

THE SECURITIES ACT
THE SECURITIES (TAKE-OVERS AND MERGERS) REGULATIONS, 1999
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THE SECURITIES ACT

REGULATIONS
(under section 76)

THE SECURITIES (TAKE-OVERS AND MERGERS) REGULATIONS, 1999

*(Made by the Securities Commission and approved by the Minister
on the 1st day of September, 1999)*L.N. 1999/A/99
154/2000
101B/2014

1. These Regulations may be cited as the Securities (Take-Overs and Mergers) Regulations, 1999. Citation

PART I. *Preliminary*

- 2.—(1) In these Regulations, unless the context otherwise requires— Interpretation.
- “associate” shall be construed in accordance with section 3 (1) of the Act;
- “company” means a public company;
- “control” means a holding or aggregate holdings of shares carrying 50% or more of the voting rights of a public company
- “shares” means the equity shares or equity stock of a company;
- “offer” includes, wherever appropriate, take-overs and mergers transactions however effected, including reverse take-overs, partial offers and offers by a parent company for shares in its subsidiary;
- “offeree” means a person or company to whom an offer is made;
- “offeree company” means a company whose shares are the subject of an offer;
- “offeror” means an individual wherever resident or a public or private company, wherever incorporated, other than an agent, who makes an offer and includes two or more persons or companies—
- (a) whose offers are made jointly or in concert; or
 - (b) who intend to exercise jointly or in concert any voting rights attaching to the shares for which an offer is made;
- “take-over” means a transaction or series of transactions whereby a person acquires control whether directly or indirectly, over the assets of a company;
- “take-over bid” means an offer to shareholders (directly or through the board), to purchase such number of equity shares of a company that, together with the offeror’s shares, will in the aggregate exceed 50% of the company’s outstanding voting shares;

“merger” means a combination of two or more companies at least one of which is public, whereby the assets of the original companies become vested in or under the control of one company;

“voting rights” means all the voting rights attributable to the shares of a company which are currently exercisable at a general meeting.

(2) For the purposes of these Regulations persons shall be regarded as acting in concert if those persons, pursuant to an agreement, understanding or undertaking (whether formal or informal) actively co-operate, through the acquisition of shares in a public company by any or all of them, in order to obtain or consolidate control of that company.

(3) The following persons shall be deemed to be acting in concert with other persons in the same category unless the contrary is proved—

- (a) a public or private company, its parent, subsidiaries and fellow subsidiaries;
- (b) public or private companies associated with a company referred to in paragraph (a), and for the purpose of this sub-paragraph, a company shall be regarded as an associated company if it owns or controls 20% or more of the equity share capital of a company;
- (c) a public or private company and any of its directors (together with their close relatives and related trusts);
- (d) directors of a company which is subject to an offer or where the directors have reason to believe a *bona fide* offer for their company may be imminent.

PART II. Information

Commission may request information.

3. In the exercise of its powers under these Regulations, the Commission may request information from any or all of the following—

- (a) licensed dealers;
- (b) investment advisers;
- (c) officers of the offeror and offeree companies;
- (d) all other parties to the offer.

Information to shareholders

4. Where an offer has been made in respect of an offeree company—

- (a) the offeror shall give to the shareholders of that company, sufficient evidence, facts and expert opinions upon which an adequate judgment and decision can be reached, and sufficient time to make an assessment and a decision; and
- (b) no relevant information shall be withheld from them.

PART III. *Shareholders*

5. Where—

- (a) a *bona fide* offer has been communicated to the board of an offeree company; or
- (b) the board has reasonable cause to believe that such an offer is likely to be made,

Approval by shareholders of board's actions.

that board or any member or members thereof shall not, at any time thereafter, take any action, whether directly or indirectly, in relation to the company's affairs, without the approval in general meeting by the company's shareholders, which could effectively result in—

- (i) any such offer being frustrated; or
- (ii) the company's shareholders being denied an opportunity to decide on its merits.

6. All parties to take-overs or mergers shall take such steps as are necessary to prevent the creation of a false market in the shares of an offeror or offeree company.

