

# **OMAN TAKE-OVER AND ACQUISITION REGULATION**

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## OMAN TAKE-OVER AND ACQUISITION REGULATION

[In exercise of the powers conferred by the Capital Market Law, the CMA, prescribes the following Regulation:]

### PART I

#### PRELIMINARY

##### Citation and commencement

1. (1) This Regulation may be cited as the **Oman Take-Over and Acquisition Regulation**.

(2) This Regulation comes into operation on [            2015].

(3) **This Regulation shall apply to any person who has any intention or carries out an acquisition to obtain 25% or more shareholding control of any public joint stock company listed on the MSM or any stock exchange in the Sultanate of Oman under section 9(1).**

##### Interpretation

2. (1) In this Regulation:

“**CMA**” means the Capital Market Authority, Sultanate of Oman.

“**CML**” means the Capital Market Law of the Sultanate of Oman.

“**competing take-over offer**” means a new take-over offer for an offeree given during the offer period, and does not include a take-over offer that has been revised by the offeror;

“**compulsory acquisition**” means the acquisition by the offeror of all remaining shares of a public joint stock company listed on the MSM, after obtaining acceptances amounting to **ninety per centum (90%)** in the nominal value of those shares or of the shares of that class (**excluding** shares already held at the date of the take-over offer by the offeror or persons acting in concert), and **subject** to the approval of the CMA and the offeree shareholders at their EGM (provided that the application shall be attached with the offeror’s plan and direction for the company and the time period required for executing the plan);

**“convertible securities”** means securities such as options and other securities that are issued by the offeror or offeree which are capable of being converted into new voting shares or voting rights of the offeror or offeree;

**“downstream entity”** means a subsidiary or associate company of an upstream entity;

**“first closing date”** means the earliest day a take-over offer can be closed for acceptance, which is **not less than twenty-one (21) days but not more than sixty (60) days** from the dispatch of the offer document;

**“market day”** means a day on which the stock exchange in Oman is open for trading in securities;

**“mandatory offer”** means a take-over offer made or to be made under this Regulation of any class of the voting shares or voting rights of a company from all offeree shareholders pursuant to **section 9(1)**;

**“MSM”** means the Muscat Securities Market of the Sultanate of Oman;

**“Oman”** means the Sultanate of Oman.

**“offer document”** means an offer document referred to in **section 11**;

**“offeree shareholders”** means holders of voting shares or voting rights of the offeree to which the take-over offer relates other than the offeror;

**“offer period”** means the period commencing from the date the offeror makes an announcement of a take-over offer or proposes a possible take-over offer under **subsection 10(7)** or sends a written notice under **subsection 10(8)**, whichever is earlier, until the date when the take-over offer becomes or is declared unconditional as to acceptances, closes, lapses, expires or is withdrawn, whichever is later;

**“press advertisement”** means an advertisement to be issued in at least three (3) main newspapers, one of which shall be in Arabic language and one in the English language, and an announcement to be made through the MSM simultaneously, for three (3) consecutive days;

**“public shareholder”** means all persons or members of the public **but excludes:**

- (a) **directors of a listed company and its subsidiaries;**
- (b) **substantial shareholders of a listed company, except** where such shareholder fulfills all the following requirements, in which case such shareholder may be included as a “public shareholder”:
  - (i) such shareholder’s interest, directly or indirectly is not more than fifteen per centum (15%) of the total number of shares of the listed company;
  - (ii) such shareholder is not a promoter of the listed company; **and**
  - (iii) such shareholder is either–
    - (A) a statutory institution who is managing funds belonging to contributors or investors who are members of the public; or
    - (B) an entity established as a collective investment scheme, such as investment funds (but excluding investment holding companies);
- (c) **associates of directors or substantial shareholders of a listed company;**

**“public shareholding spread”** means that the listed company on the MSM must ensure at all times **at least twenty-five per centum (25%)** of its total listed shares (excluding treasury shares) or listed units are in the hands of public shareholders or unit holders after completion of the take-over offer, if it wishes to remain listed on the MSM and to ensure a more liquid market;

**“relevant stock exchange”** means any stock exchange in or outside Oman on which the securities of the company are listed;

**“reverse take-over”** means a situation where an offeror makes a take-over offer for the voting shares or voting rights of an offeree by means of an exchange of shares such that if the take-over offer is accepted, the offeree shareholders would have control over the offeror;

**“securities exchange offer”** means a take-over offer in which the consideration includes an issue of new shares or an exchange of securities of the offeror or any other body corporate;

**“substantial shareholder”** means a person who has an interest in the voting shares or voting rights of a company and the aggregate amount of the voting share or voting right is **not less than five per centum (5%)** of all the voting shares or voting rights in the company;

**“take-over offer”** means an offer made to acquire all or part of the voting shares, or any class or classes of voting shares in the company;

**“TCS”** means the Trade Confirmation Service provided by the MSM for special orders transaction under Articles 88 to 91 of the Executive Regulation of the CML;

**“ultimate offeror”** means:

- (a) a person in accordance with the directions and instructions the potential offeror or any person acting in concert with the potential offeror is accustomed to act; or
- (b) a person having an interest in the proposed take-over offer pursuant to an agreement, arrangement or understanding with the potential offeror or any person acting in concert with the potential offeror;

**“upstream entity”** means the ultimate or immediate holding company of a downstream entity;

(2) Where a period specified in the Regulation ends on a day which is not a market day, the period is extended until the next market day.

(3) For the purposes of this Regulation, any reference to the board of directors of an offeree in relation to an investment fund, means the board of directors of the Investment Committee.

### **Company**

3. The following entities are prescribed to be a company subjected to this Regulation:

- (a) a company that is incorporated outside of Oman but listed on the MSM or any stock exchange in Oman; **and**
- (b) an investment fund that is listed on the MSM or any stock exchange in Oman.



## **Persons acting in concert**

4. (1) A reference to “persons acting in concert” shall be construed as a reference to persons who, pursuant to an agreement, arrangement or understanding, co-operate to:

- (a) acquire jointly or severally voting shares of a company for the purpose of obtaining control of that company; **or**
- (b) act jointly or severally for the purpose of exercising control over a company.

(2) For the purposes of **subsection (1)**, an agreement, arrangement or understanding means an agreement, arrangement or understanding whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force.

(3) Without prejudice to the generality of **subsection (1)**, the following persons **shall be presumed to be persons acting in concert**, unless the contrary is established:

- (a) a company and its related and associate companies;
- (b) a company and any of its directors, or the parent, child, brother or sister of any of its directors, or the spouse of any such director or any such relative, or any related trusts;
- (c) a company and any pension fund established by it;
- (d) a person and any investment company or fund whose investments such person manages on a discretionary basis;
- (e) a financial adviser and its client which is a company, where the financial adviser manages on a discretionary basis the company’s funds and has **ten per centum (10%) or more** of the voting shares in that company; **and**

- (f) a person who owns or controls **twenty per centum (20%) or more** of the voting shares of a company falling within **paragraph (a)** and any parent, child, brother or sister of such person, or the spouse of such person or any such relative, or any related trusts together with one or more persons falling within **paragraph (a)**.

(4) For the purposes of **paragraph (3)(a)**, an “**associated company**” means a company in respect of which **not less than twenty per centum (20%)** of the voting shares of that company are held by another company.

(5) The following persons are also prescribed to be persons acting in concert:

- (a) a company, the directors of the company, and the shareholders of the company where there is an agreement, arrangement or understanding between the company or directors of the company, and shareholder of the company which restricts the director or the shareholder from:
  - (i) offering or accepting a take-over offer for the voting shares or voting rights of the company; or
  - (ii) increasing or reducing his shareholdings in the company; **and**
- (b) a person who is a partner of a partnership.

(6) For the purpose of this section, “**partnership**” means two (2) or more persons having a business arrangement and common interest in several companies between them.

