraph (c) of Article 17 of these Regulations. Where the publication of such results would be required by the Capital Market Law and/or its Implementing Regulations, the board of directors of the offeree company shall, as soon as possible, raise the issue to the Authority that will make a decision as it deems appropriate.

g) **Effect of lapsing**

The lapsing of an offer will result in the offer ceasing to be capable of further acceptance and the shareholders and the offeror thereafter ceasing to be bound by prior acceptances. Such effect shall be clearly stated in the offer document.

Article 44 : Revision of the offer

a) **Entitlement to revised payment**

If an offer is revised, it must be revised on terms no less favourable to offeree shareholders, and all shareholders who accepted the original offer must be entitled to the revised payment.

b) **New conditions for the offer**

Subject to the prior consent of the Authority, and only to the extent necessary to implement an improved or increased offer, the offeror may introduce new conditions.

Article 45 : Right to withdraw acceptance

A person who has accepted an offer must be entitled to withdraw his acceptance from the time prescribed in the timetable adopted by the Authority under sub-paragraph (1/i) of paragraph (c) of Article 17 of these Regulations.

Article 46 : Reduction or increase of Company's Shares

a) **Possible requirements to make an offer**

When for any reason the total number of a particular class of securities of a company listed on the Exchange is reduced, whether by redemption, repurchase or cancellation or increased by way of rights issuance or capitalisation issue or otherwise, resulting in each case in an increase in the percentage of voting rights held by a shareholder or group of shareholders acting in concert, the provisions of Article 23 and Article 24 of these Regulations shall apply (as applicable).

b) **Subsequent acquisitions of shares**

Subsequent to the reduction or increase referred to in paragraph (a) of this Article, all shareholders will be subject, in making further acquisitions of shares in the company, to the relevant provisions of these Regulations.

c) **Redemption or purchase of securities by the offeree company**

1) **Providing information to shareholders**

If a notice for the general assembly of shareholders of the offeree company is sent for approval of redemption or purchase by the offeree company of its own shares during the course of an offer, or 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, the board of the offeree company must include information about the offer, merger or anticipated offer in the notice convening the general assembly.

2) **Public disclosure**

For the purpose of Article 22 of these Regulations, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by the offeree company. The total amount of securities of the relevant class remaining in issue following the redemption or purchase must also be disclosed.

3) **Disclosure in the offeree company board circular**

The offeree company board circular advising shareholders on an offer must state the amount of relevant securities of the offeree company which the offeree company has redeemed or purchased during the period commencing 12 months prior to the offer period and ending with the latest date prior to the publication of the circular, and the details of any such redemptions and purchases, including dates and prices.

d) **Redemption or purchase of securities by the offeror company**

1) **Public disclosure**

For the purpose of Article 22 of these Regulations, dealings in relevant securities include the redemption or purchase of, or taking or exercising an option over, any of its own relevant securities by an offeror.

2) **Disclosure in the offer document**

The offer document must state the amount of relevant securities of the offeror which the offeror has redeemed or purchased during the period commencing 12 months prior to the offer period and ending with the latest date prior to the publication of the offer document and the details of any such redemptions and purchases, including dates and prices.

Article 47 : Related parties' Offers

a) **Requirements to related parties' offers**

Where an offeror makes an offer to which these Regulations apply, and there exists any related party, the offer shall be made subject to the additional conditions set out in this Article.

b) **Shareholders consent as a precondition to offer**

1) Any offer made in relation to which there is a related party shall be conditional on independent and disinterested shareholders' approval received in accordance with this Article.

2) The announcement of any offer made under Article 17 of these Regulations shall include the following:

a. the name of the related party and of any person acting in concert with it, and the fact that such person is a related party; and