Prevention of false market.

7. A board which receives an offer or is approached with a view to an offer being made shall, in the interest of its shareholders, seek the advice of such persons as it considers competent in such matters.

Board to seek independent advice.

8. Rights of control shall be exercised in good faith and with due regard to the minority rights.

Exercise of rights of control.

9.—(1) All shareholders of the same class of an offeree company shall be afforded equal treatment by an offeror company in relation to the price of shares, the information to be supplied pursuant to regulation 4 and any other aspect of the offer.

Treatment of shareholders.

(2) During the course of an offer or when an offer is being considered the offeror company, the offeree company or any of their respective advisers shall not furnish information to some shareholders which is not made available to all shareholders.

(3) Paragraph (2) shall not apply to the furnishing of information in confidence by any offeree company to a *bona fide* potential offeror company or *vice versa*.

10. Directors of an offeror or offeree company shall, at all times when advising the company's shareholders—

Duty of directors to act in that capacity.

- (a) act only in their capacity as directors without regard to their personal or family shareholdings or their personal relationship with the company;
- (b) have regard only to the interests of the company's shareholders, employees and creditors.

PART III. *Shareholders, contd.*

Standard of
care re
documents,
etc.

11. Any document or advertisement addressed to shareholders containing information, opinions or recommendations from the board of an offeror company or its respective advisers—

- (a) shall be treated with the same standard of care as if it were a prospectus within the meaning of the Companies Act; and
- (b) particular care shall be taken in making forecasts as to profit in order to avoid the encouragement of expectations which may be unrealistic in the particular circumstances.

General
offer to
shareholders.

12.—(1) Subject to regulation 26, where control of a company is acquired by a person or by persons acting in concert, or where such control is consolidated, a general offer to all other shareholders shall be made within thirty days of acquiring control.

(2) A person who intends to acquire control of a company shall, before making the acquisition, take such steps as are necessary to ensure that he can and will continue to be able to implement the offer referred to in paragraph (1).

Notice of
acquisition
of 20% or
more of
company's
equity.

13.—(1) Where any person, whether directly or indirectly, acquires 20% or more of the equity of any company, that person shall, within ten days of the acquisition, send by registered mail to the Commission and to the company at its registered office or principal place of business, a written statement containing the following information—

- (a) the identity, occupation, place of residence and citizenship of the person acquiring such equity;
- (b) a declaration as to—
 - (i) the amount of equity being acquired;
 - (ii) the purpose of such acquisitions;
 - (iii) whether further purchases of equity in the company are intended; and
 - (iv) whether it is intended to acquire control of the company's business or majority shareholding or both.

(2) Whenever a person referred to in paragraph (1) acquires, whether directly or indirectly, a further 5% or more of the company's equity, that person shall, at the time of each such acquisition, send the statement referred to in that paragraph to the company and the Commission.

Contents,
etc., of offer.

14.—(1) All offers to or by a public company shall—

- (a) be made in writing in the first instance to the board of the offeree company or to its shareholders;

PART III. *Shareholders, contd.*

- (b) state the date of the bid and the name and address of the offeror and shall contain—
- (i) precise particulars of the securities of which the offer is made;
 - (ii) the total consideration payable for the purchase;
 - (iii) how any securities issued will rank for dividends, capital and redemption;
 - (iv) when and how the document of title will be issued; and
 - (v) how, when and where such offer may be accepted.

(2) If the offer or an approach with a view to making an offer is made by a principal or by any agent, the identity of the principal shall be disclosed at the outset.

(3) The board of an offeree company shall satisfy itself that the offeror company is, or will be, able to implement the offer in full.

(4) Whenever a board receives notice of any firm intention to make an offer, the board shall, whether or not it views the offer as favourable, forthwith notify the shareholders without delay by notice published in a daily newspaper circulating in Jamaica.

PART IV. *The Take-Over Bid Circular*

15. A take-over bid circular—

- (a) approved and authorized for delivery by the director of the offeror company; and
- (b) containing the particulars specified in regulation 16, shall be sent by prepaid post or delivered to the offeree company and a copy thereof shall be sent to the Commission.