(7) For the purpose of rebutting the presumption that two (2) or more persons are acting in concert with one another, the CMA may take into consideration the following factors:

- (a) the pattern, volume, timing and prices of shares or rights purchased by such persons;
- (b) voting pattern of the shares or rights by such persons and any business activities in common or other ties;
- (c) any financial dependence between such persons;

- (d) animosity/hostility amongst the persons acting in concert; or
- (e) any other factors as may be determined by the CMA.

### **Delivery of document**

5. Where a provision in this Regulation requires a document to be dispatched, delivery of the document shall be presumed to be effected:

- (a) by properly addressing, prepaying and dispatching the document by post; and
- (b) at the time when the document would have been delivered in the ordinary course of the post,

unless the contrary is proven.

### **Rulings**

6. This Regulation shall be read together with any laws, regulations or rulings issued by the CMA.

## PART II

### CONDUCT DURING TAKE-OVER, ACQUISITION AND COMPULSORY ACQUISITION

#### Conduct of persons who intend or are obliged to make a take-over offer, effect an acquisition, undertake a compulsory acquisition, etc.

7. (1) Any person who intends or is obliged to make a take-over offer, effect an acquisition, undertake a compulsory acquisition or who intends to apply for an exemption from the provisions of this Regulation **shall appoint and seek advice from advisers who are Issue Managers licensed by the CMA.**

(2) An adviser giving advice in relation to a take-over offer, acquisition, compulsory acquisition or any application for exemption shall give full effect to the provisions of this Regulation and any rulings made by the CMA.

(3) Without limiting the generality under **subsection (2)**, the adviser shall:

- (a) provide objective and appropriate advice that would enable the person concerned to make informed decisions;
- (b) facilitate early consultation with and consideration by the CMA (if necessary) to enable prompt action by persons involved in a take-over offer, acquisition or compulsory acquisition; and
- (c) ensure that any application for an exemption, ruling or any other matter pertaining to a take-over offer, acquisition or compulsory acquisition complies with the format and content of the applications specified by the CMA.

(4) For the purposes of this section, only those persons who meet the eligibility criteria as an Issue Manager as set out under the Executive Regulation of the CML issued by the CMA or persons approved by the CMA are permitted to submit proposals for the purpose of take-over offers, acquisitions and compulsory acquisitions.

## **Conduct of persons involved in take-over offer, acquisition or compulsory acquisition**

8. (1) A person who is involved in a take-over offer, acquisition or compulsory acquisition shall:

- (a) observe good standards of commercial behavior so that the minority shareholders are given a fair and equal opportunity to consider the merits and demerits of a take-over offer, acquisition or compulsory acquisition;
- (b) provide fair and equal treatment to all shareholders, in particular the minority shareholders;
- (c) ensure that information is not furnished to shareholders on a selective basis during the course of a take-over offer or acquisition transaction, or when such transaction is in contemplation, except where the information is furnished in confidence to a *bona fide* potential offeror by the offeree or *vice versa*;
- (d) treat documents or advertisements addressed to shareholders containing information, opinions or recommendations from the board of directors of an offeror or offeree, or their respective advisers with the same standards of care as if the documents or advertisements were a prospectus; and
- (e) prohibit the creation of false markets in the securities of the offeree, the offeror or any other company concerned in the take-over offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.

(2) An adviser who is involved in a take-over offer, acquisition or compulsory acquisition shall ensure that:

- (a) the offeror is able and will continue to be able to implement the take-over offer before an acquisition which will result in him incurring the obligation to make a take-over offer;

- (b) the notice of the take-over offer is dispatched when the obligation arises;  
and
- (c) financing for the take-over offer is arranged, if required.

(3) The board of directors of an offeree who are involved in a take-over offer, acquisition or compulsory acquisition shall:

- (a) safeguard the interests of the offeree as a whole;
- (b) not deny the holders of securities the opportunity to decide on the merits of the take-over offer; and
- (c) not take any action or make any decision without the approval of its shareholders at a general meeting or the CMA, which could result in:
  - (i) any take-over offer being frustrated; or
  - (ii) the offeree shareholders being denied an opportunity to decide on its merits of the take-over offer,

in the event a *bona fide* take-over offer has been communicated to the board of directors, or where the board of directors has reason to believe that a *bona fide* take-over offer is imminent.

(4) The board of directors of an offeree who are involved in a take-over offer, acquisition or compulsory acquisition shall seek advice from advisers on the merits of the take-over offer, acquisition or compulsory acquisition.

(5) All persons involved in a take-over offer, acquisition or compulsory acquisition shall comply with any other relevant provisions under the CML.

### **PART III**

#### **MANDATORY OFFER**

##### **Mandatory offer**

9. (1) A mandatory offer **shall apply** to an acquirer in the following situations:
- (a) where the acquirer has obtained a **twenty-five per centum (25%) or more** shareholding control in a company; **or**
  - (b) where the acquirer has acquired more than two per centum (2%) of the voting shares or voting rights of a company in any period of six (6) months and that acquirer's holding was more than twenty-five per centum (25%) but not more than fifty per centum (50%) of the voting shares or voting rights of the company during that six (6) months period;

irrespective of how the control or acquisition is to be effected.

(2) The CMA may grant an exemption in writing from a mandatory offer obligation and the provisions of this Regulation. Any application for an exemption must be submitted to the CMA **before a mandatory offer obligation is triggered**. In granting an exemption, the CMA may take into consideration issues relating to the national interest of Oman or the interest of investors at large or such other reasons as the CMA deems fit. In addition, the CMA may impose any condition, restriction or limitation.

### **PART IV**

#### **ANNOUNCEMENT, NOTICE, OFFER DOCUMENT AND STEPS OF TAKING-OVER**

##### **Announcement**

10. (1) To preclude the creation of false markets, a potential offeror shall, where there is untoward movement or increase in the volume of share turnover of an offeree, make an announcement on the MSM as to whether there is a take-over or possible take-over offer before approaching the board of director of the offeree.

(2) The board of directors of the offeree shall, after being approached by the potential offeror, make an announcement on the MSM as to whether there is a take-over offer or possible take-over offer and therefore shall keep a close watch on its share price and volume of share turnover.

(3) A potential offeror shall not attempt to prevent the board of directors of an offeree from making an announcement on the MSM or requesting the stock exchange to grant a temporary suspension of listing at any time the board of directors of the offeree thinks appropriate.

(4) Until an announcement of a take-over offer or possible take-over offer has been made under **subsection (7)**, a potential offeror or offeree is required to make a brief announcement on the MSM that negotiations are taking place.

(5) In cases where an announcement of a take-over offer or possible take-over offer is premature or inappropriate and no further announcement pursuant to **subsection (4)** has been made within one (1) month, a potential offeror or offeree **shall make a monthly announcement** on the MSM setting out the progress on the negotiations until:

- (a) an announcement of a take-over offer or possible take-over has been made under **subsection (7)**;
- (b) a decision not to proceed with the negotiations has been made by the potential offeror or offeree; or
- (c) the negotiations are terminated by the potential offeror or offeree.

(6) A potential offeror, a person acting in concert with the potential offeror or a person subsequently acting in concert with the potential offeror, **shall not, within one (1) year** after making an announcement that he does not intend to make a take-over offer or there is no possible take-over offer by him, undertake any of the following:

- (a) announce a take-over offer or possible take-over offer for the offeree;
- (b) acquire any voting shares or voting rights of the offeree if any such person would thereby become obliged under **section 9** to make a take-over offer;



- (c) procure an irrevocable commitment to acquire shares of the offeree, which would in aggregate carry **more than twenty-five per centum (25%)** of the voting shares or voting rights of the offeree;
- (d) make any statement which raises or confirms the possibility that a take-over offer may be made for the offeree; or
- (e) take any steps in connection with a possible take-over offer for the potential offeree where knowledge of the possible take-over offer may be extended outside those who need to know in the potential offeror and its advisers.

