

# Explanatory Note

**Date:** 26 May 2006

**Subject:** Takeover Bids – New Listing Rules

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The Malta Financial Services Authority invites comments, **by 16 June 2006**, on the draft Listing Rules transposing the Takeover Bids Directive. The attached document is a revised draft following consultation carried out with the Financial Services Consultation Council and the company secretaries of listed companies. It is expected that the draft listing rules will enter into force on the 19 June 2006. Interested parties are invited to send their comments in writing addressed to the Deputy Director, Company Compliance Unit, MFSA or via e-mail on [cocomp@mfsa.com.mt](mailto:cocomp@mfsa.com.mt).

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## 1. Introduction

The objective of Directive 2004/25/EC of the European Parliament and of the Council of the 21 April 2004 on 'Takeover Bids' is to protect the interests of shareholders in Member State companies when these are the subject of takeover bids. This note explains the main issues which are involved and the method of transposing the provisions of the Directive into Maltese law. .

Takeover legislation or regulations are practically non-existent in Malta and it was necessary to introduce the general principles included in the Directive practically from scratch. Implementation of the Directive therefore requires the introduction of a statutory framework.

Since the rules are meant 'to regulate the market relating to takeover bids for the securities of companies where all or some of those securities are admitted to trading' it was considered appropriate to designate the Listing Authority as the Authority competent to supervise takeover bids. It was decided therefore to introduce and include the rules governing 'Takeover Bids' by way of a new Chapter in the Listing Rules.

## 2. Takeover Bids

As mentioned above, these 'Rules' are intended to govern takeover bids for the offeree ie companies whose securities, whether all or some, are admitted to trading.

The proposed new rules regulate the various concepts related to takeover bids and include amongst others the following:

- A mandatory bid rule whereby any person acquiring control of a company is required to launch a bid for all of the company's shares;

- Provisions on the equitable price to be paid to shareholders for their shares by the offeror following a mandatory bid;
- Provisions preventing the Board of Directors of the offeree company from taking defensive measures without the approval of shareholders. There is an option for Member States to make this provision of the Directive voluntary for companies, rather than mandatory;
- Provisions dealing with the squeeze-out and sell-out rights of minority shareholders;
- A breakthrough provision which allows the override of restrictions on transfer of shares and voting rights following a bid. However the Directive gives Member States the option to make the provision voluntary. If Member States decide not to impose this requirement, companies may still decide voluntarily to opt-in following a decision of the General Meeting of the Company.

### 3. *Mandatory Bids*

The Directive provides that once a person has acquired a certain percentage of a company's securities, he/it is required to make a bid for the remainder of the securities (namely a "Mandatory Bid") so as to protect minority shareholders. The current Directive does not specify a percentage, but allows each Member State to set the percentage of holding which it deems a "controlling interest",

The Authority intends to define a "controlling interest" as the acquisition or the holding by a person, whether acting alone or in concert with others, of fifty percent plus one of the voting rights of a company. As soon the holding of a controlling interest is reached, the proposed Listing Rules impose a number of obligations on the holder (also referred to as "the Offeror") regarding:

- the 'Announcement' to be made;
- the need to make public an 'Offer Document' specifying the details that need to be included; and

the length of time security holders of an Offeree company must have to enable them to reach an informed decision.

Furthermore, the Board of Directors of the Offeree company must inform the representatives of their employees or, where there are no representatives, the employees themselves, of the bid. The board shall also draw and make public a document setting out its opinion and shall also communicate that opinion to the representatives of its employees.

The Rules specify also those circumstances which the Listing Authority may consider in order to grant exemptions from the obligation to make a mandatory bid.

### 4. *Equitable price*

Article 5 of the Directive refers to the equitable price. In general terms, the equitable price is the highest price paid by the offeror during the period of not less than six months and not more than twelve months before the bid. The draft Rules state that the purchase price for securities that are the object of a mandatory bid must be the highest price determined according to the criteria specified in draft Listing Rule 18.39.

#### 5. *Squeeze-out and sell-out rights*

The squeeze-out rights are the rights an Offeror acquires, if he holds or acquires not less than ninety percent of the capital carrying voting rights and ninety percent of the voting rights in the Offeree company, to require all the holders of the remaining securities to sell him those securities at a fair or equitable price whichever is the highest. The sell-out rights are the rights of the minority shareholder to require the offeror to purchase their shares once the offeror has acquired ninety percent of the capital carrying voting rights and ninety percent of the voting rights in the Offeree company.

