

New Takeover Rules Notification

Background

On 13 May 2011 the Capital Market Supervisory Board (the regulatory body now responsible for the Takeover Rules, instead of the Securities and Exchange Commission) issued its Notification no. TorJor. 12/2554 re: Rules, Conditions and Procedures for the Acquisition of Securities for Business Takeovers. This new Notification become effective on 1 June 2011.

The CMSB's new Notification amends the existing Takeover Rules but is understood to cover only some of the issues to be revised. A number of other issues raised at a public hearing held in 2010 are in process with the CMSB and expected to be covered later.

There are three key amendments made by the new Notification:

Trigger points

Basically, a mandatory tender offer is triggered when an acquisition of shares results in the acquirer and its related parties and any parties with whom it is acting in concert, holding 25%, 50% or 75% or more of all voting rights of an issuer.

The existing Takeover Rules stipulates that the trigger points of 50% and 75% are calculated by reference to the total voting rights of the issuer, whilst the trigger point of 25% is instead calculated by reference to "the total number of issued shares of the issuer or, if preference shares with less than one vote per share have been issued by that issuer, an acquisition of ordinary shares that results in the ordinary shares held by such person in the issuer increasing such that it reaches or exceeds 25% of the total ordinary shares issued by the issuer....."

The new Notification simplifies the convoluted wording concerning the 25% trigger point in the existing Takeover Rules to just "25% of the total voting rights of the issuer".

Exemption to prohibition on further offers following an offer that is withdrawn

Under the existing Takeover Rules, if an offeror makes a tender offer subject to certain pre-conditions and then announces the offer is withdrawn because the pre-conditions were not satisfied, it is prohibited from making a further tender offer, or taking action that triggers a requirement to make a tender offer, for that issuer for one year from the date the offer is withdrawn.

The new Notification creates an exception to this prohibition if non-satisfaction of the pre-conditions was for reasons beyond the offeror's control. In such circumstances the offeror is allowed to make another tender offer without being required to wait one year.

Key Issues

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Trigger points

Exemption to prohibition on further offers following an offer that is withdrawn

Requirements after making a tender offer

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Requirements after making a tender offer

Under the existing Takeover Rules, requirements are imposed following a tender offer that (i) prohibit the offeror from paying more than the price specified in the offer for any share within the following six months and (ii) bind the offeror to adhere to its stated intentions concerning the issuer in the offer document for one year, which only apply once an offeror has become a shareholder in the issuer with a shareholding that reaches or exceeds any trigger point.

The new Notification confirms that these requirements become effective immediately upon the tender offer being announced, regardless of whether securities are acquired pursuant to the offer. Thus, an offeror will be committed to pay no more than the offer price for six months and to adhere to its stated intentions concerning the issuer, even though the offer may fail or be withdrawn.

If you would like further information on any issue raised in this briefing note please contact the author at the address above

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