(7) **An offeror who makes a take-over offer** or proposes a possible take-over offer shall immediately announce the take-over offer or the possible take-over offer to the public **by way of a press advertisement** as defined.

(8) An offeror shall, after making the announcement under **subsection (7)**, send a **written notice simultaneously** regarding the same matter to:

- (a) the board of directors of the offeree or an adviser designated by the board of directors of the offeree;
- (b) the CMA; **and**
- (c) the MSM or the relevant stock exchange in Oman.

(9) The press advertisement and written notice referred to in **subsections (7) and (8)** respectively shall include the following information:

- (a) the identity of the offeror and all persons acting in concert with the offeror;
- (b) the basis of the offer price;
- (c) the basis of consideration, if other than by way of cash;
- (d) the type and total number of voting shares or voting rights of the offeree:
  - (i) which have been acquired, held or controlled directly or indirectly by the offeror or any person acting in concert with the offeror;

- (ii) in respect of which the offeror or any person acting in concert with the offeror has received an irrevocable undertaking from other offeree shareholders to accept the take-over offer; **and**
  - (iii) in respect of which the offeror or any person acting in concert with the offeror has an option to acquire;
- (e) the details of any existing or proposed agreement, arrangement or understanding relating to voting shares or voting rights referred to in **paragraph (d)** between the offeror or any person acting in concert with the offeror and the offeree shareholders; and
- (f) the terms and conditions of the take-over offer, including conditions relating to acceptances, listing and increase of capital.

(10) The board of directors of the offeree shall, upon receiving a written notice under **subsection (8)**:

- (a) make an announcement to:
  - (i) the public by way of a press advertisement; **and**
  - (ii) the MSM or the relevant stock exchange in Oman,that they have received the written notice, **within twenty-four (24) hours** of the receipt of such notice; and
- (b) dispatch the announcement referred to in **paragraph (a)** to all offeree shareholders **within seven (7) days** of the receipt of such notice.

(11) The board of directors of the offeree shall include in the announcement referred to under **subsection (10)** the following:

- (a) all the information disclosed to the board of directors of the offeree in the written notice referred to under **subsection (8)**; and

(b) a statement whether the board of directors of the offeree is seeking another person to make a take-over offer of its voting shares or voting rights.

(12) Where the offeror and the board of directors of the offeree intend to make a joint announcement on a take-over offer, the provisions of this section relating to the board of directors of the offeree shall apply to the offeror.

(13) Where there has been an announcement of an intention to make a take-over offer under **subsection (7) or (8)**, the offeror **shall not withdraw** the take-over offer **without the prior written consent of the CMA**.

(14) The CMA may direct any offeror or board of director of offeree or both to make the announcement referred to under **subsection (7) or (8)** in any other manner as the CMA thinks fit.

### **Offer document**

11. (1) An offeror shall, **within four (4) days** from the date of sending of the written notice under **subsection 10(8)**, submit the offer document to the CMA for its consent together with payment of the relevant fees.

(2) Where the CMA has consented to the offer document, the offeror shall include in the offer document a statement that the CMA has consented to the offer document under this Regulation and that the consent of the CMA shall not be taken to suggest that the CMA recommends the take-over offer to offeree shareholders.

(3) The offer document as consented by the CMA under **subsection (2)** shall be dispatched by the offeror to the board of directors of the offeree and offeree shareholders **within twenty-one (21) days** from the date of the sending of the written notice made under **subsection 10(8)**.

(4) An offeror shall disclose all information that the offeree shareholders and their advisers would reasonably require and expect to find in an offer document or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in doing so.

(5) The information required to be disclosed under **subsection (4)** shall include:

(a) information which is within the knowledge of:

- (i) an offeror and all persons acting in concert with the offeror;
- (ii) in the case of a company, its officers and associates person; or
- (iii) in relation to the take-over offer, an expert appointed by an offeror and all persons acting in concert with the offeror; and

(b) information which the persons referred to in subparagraph (a) would be able to obtain by making such enquiries as were reasonable in the circumstances.

(6) An offeror shall also include in the offer document all information and statements as required under the **First Schedule**.

(7) A person referred to under **subparagraphs (5)(a)(i), (ii) and (iii)** shall be presumed to have been aware of the information of which his employee or agent having duties or acting on his behalf was aware of at that particular time, unless the contrary is proved.

(8) In the case of a **securities exchange offer** and where the offeror has convertible securities outstanding, the offeror shall disclose such information in the offer document.

(9) In the case of a **reverse take-over pursuant to a mandatory offer**, the board of directors of the offeror **shall obtain the approval of the holders** of voting shares or voting rights of the offeror for the reverse take-over, **prior** to the dispatch of the offer document to the offeree shareholders.

### **Management of the affairs of an offeree**

12. In the case of a **mandatory offer**, an offeror and any person acting in concert with the offeror, shall not exercise, dispose or transfer the voting shares or voting rights in the offeree, or enter into an arrangement or agreement to reduce the offeror's holding or entitlement in relation to the voting shares or voting rights in the offeree, during the offer period **unless**:

- (a) the offeror and any person acting in concert with the offeror has sent an offer document in accordance with **subsection 11(3)** to offeree shareholders; **and**
- (b) the disposal of such shares or rights is between an offeror and any person acting in concert with the offeror executed through the TCS.

### **Duty of board of directors of the offeree to issue comments etc.**

13. (1) The board of directors of the offeree shall issue its comments, opinion and information on the take-over offer, including any other forms of consideration offered by the offeror, in a form of a circular to every offeree shareholder **within ten (10) days** from the date that the offer document was dispatched to the offeree shareholders.

(2) The board of directors of the offeree shall disclose all information that the offeree shareholders and their advisers would reasonably require and expect to find in the circular issued under **subsection (1)** for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in doing so.

(3) The comments, opinions and information required to be disclosed under **subsection (2)** shall include:

- (a) information which is within the knowledge of:
  - (i) the board of directors of the offeree; or
  - (ii) an expert appointed by the board of directors of the offeree in relation to the take-over offer; and

- (b) information which the board of directors of the offeree or an expert appointed by the board of directors of the offeree in relation to the take-over offer, would be able to obtain by making such enquiries as were reasonable in the circumstances; and
- (c) information on details of any purchase of the offeree's own voting shares, convertible securities or voting rights, including dates and prices, during the period commencing six (6) months prior to the beginning of the offer period and ending on the latest practicable date prior to the sending of the circular.

(4) A person referred to under **subparagraphs (3)(a)(i) and (ii)** shall be presumed to have been aware of the information of which his employee or agent having duties or acting on his behalf was aware of at that particular time, unless the contrary is proved.

(5) The circular shall also include, but shall not be limited to such comments, opinions and information on:

- (a) the offeror's stated intentions regarding the continuation of the business of the offeree;
- (b) the offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the offeree, sell its assets or re-deploy the fixed assets of the offeree or make any other major change in the structure of the offeree;
- (c) the offeror's stated long-term commercial justification for the proposed take-over offer;
- (d) the offeror's stated intentions with regard to the continued employment of the employees of the offeree and of its subsidiaries;

(e) the reasonableness of the take-over offer, including the reasonableness and accuracy of profit forecasts for the offeror, if such forecast is included by the offeror in the offer document; and

(f) the convertible securities outstanding in the offeree.

(6) The directors of an offeree who have or potentially may have a **conflict of interest position shall abstain** from making recommendation with regards to the take-over offer.

(7) No person shall send or cause to be sent a circular under **subsection (1) without prior consent of the CMA** with regard to the contents of the circular.

(8) Where the CMA has granted its consent to the contents of the circular referred to in **subsection (7)**, the offeree directors shall include in the circular a statement that the CMA has consented to the contents of the circular under this section and that the consent of the CMA shall not be taken to suggest that the CMA agrees with the recommendation of the board of directors of the offeree.

(9) The board of directors of the offeree shall be responsible for all comments, opinions and information disclosed in the circular made under this section.