#### 6. *Barriers to takeovers*

The Directive aims to prevent certain steps that may be taken by companies both prior to and during the takeover bid which have the aim of frustrating the bid. Article 11 of the Directive contains the 'breakthrough provisions' intended to prevent pre-bid defences such as differential share structures under which minority shareholders exercise disproportionate voting rights. Post-bid defences are addressed by article 9 of the Directive which article prevents the Board of Directors of an offeree company from taking certain action without the prior approval of the shareholders.

#### 7. *Breakthrough*

Article 11 lays down that any restrictions on the transfer of securities provided for in the articles of association or provided for in any contractual agreement shall not apply during the time allowed for the acceptance of the bid and multiple-vote securities shall carry only one vote each at the general meeting. Where such rights are removed equitable compensation shall be provided for any loss suffered by the holders of those rights.

#### 8. *Obligations on Board of Directors*

Based on the fundamental principle that it should be the shareholder, not the management of a target company to decide on the merits of a takeover bid, Article 9 provides that the Board shall obtain the prior mandatory authorisation of the shareholders in general meeting. The shareholders shall also approve or confirm any decision which does not form part of the normal course of the company's business.

The Directive gives Member States the option not to impose Article 9 (on the Obligations of the board of the offeree company) and/or Article 11 (on Breakthrough) but, instead, to put in place the legal framework so that companies can voluntarily decide to opt in to that framework. The Authority proposes to make the provisions of Article 9 mandatory, and to allow companies to decide whether to opt in to Article 11.

#### 9. *Disclosure by Companies of Control and Structure of their shares*

Articles 10 (1) and (2) of the Directive requires Issuers to provide, in their annual reports, detailed information on their share and control structures, such as information on structure of share capital, restrictions on transfer of securities, significant shareholdings, restrictions on voting rights. Article 10(3) of the Directive requires the Board of Directors of Issuers to present an explanatory report to shareholders on the issues outlined in articles 10(1) and (2) at the company's Annual General Meeting. Article 10 aims to help break down barriers to takeovers and to bring greater transparency. By requiring companies to disclose share structures which disadvantage certain shareholders, companies may be encouraged to change to more open systems. The requirements of article 10 apply to all companies whose securities are admitted to trading on a regulated market, irrespective of whether or not they are involved in a takeover.

These disclosure requirements shall be adopted in their entirety in the Listing Rules. However it was felt that these rules should not form part of the new Chapter 18, but are included in Chapter 8 dealing with 'Continuing Obligations' since these requirements apply to all Issuers, whether or not they are involved in a takeover.

#### 10. *Reciprocity*

Article 12 of the Directive provides that where Member States have granted companies the option to decide whether or not to apply articles 9 and/or 11 voluntarily, Member States may nevertheless exempt offeree companies when they are the target of a bid from a company which is itself not also subject to those articles.

The Authority intends not to apply these reciprocity provisions since seeking to ring-fence Maltese companies could lead to retaliation and have adverse consequences for international trade.

#### 11. *Other Rules*

Member States are required to lay down rules governing takeover bids, at least as regards the following:

- Competing bids;
- Revision of a bid;
- Lapsing of a bid;
- Disclosure of the results of bids; and
- Irrevocability of bids.

#### 12. *Other Articles in the Directive*

The Directive 2004/25/EC on takeover bids grants further options to Member States regarding the Articles listed below:

- (i) "Member States may provide in the rules that they make rules derogating from the provisions of the Directive." (Proviso to article 4.5 of Directive).

The Authority proposes the adoption of the exemptions listed in draft Listing Rule 18.21.

- (ii) "Member States may authorise their Supervisory Authority to adjust the equitable price in circumstances and in accordance with criteria clearly determined. To that end, Member States may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards.....Any decision by a Supervisory Authority to adjust the equitable price shall be substantiated and made public." (Article 5.4 the proviso.)

The Authority does not intend to take up the option to adjust the equitable price.

- (iii) "The Supervisory Authority may require that the Authority is informed before such a decision (decision to launch a bid) is made public" (Article 6.1)

The Authority is proposing that it need not be informed *before* such a decision is made public but, instead, that it should be informed within seven days from when the offeror acquires a controlling interest.