Take-over bid circular be sent to Commission.

16.—(1) The take-over bid circular shall contain the following information—

- (a) the number and designation, without duplication, of any securities of the offeree company beneficially owned, directly or indirectly—
 - (i) by the offeror company;
 - (ii) by a subsidiary, parent or other associate company of the offeror company;
 - (iii) by each director and each officer of the offeror company; or

Contents of take-over bid circular.

PART IV. *The Take-Over Bid Circular, contd.*

- (iv) by a person or company who beneficially owns directly or indirectly, equity shares of the offeror company carrying more than 10% of the voting rights attached to all the equity shares of the offeror company for the time being outstanding or, if no such shares are so owned, a statement to that effect;
- (b) the number and designation of any equity shares of the offeree company traded by the person or companies referred to in paragraph (a) during the six months preceding the date of the offer, including the purchase or sale price and the date of each transaction;
- (c) particulars of all conditions attached to acceptances;
- (d) where the obligation of the offeror to take up and pay for shares under an offer is conditional upon a minimum number of shares being deposited pursuant thereto, the particulars of such condition and the last date on which the offer can be made unconditional;
- (e) particulars of the method and time of payment of the cash or other consideration to be paid for the shares of the offeree company;
- (f) a statement to the effect that any shares deposited pursuant to the offer may be withdrawn by or on behalf of the offeree at any time before the expiration of seven days from the opening date of the offer;
- (g) where the shares in the offeree company are to be paid for in whole or in part in cash, details of the arrangements that have been made to ensure that the required funds are available to carry out the offer;
- (h) where reasonably available, a summary showing in detail the volume of trading and price range of the shares of the offeree company in the six months preceding the opening date of the offer;
- (i) the particulars of any arrangement made or proposed between the offeror and any holders of more than 10% of the offeree's shares, officers or directors of the offeree or persons who, within the period of nine months before the offer was made, were holders of more than 10% of the offeree's shares, including particulars relating to any proposed compensation for loss of office or their retaining or retiring from office if the offer is successful;
- (j) particulars of any information known to the offeror that indicate any material change in the financial position or prospects of the offeree company since the date of its last published interim or annual financial statement;
- (k) a statement as to the intentions of the offeror regarding the employees of the offeree and the continuation of the business;

PART IV. *The Take-Over Bid Circular, contd.*

- (l) particulars of all documents required to be lodged for valid acceptance;
- (m) if the total emoluments receivable by the directors of the offeror company or group will be varied after the acquisition, full particulars of the variations or, if there will be no variation, a statement to that effect;
- (n) details of any special arrangements relating to the offer, between the offeror or any parties acting in concert and any of the directors, immediate past directors or shareholders of the offeree;
- (o) such other information as may be required from time to time by the Commission or a recognized stock exchange or both.

(2) Where the consideration for an offer includes, in whole or in part, the securities of a company, the take-over bid circular shall contain the following additional information regarding that company—

- (a) such information as is required for inclusion in a prospectus statement in lieu of prospectus as prescribed by the Companies Act;
- (b) the audited financial statements for the previous year;
- (c) the company's profit and loss statements for the previous five years of operation;
- (d) the unaudited financial statements for the company's last quarter;
- (e) the particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the company since the date of the last published interim or annual financial statement of such company.

(3) After an offer has become or is declared unconditional, the offer shall remain open for acceptance for not less than fourteen days, but shall, in the event that the offer becomes or is declared unconditional on an expiry date and the offeror company has given at least ten days' notice in writing to the shareholders of the offeree company, the offer shall not be open for acceptance beyond that date.

(4) If the proposed purchase is not completed, all documents referred to in paragraph (1) (l) shall be returned to the offeror within fourteen days of the closing date of the offer.

17.—(1) A report, opinion or statement by an expert or a person whose profession gives authority thereto, shall not form a part of or accompany a take-over bid circular unless the expert or person has agreed in writing to the use of the report, opinion or statement.