- b. the fact that, by virtue of the existence of a related party in relation to the offer, the offer will be subject to an independent and disinterested shareholders' vote as required by these Regulations.
- 3) Where this Article applies to an offer, it must be a term of the offer that it will lapse if, by the closing date for the offer, the offeror has not obtained approval of a majority of the offeree company's independent and disinterested shareholders in voting in general meeting, to the completion of the offer.
- 4) If requested by the offeror who owns 5% or more of the offeree company, the board of the offeree company must convene a general assembly of shareholders and send a circular to shareholders prior to the date of such general assembly in accordance with the terms of its bylaws and the provisions of the Companies Law and the Corporate Governance Regulations. Such circular must include at least the following:
- a. a copy of the offer document;
 - b. the details of any existing holdings of related party in each of the offeror and the offeree company, including:
 - 1. any holdings which such related party (or any person acting in concert with it) owns or over which it has shareholding control;
 - 2. any holdings in respect of which such related party (or any person acting in concert with it) holds an option to purchase;
 - c. the details of any position of such related party and any person acting in concert with it, in the offeror or the offeree company (as applicable);
 - d. details of any outstanding derivative referenced to the securities of the offeror or the offeree company (or any of their affiliates) entered into by such related party and any person acting in concert with it;

- e. a statement whether the directors (excluding the related party) are of the view that the proposed offer is fair and reasonable so far as the shareholders (other than the related party and of any person acting in concert with it) are concerned, that the directors have reached such a view without the related party taking any role in the matter, and that the directors have been so advised by a competent independent financial advisor; and
 - f. a statement that the related party has undertaken not to vote on the relevant resolution at the general assembly, and will procure that persons acting in concert with it will not vote.
- 5) The board of directors of the offeree company shall ensure that the votes of the related party and of any person acting in concert with it are not counted in determining the resolution approving the offer at the shareholders' general assembly convened in accordance with sub-paragraph (4) of paragraph (b) of this Article.
- 6) In the event that the resolution approving the proposed offer is not passed, the offer shall lapse and the offeror shall promptly notify the Authority of that fact.

PART 3
MERGER

Article 48 : Types of Merger Transactions

Without prejudice to the Capital Market Law, Companies Law, and its Implementing regulations, a company may enter into a merger transaction through any of the following.

a) **Merger by way of absorption**

An offeree company may merge into another entity by way of absorption by an offeror which shares can be listed on the Exchange or be privately held.

1) **Offeree Company absorbed by another listed Company**

- a. If a merger involves the absorption of an offeree company by an offeror which shares are listed on the Exchange, an offer to purchase all of the offeree company's shares shall be made by the offeror in accordance with Part 2 of these Regulations, and new shares in the offeror shall be offered and/or issued to the shareholders of the offeree company (being acquired) in accordance with the provisions of Capital Market Law and its Implementing Regulations.
- b. Upon successful completion of the share exchange mentioned in subparagraph (1/a) of paragraph (a) of this Article and closing of the merger transaction, the assets of the offeree company are transferred to the offeror (the absorbing entity) which will continue to exist. The listing of the offeror (absorbing entity) will remain in place while the offeree company (absorbed entity) will cease to exist and its shares will be delisted from the Exchange in accordance with the Capital Market Law and its Implementing Regulations.

2) **Offeree Company absorbed by a non-listed company**

- a. If a merger involves the absorption of an offeree company by an offeror which shares are not listed on the Exchange, an offer to purchase all of the offeree company's shares shall be made by the offeror in accordance with Part 2 of these Regulations, and new shares in the offeror shall be offered and/or to the shareholders of the offeree company (being absorbed) in accordance with the provisions of Capital Market Law, Companies Law and its Implementing regulations.
- b. Upon successful completion of the share exchange mentioned in sub-paragraph (2/a) of paragraph (a) of this Article and closing of the merger transaction, the assets of the offeree company are transferred to the offeror (the absorbing entity) which will continue to exist and the offeree company (absorbed entity) will cease to exist and its shares will be delisted from the Exchange in accordance with the Capital Market Law and its Implementing Regulations.

b) **Merger by way of forming a new legal entity**

- 1) If a merger involves the formation of a newly formed legal entity into which the offeree company and another merging company will merge, an offer for the purchase of all the shares of the offeree company's shareholders shall be made by the newly formed legal entity in accordance with Part 2 of these Regulations, and shares in the newly formed legal entity shall be issued to the shareholders of the offeree company and the other merging company in accordance with the provisions of the Capital Market Law, Companies Law and its Implementing Regulations.
- 2) Upon successful completion of the offers mentioned in sub-paragraph (1) of paragraph (b) of this Article and closing of the merger transaction, the assets of the offeree company and of the other merging company are transferred to the newly formed legal entity (the absorbing entity) and the offeree company and

other merging company (absorbed entities) will cease to exist, and the offeree company's shares will be delisted from the Exchange in accordance with the Capital Market Law and its Implementing Regulations.