- (iv) “Where the Offer document is subject to the prior approval of the Supervisory Authority.” (Article 6.2 **proviso**)

The Authority proposes to apply Article 6.2 (but not the proviso) *ie* ‘Before the Offer Document is made public, the Offeror shall communicate it to the Supervisory Authority’ *ie*: for information and not for approval

- (v) “Member States may provide that the period of 10 weeks may be extended on condition that the Offeror gives at least two weeks notice of his intention of closing the bid” and “ may provide for rules changing the period in specific cases”. (Article 7.1 and 7.2)

The Authority does not propose to take up the option to extend the period of ten weeks since it considers that ten weeks is ample time for a decision to be taken on whether to accept the bid or not.

- (vi) “ Member States may require that the authorisation of the shareholders in general meeting may be obtained at an earlier stage..” (Article 9 .2 )

This option will not be taken up because it is difficult to establish what is imminent.

- (vii) “ Member States may adopt rules allowing a general meeting of shareholders to be called at short notice Provided that the meeting does not take place within two weeks of notification being given.” (Article 9 .4)

The Authority intends to adopt this option.

## CHAPTER 18

### Takeover Bids

18. 1.1 This Chapter applies in relation to takeover bids when all or some of the securities of the offeree company are admitted to trading on a regulated market.

18.1.2 The objective of this chapter is to implement the relevant provisions of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, other than article 10 of the Directive which is transposed in Chapter 8.

18.1.3 In the event that any of these Listing Rules are in conflict with the provisions of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, the Directive shall prevail.

18.2 The provisions of this Chapter shall not apply to takeover bids:

18.2.1 for securities issued by companies, the object of which is the collective investment of capital provided by the public, which operate on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of those companies. Action taken by such companies to ensure that the stock exchange value of their units does not vary significantly from their net asset value shall be regarded as equivalent to such repurchase or redemption;

18.2.2 for securities issued by the central banks of the Member States or EEA States.

18.3 In this Chapter, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them:

'Acting In Concert' means any person who cooperates with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid. Subsidiary undertakings of any person cooperating with the offeror or the offeree company shall be deemed to be persons acting in concert with that other person and with each other.

'Announce' means publish or make 'available to the public'.

'Control' or 'Controlling Interest' means the acquisition by a person or the acquisition by persons acting in concert with him which, when added to any existing holdings of those securities of the person and/or to holdings of those securities of persons acting in concert with him, directly or indirectly give him fifty percent plus one of the voting rights of a company.

'Multiple-Vote Securities' means securities included in a distinct and separate class and carrying more than one vote each.

'Offeree Company' means a company, the securities of which are the subject of a bid.

'Offeror' means any natural or legal person making a bid.

'Parties To The Bid' means the offeror, the board of directors if the offeror is a company, the offeree company, holders of securities of the offeree company and the board of directors of the offeree company, and persons acting in concert with such parties.

'Securities' mean transferable securities carrying voting rights in a company.

'Takeover Bid' or 'Bid' means a public offer, other than by the offeree company itself, made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has, as its objective, the acquisition or control of the offeree company.

"Target company" means an issuer of securities for which the offeror is obliged to make or has made a takeover bid.

"Voluntary bid" means a bid made to all the holders of securities of a company for all their holdings when the person making such a bid does not have a controlling interest in the company.

18.4 The Listing Authority shall be the authority competent to supervise a bid where:

18.4.1 the offeree company is an issuer whose securities are admitted to trading in Malta and which has its registered office in Malta; or

18.4.2 the offeree company is registered in another Member State or EEA State but has its securities admitted to trading solely on a Recognised Investment Exchange in Malta:

Provided that if securities of the offeree company are admitted to trading on regulated markets in more than one Member State or EEA State, including Malta, the Listing Authority shall be the authority competent to supervise the bid if the securities of the offeree company were first admitted to trading on a Recognised Investment Exchange in Malta.

18.5 The Listing Authority shall supervise the bid if the securities of the offeree company were first admitted to trading on regulated markets in more than one Member State or EEA State simultaneously, including Malta, and the offeree company has determined that the Listing Authority shall be the authority competent to supervise the bid and has notified the Listing Authority accordingly on the first day of trading:

Provided that where, on the coming into force of this

Chapter, the securities of an offeree company were already admitted to trading on a Recognised Investment Exchange in Malta and on the regulated market of another Member State or EEA State simultaneously, the Listing Authority together with the regulatory authority of the other Member State or EEA State shall, within four weeks of the coming into force of this Chapter, determine which of the authorities shall supervise the bid. Otherwise, the offeree company shall determine which of the authorities shall supervise the bid on the first day of trading following the four week period referred to herein.