Experts' report
on take-over
bid circular.

PART IV. *The Take-Over Bid Circular, contd.*

(2) The agreement referred to in paragraph (1), shall be reproduced in the take-over bid circular.

(3) The report, opinion or statement referred to in paragraph (1) shall be included in or submitted with the take-over bid circular in the exact form and context in which it was made.

PART V. *Directors' Circular*

18.—(1) The board of an offeree company shall, within seven days of receipt of a take-over bid, issue a directors' circular containing a recommendation as to acceptance or rejection of the offer and the particulars specified in regulation 19.

(2) A copy of the directors' circular shall—

- (a) form part of or accompany a notice which shall be sent by the directors to each shareholder by prepaid post or by delivery at the shareholder's last known address, as shown in the books of the company;
- (b) be published in at least one daily newspaper circulating in Jamaica; and
- (c) immediately prior to being published and sent to shareholders, be delivered to the Commission and to any recognized stock exchange where the offeree company's securities are listed.

19. A directors' circular shall contain—

- (a) the number and designation, without duplication of any securities of the offeree company beneficially owned (directly or indirectly) by—
 - (i) each director and officer of the offeree company;
 - (ii) where known to the directors or officers, each person or company who beneficially owns (directly or indirectly) equity shares of the offeree company carrying over 10% of the voting rights,

and in each case, if no such shares are so owned, a statement to that effect;

- (b) a statement as to whether the categories of beneficial owners referred to in paragraph (a) have accepted or intend to accept the offer made in respect of the take-over bid;
- (c) where an offer is made by a company, the number and designation, without duplication, of any securities of the offeror, beneficially owned by each director or officer of the offeree company and, where

PART V. *Directors' Circular, contd.*

known, by each person or company who beneficially owns equity shares for the time being outstanding of the offeror company carrying more than 10% of the voting rights;

- (d) particulars of any arrangement or agreement made or proposed between the offeror and any of the directors or officers of the offeree company, including particulars relating to any proposed compensation for loss of office or their remaining in or retiring from office if the offer is successful;
- (e) a statement as to whether or not any director or officer of the offeree company and, where known, any person or company beneficially owning over 10% of the voting shares of the offeree company for the time being outstanding, has any interest in any material contract to which the offeree is a party, and if so, particulars of such interest;
- (f) where reasonably ascertainable, a summary in detail of the volume of trading and the price range of the shares of the offeree company in the six months preceding the offer, if in the opinion of the directors of the offeree company, such information is not adequately disclosed in the take-over bid circular;
- (g) particulars of any material change in the financial position and prospects of the offeree company since the date of the company's last published interim or annual financial statements;
- (h) a statement showing the trading in the shares of both the offeror and offeree company by every director and officer of the company for at least six months before the date of the offer or, if there was no such trading, a statement to that effect;
- (i) the audited financial statements for the previous year;
- (j) the company's profit and loss statements for the previous five years of operation;
- (k) the unaudited financial statements for the company's last quarter;
- (l) a valuation report, made not more than eighteen months before the date of the directors' circular, of the company's fixed assets prepared by a professional valuator containing a precise explanation of the basis for the valuation;
- (m) particulars of any other material facts not disclosed in the valuation report;
- (n) such other information as may be requested from time to time by the Commission or a recognized stock exchange, or both.

20.—(1) A report, opinion or statement by an expert or person whose profession give authority thereto, shall not form part of or accompany a directors'

Expert report
on directors'
circular.

PART V. *Directors' Circular, contd.*

circular unless the expert or person has agreed in writing to the use of the report, opinion or statement.

(2) The agreement referred to in paragraph (1) shall be reproduced in the directors' circular.

(3) Such report, opinion or statement shall be included in or submitted with the directors' circular in the exact form and context in which it was made.

21.—(1) Where an offer is made for all equity shares of a class owned by the offeree—

- (a) the offer shall remain open for at least twenty-one days;
- (b) shares so deposited—
 - (i) shall not be taken up and paid for by the offeror until the expiration of seven days from the opening date of the offer;
 - (ii) may be withdrawn by or on behalf of an offeree at any time before the expiration of seven days from the opening date of the offer.