- 3) Should the newly formed legal entity (the absorbing entity) wish to list its shares on the Exchange, it shall submit a new application to the Authority in Accordance with the Capital Market Law and its Implementing Regulations.

Article 49: Rules of merger transactions and a 100% Securities Exchange Offers

- a) The provisions of Chapter 2 of Part 2 of these Regulations -applicable to takeover offers- shall apply *mutatis mutandis* to merger transactions and a 100% Securities Exchange Offers.
- b) Sub-paragraphs (1/f), (1/g), (1/h), (1/i), (1/j), (1/k), (1/l), (1/m), (2) and (3) of paragraph (c) of Article 17 of these Regulations shall not apply to merger transactions and a 100% Securities Exchange Offers.

Article 50 : Required acceptance and approvals for a merger transaction and a 100% Securities Exchange Offer

- a) The offer (related to a merger transaction or Securities Exchange Offer) shall not be declared unconditional as to acceptances unless the offeror has acquired or agreed to acquire (either pursuant to the offer or otherwise) shares carrying over 50% of the voting rights attributable to any class of shares of the offeree company.
- b) Notwithstanding paragraph (1) of this Article and paragraph (b) of Article 23 of these Regulations, the implementation and closing of a merger transaction or a Securities Exchange Offer to acquire the entire share capital of an offeree company in exchange of shares in the Offeror to be offered to the shareholders of the Offeree Company is not permitted until the passing of resolutions of the extraordinary general assembly of shareholders of the offeror and the offeree company on the merger transaction or such Securities Exchange Offer to be passed in accordance with the provisions of the Companies Law.

PART 4

Reverse Takeover and Demergers

Article 51: General provisions

- a) When calculating the Percentage Ratio in order to determine whether the transaction (or several transactions) constitutes a Reverse Takeover or a Demerger requiring shareholders' approval, the Listed Company should apply all applicable Class Tests, using as the denominator of the Percentage Ratios, the latest published figures of the asset value, revenues and profits as shown in the Listed Company's latest reviewed interim financial statements or audited annual financial statements, whichever is later; and the market value of the Listed Company at the time of announcing the transaction(s), as applicable.
- b) When assessing whether a material change has taken place in the Listed Company as a result of a transaction, the Listed Company should take the following into consideration:
 - 1) the extent to which the transaction will change the strategic direction or nature of the Listed Company's business;
 - 2) whether the Listed Company's business will be part of a different industry sector following the completion of the transaction; or

Article 52: Potential Suspension of Listing when announcing a Reverse Takeover

- a) A Listed Company must contact the Authority as early as possible:
 - 1) before announcing a Reverse Takeover which has been agreed or is in contemplation, to discuss whether a suspension of listing is appropriate; or
 - 2) where details of the Reverse Takeover have leaked, to request a suspension.
- b) A Reverse Takeover is deemed in contemplation in the following situations:
 - 1) the Listed Company has approached the Target's board of directors;
 - 2) the Listed Company has entered into an exclusivity period with a Target; or
 - 3) the Listed Company has been given access to begin due diligence work (whether or not on a limited basis).
- c) When a Reverse Takeover is announced or relevant information leaked, and there will be insufficient publicly available information about the proposed transaction and the Listed

Company will be unable to assess accurately its financial position and inform the market accordingly the Authority may suspend the listing of the listed company's shares.

- d) If the Listed Company makes an announcement containing sufficient information about the Target, then the Authority may, if it is satisfied that following the Listed Company's announcement, there is sufficient publicly available information about the proposed transaction, it may agree with the Listed Company that a suspension is not required at this point in time.