(10) The responsibility of the board of directors of the offeree under **subsection (9)** shall also be applicable to any holders of convertible securities of the offeree.

#### **Independent advice circular**

14. (1) **The board of directors of the offeree shall appoint an independent adviser** to provide comments, opinions, information and recommendation on a take-over offer in an independent advice circular.

(2) The independent adviser appointed under **subsection (1)** shall issue the independent advice circular to the board of the offeree, offeree shareholders and holders of convertible securities of the offeree **within ten (10) days** from the date the offer document was dispatched to the offeree shareholders.

(3) Where:

- (a) a take-over offer is a reverse take-over; **or**
- (b) the board of directors of the offeror is faced with a conflict of interest situation,

**the board of directors of the offeror shall appoint an independent adviser** to provide its comments, opinions, information and recommendation on the take-over offer or conflict of interest situation in an independent advice circular.

(4) The independent adviser appointed under **subsection (3)** shall issue the independent advice circular to the offeror shareholders and holders of convertible securities of the offeror.

(5) The independent advice circular issued under **subsection (4)** shall also include the views and advice of the board of directors of the offeror on the take-over offer or conflict of interest situation.

(6) An independent adviser shall be responsible for all comments, opinions and information disclosed in the independent advice circular under **subsections (2) and (4)**.

(7) No person shall send or cause to be sent an independent advice circular under **subsections (2) and (4) without the prior consent of the CMA** with regard to the contents of the independent advice circular.

(8) Where the CMA has granted its consent to the contents of the independent advice circular, the independent adviser shall include in the independent advice circular a statement that the CMA has consented to the independent advice circular under this section and that the consent of the CMA shall not be taken to suggest that the CMA agrees with the recommendation of the independent adviser.

(9) An independent adviser shall disclose all information that the offeror shareholders, the board of directors of the offeree, the offeree shareholders, the holders of convertible securities and their advisers would reasonably require and expect to find in the independent advice circular issued under **subsections (2) and (4)** or for the purpose of making an informed assessment as to the merits of approving, accepting or rejecting the take-over offer and the extent of the risks involved in doing so.



(10) The information required to be disclosed under **subsection (9)** shall include information which:

- (a) is within the knowledge of the independent adviser; and
- (b) the independent adviser would be able to obtain by making such enquiries as were reasonable in the circumstances.

(11) An independent adviser appointed by the board of directors of the offeree **shall declare its independence** from any conflict of interest or potential conflict of interest to the CMA **within three (3) days** of its appointment.

(12) An independent adviser shall be presumed to have been aware of the information of which his employee or agent having duties or acting on his behalf was aware of at that particular time, unless the contrary is proved.

(13) An independent adviser shall also include in the circular independent advice to the board of directors of the offeree or offeree shareholders all information and statements as required under the **Second Schedule**, whichever is relevant.

### **Profit forecasts and asset valuation**

15. (1) An offeror or offeree who provides profit forecasts shall ensure that such profit forecasts comply with the following:

- (a) a profit forecast for the current financial year shall include the forecast for the next immediate financial year if the forecast year for the current financial year is less than three (3) months of the current financial year;
- (b) the disclosure of assumptions, including the commercial assumptions, upon which the profit forecasts are based shall be stated in any document sent to offeree shareholders in connection with a take-over offer;
- (c) the accounting policies and calculations for the forecasts shall have been examined and reported on by the Issue Manager of the offeror or the offeree; and

(d) when a profit forecast includes a period in which trading has already commenced, any previously published profit figures which are available in respect of any expired portion of such period together with comparable figures for the preceding year shall be stated.

(2) A financial adviser/Issue Manager mentioned in the document shall also comment on the profit forecasts.

(3) The offeror or offeree shall include in the document a statement that the relevant advisers, including the consultant accountants and financial advisers, have given and have not withdrawn their consent to the publication of their statement and their name in the document.

(4) Where any valuation of assets is given by the offeror or the offeree, they shall include in the document containing the valuation:

- (a) the basis of valuation;
- (b) an opinion of an independent valuer supporting the valuation; **and**
- (c) a statement that the independent valuer has given and has not withdrawn his consent to the publication of his statement and name in the document.

## PART V

### TERMS OF TAKE-OVER OFFER

#### Acceptance condition

16. (1) An offeror **shall not** include any other condition in an offer document relating to a mandatory offer other than the condition specified under **subsection (2)**.

(2) In the case of a **mandatory offer**, an offeror shall include in an offer document a condition that the take-over offer **shall be subject to the offeror having received acceptances** which would result in the offeror and all persons acting in concert with the offeror, holding in aggregate **more than fifty per centum (50%)** of the voting shares or voting rights of the offeree.

(3) For the purposes of computing the level of acceptances under **subsection (2)**, such voting shares or voting rights that are already acquired, held, or entitled to be acquired or held by the offeror and all persons acting in concert with the offeror, shall be included in computing whether the offeror has received the level of acceptances referred to in **subsection (2)**.

(4) A take-over offer shall lapse if the condition referred to in **subsection (2)** is not fulfilled **by 5.00 p.m. on the sixtieth (60<sup>th</sup>) day** from the date on which the offer document was dispatched to the offeree shareholders.

#### **Right of withdrawal**

17. A person who has accepted a take-over offer may withdraw his acceptance **within the offer period, unless** the take-over offer has become or is declared unconditional as to acceptances.

#### **Offer price and settlement of consideration**

18. (1) In the case of a **mandatory offer**, the offeror shall offer as consideration that is to be paid or provided for the acceptances of the take-over offer, an amount of **not less than the highest price (excluding stamp duty and commission) paid or agreed to be paid** by the offeror or any person acting in concert with the offeror for any voting shares or voting rights to which the take-over offer relates, **within six (6) months prior to the beginning of the offer period**.

(2) In all take-over offers, where the offeror or any person acting in concert with the offeror has purchased or agreed to purchase any voting shares or voting rights of the offeree during the offer period at a higher consideration than the consideration in the offer document, the offeror shall increase the consideration of the take-over offer to not less than the highest price (excluding stamp duty and commission) of the voting shares or voting rights that the offeror or the person acting in concert with the offeror has purchased or agreed to purchase.

(3) Where a higher price for voting shares or voting rights of the offeree is triggered pursuant to **subsection (2)**, the offeror shall immediately announce to the public in a press advertisement and to the relevant stock exchange in Oman in writing, the following information:

- (a) the revised offer price;
- (b) the number of voting shares or voting rights to which the take-over offer relates that has been purchased or agreed to be purchased; and
- (c) the price paid or agreed to be paid for the said purchase or agreement to purchase.

(4) Any revision made under **subsection (3)** shall be subject to **section 21**.

(5) The offeror, in any take-over offer, **shall pay the cash consideration** to all persons accepting the take-over offer **within ten (10) days** from:

- (a) the date the offer becomes or is declared wholly unconditional, if the valid acceptances are received during the period when the take-over offer is still conditional; **or**
- (b) the date of the valid acceptances, if the valid acceptances are received during the period after the take-over offer is or has become or has been declared wholly unconditional.

(6) In the case **where the consideration involves only securities, or a combination of cash and securities**, as the case may be, the offeror shall post or credit the consideration to all persons or the persons' securities account, as the case may be, accepting the take-over offer **within fourteen (14) days** from:

- (a) the date the offer becomes or is declared wholly unconditional, if the valid acceptances are received during the period when the offer is still conditional; **or**
- (b) the date of the valid acceptances, if the valid acceptances are received during the period after the offer is or has become or has been declared wholly unconditional.

(7) For the purpose of this section, **“securities account”** means an account established by a central depository for a depositor for the recording of deposit of securities and for dealings in such securities by the depositor.

(8) An offeror or any person acting in concert with the offeror **shall not exercise the voting rights** attached to the shares received through acceptances of the take-over offer **prior** to full settlement of the consideration.