(2) Where an offer for all the equity shares is amended to an offer for a lesser number of shares, the offer shall be regarded as having been made for that lesser number.

22. Where an offer is made for less than all the equity shares of a class owned by the offeree—

- (a) share may be deposited pursuant to that offer or any extension thereof not later than thirty-five days from the opening date of the offer;
- (b) shares so deposited shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within fourteen days after the last day on which the shares may be deposited;
- (c) if a greater number of shares is deposited than the offeror is bound or willing to take up and pay for, the shares taken by the offeror shall be taken up as nearly as possible *pro rata*, disregarding fractions, according to the number of shares deposited by each offeree.

23. Where offers for the equity shares of an offeree company are varied before their expiration by increasing the consideration offered for such shares—

Where offer made for all equity shares of a class owned by offerees.

Where offer made for less than all equity shares of a class owned by offerees.

Variation of consideration.

PART V. *Directors' Circular, cont'd.*

- (a) the offeror shall pay such increased consideration to each offeree whose shares were taken up and paid for even if taken prior to the variation; and
- (b) the offeror shall not purchase the shares in the market or from any other source.

24. Where an offer indicates that the consideration therefor may be paid partly or wholly in cash, the offeror shall make arrangements to the satisfaction of the Commission and of a recognized stock exchange for ensuring the adequacy and availability of the funds required to effect payment in full as indicated in the offer.

Consideration wholly or partly in cash

25. Where the financial statements required under these Regulations to be produced are not accompanied by the auditor's report, they shall be accompanied by a report of the company's chief financial officer who shall certify that the statements reflect fairly the financial position of the company involved over the period in question.

Certified financial statements

26.—(1) Subject to paragraphs (2) and (3), a mandatory offer shall be made to other shareholders of the same class when any person acquires, whether or not by a series of transactions over a period of time, shares which (taken together with shares held or acquired by persons acting in concert with him) carry 50% or more of the voting rights of a company or control of the company.

Mandatory offer

(2) The Commission may in writing exempt from the provisions of paragraph (1) a person who, by a transaction or a series of transactions, acquires control of a company in the following circumstances—

- (a) where the company's shares were charged as security for a loan the enforcement of which would require the lender to make a general offer, provided that the security was not given at a time when the lender had reason to believe that enforcement of the loan was likely;
- (b) the shares are acquired by that person for the purpose of recapitalizing or rehabilitating the company in order to restore it to solvency and to enable it to continue to carry on its business as a going concern; or
- (c) where—
 - (i) for the purpose of the restructuring of a group, one or more members of the group acquires 50% or more of the shares of another member of the group (hereinafter referred to as the "target company");
 - (ii) there is no change in the ultimate control of the voting rights in the target company; and

- (iii) in the opinion of the Commission, the acquisition is not likely to prejudice the minority shareholders of the target company.

(3) The exemption referred to in paragraph (2) shall not apply to any person who subsequently acquires the company's shares from a person referred to in that paragraph.

(4) The exemption referred to in paragraph 2(c)—

- (a) shall be made on an application made to the Commission by a member of the group acquiring the shares of the target company; and;
- (b) may be subject to such conditions as the Commission considers necessary in the circumstances, for the protection of minority shareholders of the target company.

(5) Where the Commission grants an exemption on an application made under paragraph (4)(a), the acquiring company shall disclose to the minority shareholders of the target company—

- (a) the intended transfer shares;
- (b) the approval of the exemption by the Commission and any conditions attached to such approval; and
- (c) the nature and circumstances of the transfer.

(6) The disclosure referred to under paragraph (5), shall be—

- (a) made forthwith upon receiving notification of the exemption approved by the Commission; and
- (b) in the form—
 - (i) of a press released authorized by an officer of the acquiring company;
 - (ii) by notice—
 - (A) by post; or
 - (B) delivered at the shareholders address as shown in the books of the company.