Article 53: Announcement and conditions of a Reverse Takeover

In relation to a Reverse Takeover to which it is a party, a Listed Company must:

- 1) Announce to the public as soon as possible after the terms of a Reverse Takeover are agreed and make follow up supplementary announcements relating to any significant change affecting any matter contained in the original announcement or if a significant new matter has arisen which would have been required to be mentioned in that earlier announcement if it had arisen at the time of the preparation of that announcement. Such original announcement must include:
 - a. details of the transaction, including the name of the other party to the transaction;
 - b. a description of the businesses carried on by, or using, the net assets the subject of the transaction;
 - c. the consideration, and how it is being satisfied (including the terms of any arrangements for deferred consideration);
 - d. the value of the gross assets subject of the transaction;
 - e. the profits attributable to the assets subject of the transaction;
 - f. the effect of the transaction on the Listed Company including any benefits which are expected to accrue to the company as a result of the transaction;
 - g. details of any service contracts of proposed directors of the Listed Company; and
 - h. the latest three years of pro forma financial information of the Target to be acquired post transaction.
- 2) Appoint a competent and independent licensed valuer to value the Target.
- 3) Provide its shareholders with an explanatory circular and obtain their prior approval to the consummation of the transaction in general assembly meeting convened as per

the provisions of the Companies Law, after obtaining the Authority's approval for publishing the circular.

- 4) Ensure that any agreement effecting the transaction is conditional on the approval of shareholders.

Article 54: Cancellation of Listing when completing a Reverse Takeover

- a) When a Listed Company completes a Reverse Takeover, the listing of such Listed Company's equity shares shall be cancelled.
- b) Where the Listed Company's listing is cancelled following completion of a Reverse Takeover, such company, should it wish to be relisted, must re-apply for the listing of the shares and satisfy the relevant listing requirements set out in the Capital Market Law and Its Implementing Regulations.

Article 55: Applying Class Tests and calculating Percentage Ratios

- a) To determine whether a transaction constitutes a reserves takeover or a Demerger requiring shareholders' approval by reference to the Percentage Ratios, the Listed Company should assess the size of the transaction relative to that of the Company it proposes to establish. The comparison of size is made by using the Percentage Ratios resulting from applying the Class Test calculations to a transaction as per the details set out in Annex (1) of these Regulations.
- b) The Authority may, where any of the calculations of the Percentage Ratios produces an anomalous result or is inappropriate to the sphere of activity of the Listed Company, disregard the calculation and substitute other relevant indicators of size, including industry specific tests. The Listed Company must provide alternative tests which it considers appropriate to the Authority for consideration.
- c) If any of the Percentage Ratios changes to the extent that the classification of the transaction as a Reverse Takeover is altered between the time that any transaction is first discussed with the Authority (if applicable) and the time of its announcement, the Listed Company must

inform the Authority of such changes. The Listed Company must comply with the relevant requirements applicable to the transaction at the time of its announcement.

Article 56: Aggregation of transactions

The Authority may require a Listed Company to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12 month period or are otherwise related. In such cases, the Listed Company must comply with the requirements for the classification relevant to the transaction when aggregated and the figures to be used for determining the Percentage Ratios are those as shown in the latest reviewed interim financial statements or audited annual financial statements, whichever is later.

Article 57: Condition relating to the Listed Company

A Listed Company wishing to effect a Demerger must have completed at least three full financial years since the date of its first listing.

Article 58: Shareholders' approval

If in the contemplated Demerger any of the Percentage Ratios in Annex 1 of these Regulations is 25% or more, the Listed Company must obtain the prior approval of its shareholders convened in a general assembly meeting held in accordance with the Companies Law. Any shareholder having any direct or indirect interest in the proposed Demerger must abstain from voting on such transaction in the general assembly meeting.

Article 59: Specialised Committee and Financial Advisor

- a) In relation to any Demerger transaction subject to shareholders' approval pursuant to Article 58 of these Regulations, the Listed Company shall establish a specialised committee (which shall consist only of independent directors and/or other independent third parties who do not have any substantial interest in the proposed Demerger) to advise shareholders as to whether the terms of the relevant Demerger are fair and reasonable and whether such a Demerger is in the best interests of the Listed Company and its shareholders as a whole.

- b) In addition, the Listed Company shall appoint an independent financial advisor authorised by the Authority to provide advisory services, to make recommendations to the specialised committee and the shareholders as to whether the terms of the relevant Demerger are fair and reasonable and whether such a Demerger is in the best interests of the Listed Company and its shareholders as a whole.