### **Nature of consideration**

19. (1) In the case of a **mandatory offer**, an offeror shall provide:

- (a) the consideration to be paid, or provided, for the acquisition of the voting shares or voting rights to which the mandatory offer relates consist solely of a cash sum; **or**
- (b) where the consideration to be paid, or provided, for the acquisition of the voting shares or voting rights to which the mandatory offer relates is not solely of a cash sum, an alternative consideration consisting solely of a cash sum.

(2) Where the offeror **offers unlisted securities** as consideration for a take-over offer, the offeror shall disclose:

- (a) the value of the unlisted securities made based on a reasonable estimate by an independent valuer; **and**
- (b) relevant particulars of the valuation report made by the independent valuer.

in the offer document and any circular or document issued by the offeror in relation to the take-over offer.

(3) Where the offeror **offers listed securities** as consideration for the take-over offer, the value of the consideration to be paid shall be:

- (a) in the case of **unissued securities**, the price as approved or the mandate given by the shareholders of the offeror; **or**
- (b) in the case of **issued securities**, the weighted average market price for the securities for the **past five (5) market days preceding the date of the written notice** under **subsection 10(8)**.

(4) Where there is no trading of the securities for a continuous period of five (5) market days immediately preceding the date of the written notice under **subsection 10(8)**, the value of the consideration to be paid **shall be the weighted average market price for the securities for the past five (5) market days** immediately preceding the close of trading of the market day when the securities were last traded.

(5) Where the offeror or any person acting in concert with the offeror, intends to purchase or agrees to purchase any securities under **subsection (2) or (3)** prior to the date on which the offer document is dispatched in accordance with **subsection 11(3)**, the offeror shall announce the valuation of the securities—

(a) to the public in a press advertisement; **and**

(b) to the relevant stock exchange in Oman,

**before** making the purchase or entering into an agreement to purchase.

## **PART VI**

### **TIMING OF TAKE-OVER OFFER**

#### **Duration of take-over offer**

20. (1) An offeror shall keep a take-over offer open for acceptance for a period of **at least twenty-one (21) days** from the date the offer document is first posted in accordance with **subsection 11(3)**.

(2) A take-over offer may be accepted by offeree shareholders at any day after the dispatch of the offer document until the closing of the take-over offer, but in any case **shall not be more than seventy-four (74) days** from the dispatch of the offer document.

(3) Where there is a competing take-over offer made during the period referred to in **subsection (1)**, the offer document sent by the offeror shall be deemed to have been posted on the date that the competing take-over offer document was posted.

### **Revision of a take-over offer**

21. (1) Where an offeror revises or is required to revise the take-over offer, the offeror shall:

- (a) announce such revision to the public in a press advertisement, and to the relevant stock exchange in Oman in writing;
- (b) post the written notification of the revised take-over offer to all offeree shareholders, including all offeree shareholders who have accepted the original take-over offer; **and**
- (c) keep the take-over offer open for acceptance for **at least another fourteen (14) days** from the date of posting of the written notification of the revised take-over offer under **paragraph (1)(b)**.

(2) An offeror shall state the next closing date of a revised take-over offer in any announcement of extension of time for accepting the take-over offer.

(3) **An offeror shall not revise a take-over offer**, or cause a take-over offer to be revised, **after the forty-sixth (46<sup>th</sup>) day** from the date on which the offer document was dispatched to the offeree in accordance with **subsection 11(3)**.

(4) Where a **competing take-over offer** has been announced, an offeror shall not revise the take-over offer made by him **after the forty-sixth (46<sup>th</sup>) day** from the date on which the offer document relating to the competing take-over offer was dispatched to the offeree shareholders.

(5) An offeror shall ensure that all offeree shareholders who have accepted the original take-over offer shall receive the revised consideration as consideration that is to be paid or provided for the acceptance of the take-over offer.

(6) The CMA may direct the offeror to make an announcement referred to under **paragraph (1)(a)** in relation to the revised take-over offer in any other manner as the CMA thinks fit.

### Closing of a take-over offer

22. (1) A take-over offer **shall be deemed to be closed prior to the expiry date** as stated in the offer document when:

- (a) the offeror receives acceptances amounting to **all** of the voting shares or voting rights to which the take-over offer relates;
- (b) the offeree shareholders have received the independent advice circular under **section 14** if the requirement of appointment of an independent adviser has not been exempted in writing by the CMA;
- (c) the take-over offer is no longer subject to any conditions; **and**
- (d) the offeror has made an announcement under **section 23**.

(2) Where a take-over offer has become or been **declared unconditional** as to acceptance as at the date of the dispatch of the offer document to the offeree shareholders, the **closing date** of the take-over offer **shall not be later than the sixtieth (60<sup>th</sup>) day** from such dispatch date.

(3) Where a take-over offer has become or is **declared unconditional** as to acceptance **on or before the forty-sixth (46<sup>th</sup>) day** from the date the offer document is dispatched to the offeree shareholders, the offeror shall keep the take-over offer open for acceptance for **at least fourteen (14) days** from the date on which the take-over offer becomes and is declared unconditional which, in any event, **shall not be later than the sixtieth (60<sup>th</sup>) day** from the date on which the offer document is dispatched to the offeree shareholders.

(4) Where a take-over offer has become or is **declared unconditional** as to acceptances **on any day after the forty-sixth (46<sup>th</sup>) day** from the date on which the offer document is dispatched to the offeree shareholders, the offeror shall keep the take-over offer open for acceptance for **at least fourteen (14) days** from the date on which the take-over offer becomes and is declared unconditional which, in any event, **shall not be later than the seventy-fourth (74<sup>th</sup>) day** from the date on which the offer document is dispatched to the offeree shareholders.



(5) Notwithstanding **subsections (3), (4) and 20(1)**, the offeror shall announce that the take-over offer is still open for acceptance:

- (a) to the public in a press advertisement; **and**
- (b) to the relevant stock exchange in Oman in writing,

and give **at least fourteen (14) days notice** in writing to the offeree shareholders **before closing the take-over offer**.

(6) An offeror shall not make an announcement and give notice referred to under **subsection (5)** if a competing take-over offer has been announced, **unless** the competing take-over offer has been declared unsuccessful **or** the offeree shareholders who hold **more than fifty per centum (50%)** of such voting shares or voting rights have irrevocably rejected the competing take-over offer in favour of the original take-over offer.

(7) Where:

- (a) the take-over offer is capable of becoming or being declared unconditional as to acceptances;
- (b) there are alternative forms of consideration; and
- (c) the take-over offer or the alternative form of consideration remains open,

the offeror **shall not** allow the take-over offer or any alternative form of consideration to close unless:

- (i) **fourteen (14) days have elapsed** since the first closing date on which the take-over offer was capable of becoming or being declared unconditional as to acceptance; or
- (ii) the offeror has given a notice under **subsection (5)**.

(8) For the purposes of this section, “**expiry date**” means the day after the end of the offer period, which can be any day **from the twenty-first (21<sup>st</sup>) day up to the eighty-second (82<sup>nd</sup>) day** from the dispatch of the offer document.

### **Announcement of acceptance**

23. (1) Where the securities of the offeror or offeree are listed on a stock exchange in Oman, the offeror shall inform the CMA in writing and announce to the relevant stock exchange in Oman **before 9.00 a.m.** on the market day following the day on which a take-over offer is closed, becomes or is declared unconditional as to acceptances, revised or extended, of the following:

- (a) whether the take-over offer is closed, becomes or is declared unconditional as to acceptances, revised or extended; **and**
- (b) the total number of voting shares or voting rights to which the take-over offer relates:
  - (i) for which acceptances of the take-over offer have been received after the dispatch of the offer document by the offeror to the offeree shareholders;
  - (ii) held by the offeror and all persons acting in concert with the offeror, at the time of the dispatch of the offer document by the offeror to the offeree shareholders;
  - (iii) agreed to be acquired during the offer period but after the dispatch of the offer document, and shall specify the percentage of the relevant classes of share capital represented by these figures; **and**
  - (iv) acquired after the dispatch of the offer document and shall specify the percentage of the relevant classes of share capital represented by these figures.

