

Oman's new takeover regime

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The Capital Market Authority of Oman (“CMA”) has published draft legislation governing the takeover of publicly listed Omani companies (“the Rules”).

The legislation will fill a large gap in a key area of capital market activity in Oman and practitioners in other financial centres will find it familiar reading.

The Principles

The Rules enshrine the principles of fair and equal treatment of shareholders, full and accurate disclosure and the prohibition of false markets in the shares of offeree and offeror alike. It is noteworthy that the Rules will be passed as binding legislation rather than in the form of a code or set of principles to loosely abide by.

Mandatory Offers

A party will be required to launch a takeover offer in circumstances where it has acquired 25% or more of a company's share capital or following a stakebuilding exercise in that company. While the CMA may in quite exceptional circumstances grant a waiver to make a formal offer, crossing the 25% threshold will trigger a requirement to announce a takeover and bind the acquirer to make a formal bid for the company's share capital.

To reduce disruption to the target's business caused by an impending takeover, the Rules require mandatory takeovers to be completed within 60 days from the date the offer document was sent to the shareholders.

As in other jurisdictions, mandatory offers which are subject to various conditions are not permitted; the only condition that is permitted is the requirement to obtain a certain percentage of acceptances for the acquirer to gain control of the target.

Recommended Offers

The Rules recognise that takeover rumours affect the share price of an offeree. Where there has been an unusually high level of trading in its shares, an announcement must be made informing the market of discussions which may or may not lead to a takeover. Monthly progress announcements will need to be made until such time as either a takeover offer has been confirmed or negotiations are terminated.

Once a takeover has been agreed by the respective boards, the Rules require an immediate announcement to the market and accordingly the bid team of both the offeror and offeree will need to be very well prepared because once an announcement has been made, withdrawing an offer will generally not be permitted. Following announcement the offeror is required to post an offer document to the offeree's shareholders and complete the takeover within 74 days from posting.

Non – Recommended Offers

The Rules cater for takeovers which are considered by the target's board to be hostile or unwelcome. The defence document is used by the target's board to persuade the offeree's

shareholders that the offer is not in their best interests. Action undertaken with the aim of frustrating the takeover by making the target less attractive (such as selling assets or issuing new shares) is not permitted without the approval of the target's shareholders.

Blackout Period

In an attempt to settle the offeree's business, takeover offers which fail at the negotiation stage or for lack of shareholder acceptance will subject the offeror to a 12 month blackout period during which no further approaches or substantial share acquisitions are permitted. Persons acting in concert with the offeror will also be covered by the blackout.

Practical Effect of the Rules

Companies on the Muscat Stock Exchange generally have a relatively small shareholder base and are likely to have a limited number of major shareholders with some minority investors. While the Rules are sufficiently comprehensive, they do not contain a mechanism to sweep up a small minority which could create problems for an offeror if that minority is resistant to the takeover or is simply holding out for a better price for their shares.

Additionally, sanctions for failing to comply with the Rules are limited. The rationale for this perhaps being that takeovers are undertaken for commercially strategic reasons; offeree shareholders benefit by receiving value for their shares and offeror shareholders benefit by acquiring a business and assets. The shareholders are generally aware of the risks and rewards at stake, have the ability to vote on the merits of the offer and merely require a body to supervise the procedure to allow the offeree shareholders to make an informed decision on whether to accept or reject the offer. Whether the CMA intervenes to enforce the Rules will depend on whether both sides play fair and recognise that the ultimate purpose of the Rules is to provide fair and equal treatment to all shareholders.