Article 60: Circular to Shareholders

- a) In relation to any Demerger that is subject to shareholders' approval pursuant to Article 58 of these Regulations, the Listed Company shall prepare a circular regarding the proposed Demerger to be submitted to the shareholders and published and made available to the public at least (10) days prior to the date of the related general assembly meeting during which the shareholders will vote on the Demerger. Such circular must contain at least:
 - 1) Sufficient details of the proposed Demerger;
 - 2) a separate letter from the specialised committee advising shareholders as to whether the terms of the relevant Demerger are fair and reasonable pursuant to Article 59 of these Regulations and whether such a Demerger is in the best interests of the Listed Company and its shareholders as a whole, taking into account the recommendations of the independent financial advisor; and
 - 3) a separate letter from the independent financial advisor containing its recommendation to the specialised committee and shareholders as to whether the terms of the relevant Demerger are fair and reasonable and whether such a Demerger is in the best interests of the Listed Company and its shareholders as a whole.
- b) The Circular and each of the letters mentioned in paragraph (a) of this Article must set out the reasons for and the key assumptions made and factors taken into consideration in forming that opinion.

Article 61: Listing Application requirement

Where the Demerged Entity intends to be listed on the Exchange, it must satisfy all requirements of the Capital Market Law and its Implementing Regulations (as applicable) imposed on new listing applicants.

Article 62: Specific Listing Requirements

- a) The Demerger Entity will not be considered suitable for listing on the Exchange if its assets and operations are substantially the same as those of the existing Listed Company, taking into consideration the Listed Company and Demerged Entity's business or commercial reasons for listing.
- b) The Listed Company shall retain a sufficient level of operations and sufficient assets to support its separate listing status following the listing of the Demerged Entity. The Listed Company itself would be required to retain, in addition to its interest in Demerged Entity, sufficient assets and operations of its own.
- c) There should be a clear distinction between the business(s) retained by the Listed Company and the business(s) transferred or held by the Demerged Entity.
- d) The Demerged Entity should be able to function independently of the Listed Company, with its own independent executive management and administrative capability without requiring any support of the Listed Company, save for arrangements for the sharing of administrative, non-management functions.

Article 63: Announcement of a Demerger

A Listed Company must announce the listing application of the Demerged Entity as soon as it submits the full listing application to the Authority (or its equivalent in any overseas jurisdiction). Where an overseas jurisdiction Laws require a confidential filing, the Listed Company shall announce to the public the intention to submit a listing application in an overseas jurisdiction, without mentioning the name of the jurisdiction or the market in which the Demerged Entity intends to be listed in.

PART 5

ENFORCEMENT OF THESE REGULATIONS

Article 64 : Powers and duties of the Authority to enforce these Regulations

- a) The Authority has powers to:
- 1) ensure that the offeror and offeree company and their directors act in accordance with the principles and provisions of these Regulations;
 - 2) oversee and supervise conduct of the offeror and offeree company to ensure the principles and provisions of these Regulations are complied with; and
 - 3) give directions, issue orders, notices and set requirements and, in particular, adopt timetables for conduct of individual offers, to ensure the principles and provisions of these Regulations are complied with.
- b) Any person who is subject to these Regulations may appeal to the Committee in respect of any decision or action that the Authority takes under the provisions of these Regulations.

PART 6

PUBLICATION AND ENTRY INTO FORCE

Article 65 : Publication and entry into force

These Regulations shall become effective upon their publication.

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ANNEX 1

CLASS TESTS

This Annex sets out the following Class Tests:

1. **The Assets test:**

The assets test is calculated by dividing the total gross assets which are the subject of the transaction by the total gross assets of the Listed Company, according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.

2. **The Profits test:**

- a) The profits test is calculated by dividing the net profits attributable to the assets which are the subject of the transaction by the net profits of the Listed Company, according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
- b) If the acquisition of the interest in a company will not result in consolidation of the Target then the profits test is not applicable.

3. **Revenues test:**

The revenues test is calculated by dividing the gross revenues attributable to the assets which are the subject of the transaction divided by the gross revenues of the Listed Company, according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.

4. **Consideration test:**

The consideration test is calculated by dividing the consideration (i.e. the amount paid to the contracting party in the transaction) by the total market capitalisation of the Listed Company (excluding treasury shares). The total market capitalisation is the average closing price of the Listed Company's securities as listed on the Exchange for the five business days immediately preceding the date of the transaction.

5. Equity capital test:

The equity capital test is calculated by dividing the number of shares to be issued by the Listed Company as consideration (if any) divided by the total number of the Listed Company's issued shares immediately before the transaction.

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