(2) Where the securities of the offeree or the offeror are **not listed** on a relevant stock exchange in Oman, the offeror shall inform the CMA in writing and announce to the public in a press advertisement **before 9.00 a.m.** on the market day following the day on which a take-over offer is closed, becomes or is declared unconditional as to acceptances, revised or extended the particulars referred to in **paragraphs (1)(a) and (b)**.

(3) Where the offeror, having announced the offer to be unconditional as to acceptances, **fails to comply** with any of the requirements of **subsections (1) and (2)**:

- (a) by the close of trading at the relevant stock exchange in Oman on the day referred to in **subsection (1)**; or
- (b) by 1.00 p.m. on the day referred to in **subsection (2)**, if the offeror or offeree is not listed on a relevant stock exchange in Oman,

any person who has accepted the take-over offer **shall be entitled to withdraw his acceptance** immediately thereafter.

(4) **The CMA may terminate the right of withdrawal** referred to in **subsection (3)** if:

- (a) the offeror has complied with the requirements **within eight (8) days** from the day referred to in **subsection (1)**; **and**
- (b) the offeror has confirmed in a statement to the public by way of press advertisement, and announce to the relevant stock exchange in Oman in writing, that the take-over offer is still unconditional as to acceptances.

(5) For the purpose of **subsection (4)**:

- (a) **the expiry of the eight (8) days period** from the day referred to in **subsection (1)** **shall not fall after the expiry of the sixty (60) days** from the date which the offer document is dispatched to the offeree shareholders; **and**
- (b) the right of any person who has withdrawn his acceptance under **subsection (3)** shall not be prejudiced.

(6) Where the offeror fails to comply with any of the requirements of this section **within eight (8) days** from the day referred to in **subsection (1)**, the take-over offer shall lapse if the relevant level of acceptances is not received by the offeror.

## PART VII

### **OBLIGATION OF OFFEROR IN RELATION TO TAKE-OVER OFFER AND COMPULSORY ACQUISITION**

#### **Identity of potential offeror, person acting in concert and ultimate offeror**

24. A person who conducts discussions or negotiations on behalf of a potential offeror with another person **within the last one (1) year prior to the press advertisement**, with a view to a take-over offer being made for the voting shares or voting rights of a company, shall disclose to the other person at the beginning of the discussions or negotiations the identity of:

- (a) the potential offeror and all persons acting in concert with the potential offeror; and
- (b) the ultimate offeror, if applicable.

#### **Evidence of ability to implement take-over offer**

25. Where the take-over offer is for cash or includes an element of cash, the Issue Manager shall ensure that:

- (a) the take-over offer would not fail due to the insufficient financial capability of the offeror; **and**
- (b) every offeree shareholder who wishes to accept the take-over offer would be paid in full.

#### **Favourable deal**

26. During a take-over offer or when such a take-over offer is reasonably in contemplation by the offeror, an offeror and any person acting in concert with the offeror shall not enter into any agreement, arrangement or understanding to deal in or make purchases or sales of voting shares or voting rights of the offeree if such agreement, arrangement or understanding to deal contains favourable conditions which are not being extended to all offeree shareholders.

### **Comparable take-over offers for more than one class of share capital**

27. Where an offeree has more than one class of share capital, the offeror shall make a comparable take-over offer for each class of share capital on terms which shall be subject to the approval of the CMA.

### **Treatment of convertible securities of offeree**

28. (1) Where a take-over offer is made for the voting shares or voting rights of an offeree and the offeree has outstanding convertible securities, the offeror shall make an appropriate offer or arrangement to holders of the convertible securities and safeguard their interest.

(2) The offer document shall be dispatched to the holders of convertible securities at the same time when the offer document is dispatched to the offeree shareholders.

(3) The take-over offer to holders of the convertible securities referred to in **subsection (1)** may be effected by way of a scheme approved at a meeting of the holders of the convertible securities.

### **Compulsory acquisition of SAOG companies**

29. (1) Where an offeror makes a take-over offer for more than one class of shares, separate offers shall be made for each class and the offeror shall state, if the offeror intends to resort to compulsory acquisition.

(2) A notice to be given by the offeror to a dissenting shareholder shall be made.

(3) A notice to be given by the offeror to a shareholder who has not accepted the take-over offer shall be made.

(4) Where an offeror has obtained acceptances amounting to **ninety per centum (90%)** in the nominal value of those shares or of the shares of that class (**excluding** shares already held at the date of the take-over offer by the offeror or persons acting in concert), the offeror shall:

(a) announce to the public in a press advertisement; and

(b) announce to the relevant stock exchange in Oman in writing,

**before 9 a.m.** on the market day following the day on which the level of acceptances was achieved, the following information:

- (i) the offeror has obtained such level; and
- (ii) the level it has obtained.

(5) In addition, the offeror shall seek the CMA's and offeree shareholders' approval at their EGM. The application to the CMA shall be attached with the offeror's plan and direction for the company and the time period required for executing the plan.

#### **Disclosure of dealings by offeror etc. during offer period**

30. (1) The following persons shall disclose the total number and price of all voting shares, voting rights, non-voting share or convertible securities of the offeree which are dealt in for their own account during the offer period:

- (a) the offeror and all persons acting in concert with the offeror;
- (b) a substantial shareholder of the offeror;
- (c) any chief executive, a director or an officer of the offeror who occupies or acts in a senior managerial position in the offeror by whatever name called and whether or not he is a director;
- (d) a person who is a connected person in relation to persons referred to in **paragraph (a), (b) or (c)**; and
- (e) a person who in accordance with whose directions and instructions the persons referred to in **paragraph (a), (b), (c) or (d)** is accustomed to act.

(2) The disclosure under **subsection (1)** shall be made via the Issue Manager to the CMA and announced to the relevant stock exchange in Oman in writing, **not later than 9 a.m.** on the market day following the date of the relevant transaction.

(3) All dealings in voting shares, voting rights, non-voting shares or convertible securities of the offeror or the offeree made by a connected person for the account of investment clients who are not themselves connected persons shall be similarly disclosed to the CMA in such details and at such time as is provided in **subsections (1) and (2)** respectively.

(4) For the purposes of this section, "**connected person**" means—

- (a) the offeror and all persons acting in concert with the offeror;
- (b) a banker, stockbroking company, financial and other advisers to the offeror and all persons acting in concert with the offeror; and
- (c) a person who holds ten per centum (10%) or more of the equity share capital of the offeror.

(5) The obligations under **subsections (1), (2) and (3)** shall also be applicable to a **securities exchange offer**.

**Restriction if take-over offer is withdrawn, lapse or fail**

31. (1) An offeror or any person acting in concert with the offeror **shall not withdraw** a take-over offer **without the prior written approval of the CMA**.

(2) Where a take-over offer has been withdrawn, lapsed or failed, the offeror and all persons acting in concert with the offeror **shall not within twelve (12) months** from the date of the announcement that the take-over offer was withdrawn, lapsed or failed:

- (a) make a take-over offer for the voting shares or voting rights that had been the subject of the previous take-over offer;
- (b) acquire any voting shares or voting rights of the offeree if the offeror would thereby become obliged to make a mandatory offer;
- (c) acquire any voting shares or voting rights of the offeree if the offeror holds voting shares or voting rights carrying over forty-eight per centum (48%) but not more than fifty-per centum (50%) of the class of voting shares or voting rights that had been the subject of the previous take-over offer; **or**

- (d) acquire any interest in the voting shares or voting rights of the offeree on more favourable terms than those made available under its lapsed offer where the lapsed offer is one of two or more competing offers until each of the competing offers has been declared unconditional in all respect or has lapsed.

(3) An offeror and all persons acting in concert with the offeror shall furnish the CMA **on a monthly basis** with details of any acquisition by the offeror and persons acting in concert with the offeror of any voting share or voting right of the offeree, including an option to acquire any share in the offeree **for a period of twelve (12) months** from the date of the announcement that the take-over offer was withdrawn, lapsed or failed.

#### **Restriction if take-over offer is successful**

32. In consequence of a successful take-over offer, an offeror and any person acting in concert with the offeror shall not acquire further voting shares or voting rights in the offeree on more favourable terms than the previous take-over offer, **within six (6) months** immediately after the close of the take-over offer.

### **PART VIII**

#### **OBLIGATION OF OFFEREE IN RELATION TO TAKE-OVER OFFER**

##### **Information to competing offeror**

33. An offeree or board of directors of the offeree who gives any information, including particulars of offeree shareholders, to an offeror shall give the same information to another *bona fide* potential offeror upon request and the information should be made public if it is not in the public domain.

##### **Resignation of director**

34. A director of the offeree shall not resign from the board of directors of the offeree until the first closing date of the take-over offer or the date when the take-over offer becomes or is declared wholly unconditional, whichever is the later.



### **Frustration of offer by board of directors of offeree**

35. (1) Where the board of directors of the offeree has any reason to believe that a *bona fide* take-over offer might be imminent, the board of directors of the offeree shall not undertake any action or make any decision without obtaining the approval of shareholders at a general meeting on the affairs of the offeree that could effectively result in any *bona fide* take-over offer being frustrated or the shareholders being denied an opportunity to decide on the merits of a take-over offer.

- (2) The action or decision mentioned in **subsection (1)** shall include—
- (a) the issuance of any authorised but unissued shares of the offeree;
  - (b) the issuance or granting options in respect of any unissued shares of the offeree;
  - (c) the creation or issuance or permitting the creation or subscription of any shares of the offeree;
  - (d) the sale, disposal of or acquisition or agreement to sell, dispose of or acquire assets of the offeree of a material amount;
  - (e) the entering into a contract or allowing contracts for or on behalf of the offeree to be entered into otherwise than in the ordinary course of business of the offeree;
  - (f) the disposal of assets or liabilities that is a condition to the take-over offer;
  - (g) the selling of treasury shares into the market; or
  - (h) any action which may cause the offeree or any subsidiary or associated company of the offeree to purchase or redeem shares in the offeree or provide any financial assistance for any such purchase or redemption.
- (3) **Subsections (1) and (2) shall not apply** if the action or decision is done pursuant to:

- (a) a *bona fide* contract entered into **prior** to an obligation under **subsections (1) and (2)** arising and which is not designed to frustrate a take-over offer or change the activity of the offeree; **or**
- (b) other obligations or other special circumstances which the CMA may approve in writing, as the case may be.

(4) Where **paragraph (3)(a)** applies, the board of directors of the offeree **shall obtain the CMA's prior written approval** for any of its action or decision except when the action or decision is in relation to assets which are not material.

#### **Disclosure of dealing by offeree etc. during offer period**

36. (1) During the offer period, the total number and price of all voting shares, voting rights, non-voting shares or convertible securities of the offeror and offeree which are dealt in by the following persons shall be disclosed by them respectively:

- (a) the offeree;
- (b) substantial shareholders of the offeree;
- (c) any chief executive, a director or officer of the offeree, who occupies or acts in a senior managerial position in the offeree, by whatever name called, and whether or not he is a director;
- (d) a person who is a connected person to a person referred to in **paragraph (a), (b) or (c)**; and
- (e) a person who is accustomed to act in accordance with direction or order of the persons referred to in **paragraph (a), (b), (c) or (d)**.

(2) The disclosure under **subsection (1)** shall be made via the Issue Manager to the CMA and announced to the relevant stock exchange in Oman in writing, **not later than 9 a.m.** on the market day following the relevant transaction.

(3) In the case of a **securities exchange offer**, the disclosure under **subsection (1)** is also required in relation to the voting shares, voting rights or convertible securities of the offeror and offeree.

(4) All dealings of voting shares, voting rights, non-voting shares or convertible securities of the offeror or the offeree made by a connected person for the account of investment clients who are not themselves a connected person shall be similarly disclosed to the CMA, in such details and at such time as provided in **subsections (1) and (2)** respectively.

(5) For the purposes of this section, “**connected person**” means–

- (a) the offeree and all persons acting in concert with the offeree;
- (b) banker, stockbroking company, financial and other adviser to the offeree and all persons acting in concert with the offeree; and
- (c) a holder of ten per centum (10%) or more of the equity share capital of the offeree.

### **Prompt registration**

37. (1) In the case of a take-over offer of an **unlisted voting shares** of an offeree, the board of directors and officers of an offeree shall ensure the prompt registration of the offeree shareholders in the register of members maintained.

(2) The board of directors and officers of an offeree **shall provide an offeror**, with:

- (a) the register of members, in the case of unlisted voting shares; or
- (b) the record of shareholders, in the case of listed voting shares and voting rights,

as may be required by the offeror.

## **PART IX**

### **GENERAL**

#### **Requirement to disclose material information**

38. (1) Where an offeror, offeree, advisers or any other person who circulates or provides any information or document required to be circulated or provided under this Regulation becomes aware that the information or document previously circulated or provided:

- (a) contains a material statement which is false or misleading;
- (b) contains a statement from which there is a material omission; or
- (c) does not contain a statement relating to a material

development, before an offer closes or lapses, he shall:

- (i) disclose such fact to the CMA in writing; and
- (ii) make an announcement to the relevant stock exchange in Oman in writing,

of such matters which are necessary to correct the false or misleading matter or the omission.

(2) The disclosure and announcement referred to in **subsection (1)** shall be made **at the earliest or before 9 a.m.** on a market day.

#### **Submission of information and compliance with directions**

39. A person involved in a take-over offer, or acquisition shall submit such information to the CMA or any other person, as the CMA may require from time to time, and comply with any requirements as may be imposed by the CMA.

#### **Extension of time and exemption**

40. The CMA may extend the time or provide any exemptions for compliance of any provision of this Regulation.

## FIRST SCHEDULE

### [Section 11]

#### INFORMATION AND STATEMENTS REQUIRED TO BE INCLUDED IN A TAKE-OVER OFFER DOCUMENT

1. A take-over document shall include information based on the latest practicable date prior to the sending of the offer document and where the information is not relevant, a negative statement is to be made.
2. The offeror shall state the following information in the offer document:
  - (a) the identity of the ultimate offeror disclosed under **section 24** of the Regulation;
  - (b) the name of ultimate shareholders who are beneficially entitled to all rights, benefits, powers and privileges and subject to all liabilities, duties and obligations in respect of or arising from, the shares and does not include a nominee of the description;
  - (c) the names of the persons acting in concert with the offeror;
  - (d) information regarding the offeror, including the names of its directors and the names of shareholders who hold **five per centum (5%) or more** of the voting shares of the offeror and the extent of their holding; and
  - (e) details of any purchase of the offeror's own voting shares, voting rights or convertible securities, including dates and prices, **during six (6) months prior** to the beginning of the offer period and ending with the latest practicable date.
3. The offer document shall also include:
  - (a) the offeror's intention with regard to—
    - (i) the continuation of the business of the offeree in the next twelve (12) months after the close of the take-over offer;

- (ii) the major changes to be introduced in the business of the offeree in the next twelve (12) months after the close of the take-over offer, including plans to:
  - (A) liquidate the offeree;
  - (B) sell the assets or re-deploy the fixed assets of the offeree; and
  - (C) make any other major change in the structure of the offeree;
- (iii) the continued employment of the employees of the offeree and its subsidiaries in the next twelve (12) months after the close of the take-over offer;
- (iv) the meeting of the **twenty-five per centum (25%) public shareholding spread requirement** of the offeree subsequent to the take-over offer;
- (v) the maintaining of the listing status of the offeree subsequent to the take-over offer:
  - (A) where the offeror **intends to comply** with the twenty-five per centum (25%) public shareholding spread requirement or maintain the listing status of the offeree, the offeror is to state the action plan in meeting these requirements **within three (3) months** from the closing date of the take-over offer if there is any shortfall (**unless** an extension of time is granted by the CMA); **and**
  - (B) where the offeror **does not intend to comply** with the twenty-five per centum (25%) public shareholding spread requirement or maintain the listing status of the offeree, the offeror is to state the time frame and steps to be taken to effect such intention; **and**

- (b) the offeror's objective and rationale of the take-over offer, including long-term commercial justifications for the proposed take-over offer.

4. In addition, the offer document shall include:

- (a) the offer price and its basis for the securities of the offerree and, in the event of a securities exchange offer, the basis of the consideration for the securities exchange offer;
- (b) where a take-over offer is for the securities in a downstream entity, the basis of valuation of the offer price of the downstream entity;
- (c) a statement by the offeror and the offeror's Issue Manager that they are satisfied that:
  - (i) where the take-over offer is by cash, either in part or in whole the offeror has sufficient financial resources and the take-over offer would not fail due to insufficient financial capability of the offeror; and
  - (ii) every shareholder who wishes to accept the take-over offer will be paid in full;
- (d) a statement to the effect that, except with the consent of the CMA which would only be granted in certain circumstances in which all holders of voting shares or voting rights were to be treated similarly, settlement of the consideration to which any holder is entitled under the take-over offer will be implemented in full in accordance with the terms of the take-over offer without regard to any lien, right of set-off, counter claim or other analogous rights to which the offeror may otherwise be or claim to be entitled as against the holder; and
- (e) a statement to assert that each director of the offeror has taken reasonable care to ensure both that the facts stated and opinions expressed therein are fair and accurate and that no material facts have been omitted and that each director accepts responsibility accordingly.

5. The following shall also be included in the offer document:
- (a) a statement as to whether there is any ongoing negotiation exists between the offeror, ultimate offeror or offeror's controlling shareholder and any person with respect to the offeror's or offeree's shares, rights and convertible securities;
  - (b) a statement as to whether there is any agreement, arrangement or understanding exists between the offeror or any person acting in concert with the offeror and any of the directors or past directors of the offeree, holders of voting shares or voting rights or past holders of voting shares or voting rights of the offeree having any connection with or dependence upon the take-over offer, including full particulars of the agreement, arrangement or understanding;
  - (c) a statement as to whether any voting shares or voting rights acquired pursuant to the take-over offer that will be transferred within a foreseeable period, including the names of the parties to the agreement, arrangement or understanding and their holdings of all securities in the offeree; and
  - (d) a statement as to whether the emoluments of the offeror's directors that will be affected by the take-over, in the case where the offer is a securities exchange offer.
6. For the purpose of **subparagraph 5(b) "past directors"** or **"past holders of voting shares or voting rights"** shall be such person who was during the period of six (6) months prior to the beginning of the offer period, a director or a holder of voting shares or voting rights, as the case may be.
7. The offer document shall state as at the latest practicable date prior to the sending of the offer document the number of and the percentage holding of voting shares and convertible securities:
- (a) which the offeror, the directors of the offeror and the ultimate shareholders hold, directly or indirectly in the offeree;



- (b) which persons acting in concert with the offeror hold directly or indirectly in the offeree together with the names of such persons acting in concert; and
- (c) which persons who, prior to the sending of the offer document, have irrevocably committed themselves to accept the take-over offer hold directly or indirectly in the offeree together with the names of such persons.

8. In addition to the requirement of **paragraph 7**, in the case of a **securities exchange offer only**, the offer document shall state as at the latest practicable date prior to the sending of the offer document, the number of and the percentage holding of voting shares, voting rights and convertible securities—

- (a) which the offeror, the directors of the offeror and the ultimate shareholders hold, directly or indirectly in the offeror;
- (b) which persons acting in concert with the offeror hold directly or indirectly in the offeror; and
- (c) which persons who, prior to the sending of the offer document, have irrevocably committed themselves to accept the take-over offer hold directly or indirectly in the offeror.

9. If there are no holdings of the nature required to be stated under **paragraphs 7 and 8**, then this fact shall be so stated in the offer document.

10. If the party under **paragraphs 6, 7 and 8** has dealt in the voting shares, voting rights or convertible securities in question during the period **commencing six (6) months prior** to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, the details, including the number of the shares, dates and prices, shall be stated and if no such deals have been made, this fact shall be so stated in the offer document.

## SECOND SCHEDULE

### [Section 14]

#### **INFORMATION AND STATEMENTS REQUIRED TO BE INCLUDED IN AN INDEPENDENT ADVICE CIRCULAR FOR TAKE-OVER OFFER**

1. The independent advice circular for take-over offer shall include information based on the latest practicable date prior to the sending of the circular and where the information is not relevant, a negative statement is to be made.
2. The independent adviser for take-over offer shall take into account the latest material development in giving its comments, opinion and advice prior to the sending of the independent advice circular.
3. The independent advice circular for take-over offer whether recommending acceptance or rejection of the take-over offer shall contain comments and advice on:
  - (a) the offeror's intentions with regard to—
    - (i) the continuation of the business of the offeree in the next twelve (12) months after the close of the take-over offer;
    - (ii) major changes to be introduced in the business of the offeree in the next twelve (12) months after the close of the take-over offer, including plans to—
      - (A) liquidate the offeree;
      - (B) sell the assets or re-deploy the fixed assets of the offeree; and
      - (C) make any other major change in the structure of the offeree;
    - (iii) the continued employment of the employees of the offeree and its subsidiaries in the next twelve months after the close of the take-over offer;

- (iv) the meeting of the **twenty-five per centum (25%) public shareholding spread requirement** of the offeree subsequent to the take-over offer, the timeframe and steps to be taken to effect such intention;
  - (v) the maintaining of the listing status of the offeree subsequent to the take-over offer, the timeframe and steps to be taken to effect such intention; and
- (b) the offeror's objective and rationale of the take-over offer, including long-term commercial justifications for the proposed take-over offer.
4. The independent advice circular for take-over offer shall include comment and advice on the reasonableness of the take-over offer, including:
- (a) the offer price (including comparison with the historical price) and the basis made by the offeror on the securities of the offeree;
  - (b) where the offer is for the downstream entity of a company, the basis of the valuation of the offer price made by the offeror on the securities of the downstream entity;
  - (c) in the case of a **securities exchange offer**, the basis in the consideration for the securities exchange offer; and
  - (d) profit forecasts for the offeree and its accuracy as contained in the offer document.
5. The independent advice circular for take-over offer shall also consists of the outlook and prospect for the next twelve (12) months of:
- (a) the industry in which the offeree has its core or major business activities;
  - (b) the offeree's financial performance and its positioning in the industry (including competitive advantage, threats and opportunities); and

(c) in the case of a **securities exchange offer**:

- (i) the industry in which the offeror has its core or major business activities;  
and
- (ii) the offeror's financial performance and its positioning in the industry  
(including competitive advantage, threats and opportunities).

6. The independent advice circular for take-over offer shall disclose all information regarding the offeree which comprises:

- (a) the purchase of the offeree's own voting shares, including dates and prices, during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date;
- (b) the outstanding convertible securities of the offeree including number of the convertible securities, tenure of the convertible securities and potential number of new voting shares or voting rights to be issued;
- (c) the direct and indirect holding of voting shares, voting rights or convertible securities, in terms of number of shares and the percentage held, by—
  - (i) the offeree in the offeror; and
  - (ii) the directors of the offeree in the offeror and the offeree;
- (d) the details of dealings, including number of shares, dates and prices, by the parties in **subparagraph (c)** during the period commencing **six (6) months prior** to the beginning of the offer period and ending with the latest practicable date; and
- (e) the directors of the offeree's intention, in respect of their own beneficial holdings, to accept or reject the take-over offer.