18.6 Where the Listing Authority has been designated as the authority competent to supervise the bid, such a decision shall be made public.

18.7 In the cases referred to in Listing Rule 18.4.2, 18.5 and 18.6 above:

18.7.1 matters relating to the consideration offered in the case of a bid and procedures applicable to the bid shall be regulated by the laws of the Member State or EEA State of the regulatory authority supervising the bid: and

18.7.2 matters relating to the information to be provided to the employees of the offeree company and any issues relating to the percentage of voting rights required to confer control as well as any defensive action taken to frustrate a bid shall be regulated by the laws of the Member State or EEA State where the offeree company is registered.

#### *Mandatory Bid*

18.8 Where a person acquires a controlling interest as a result of his own acquisition or the acquisition by persons acting in concert with him, such a person shall make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as determined in accordance with the provisions of Listing Rule 18.39:

Provided that where control has been acquired following a voluntary bid made to all the holders of securities for all their holdings the obligation to launch a mandatory bid shall not apply.

18.9 To calculate the threshold required to acquire a controlling interest, the following shall, *inter alia*, be included and added to the voting rights held by the offeror:

18.9.1 voting rights held by persons acting in their own name but on behalf of the offeror;

18.9.2 voting rights held by persons acquired and controlled directly by the offeror or through intermediaries;

18.9.3 voting rights attached to securities held by the offeror which are lodged by way of security, except where the holder of the security controls the voting rights and declares his



intention of exercising them, in which case they shall be regarded as his voting rights.

18.10 Where acquisition of control takes place as a result of acquisition of holdings by persons acting in concert, the obligation to make a bid shall lie with the person having the highest percentage of voting rights.

18.11 The obligation to make a bid to all the holders of securities shall not apply to those controlling holdings already in existence on the date on which this Chapter enters into force:

Provided that any further acquisitions after this date shall trigger off the obligation to launch a mandatory bid.

18.12 Notwithstanding anything contained in this Chapter, where the offeree company is a regulated company registered in Malta, a person must obtain the written consent of the competent authority before:

18.12.1 acquiring directly or indirectly a controlling interest in the offeree company;

18.12.2 increasing directly or indirectly, an existing holding which is not a controlling interest but which results in that person acquiring a controlling interest in the offeree company;

18.12.3 reducing, directly or indirectly, a controlling interest so as to cause it to cease to be a controlling interest;

18.12.4 divesting itself, directly or indirectly, of a controlling interest.

18.13 Upon becoming aware that any person intends taking any of the actions set out in Listing Rule 18.12, it shall also be the duty of the offeree company and of its board of directors to notify the competent authority forthwith.

18.14 In Listing Rules 18.12 and 18.13, the expressions:

18.14.1 "regulated company" means an offeree company which is authorised, licensed or otherwise supervised in terms of the Banking Act, the Financial Institutions Act, the Investment Services Act, the Insurance Business Act and the Insurance Brokers and Other Intermediaries Act, the Trusts and Trustees Act and the Special Funds (Regulation) Act;

18.14.2. "competent authority" means the Malta Financial Services Authority.

*Obligation to announce*

18.15 An offeror shall inform the Listing Authority of a bid and shall announce his decision to launch the bid within seven days of acquiring a controlling interest.

18.16 The bid must be announced only after the offeror ensures that he can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.

18.17 By way of consideration the offeror may offer securities, cash or a combination of both:

Provided that a cash consideration must be offered as an alternative in all cases.

18.18 As soon as the bid shall have been announced, the board of directors of the offeree company and the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

#### *Offer Document*

18.19 An offeror shall draw up and make public, not later than twenty one calendar days from announcing his decision to launch a bid, an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid, which offer document shall be communicated to the Listing Authority prior to it being made available to the public.

18.20 When the offer document is published, the board of directors of the offeree company and of the offeror shall communicate the offer document to the representatives of their respective employees or, where there are no such representatives, to the employees themselves.

#### *Exemptions concerning mandatory bids*

18.21 The Listing Authority may grant exemptions from the obligation to make a mandatory bid on the basis of a written application in the following circumstances:

18.21.1 control of the target company was obtained as a result of reduction of the offeree company's share capital;

18.21.2 control of the target company was acquired as a result of a merger or division;

18.21.3 control of the target company was obtained through the acquisition of securities with the intention to sell within a short term;

18.21.4 control has been obtained by an existing shareholder acquiring securities following an increase in capital as a result of executing his right of pre-emption and not through the purchase of securities acquired from other persons;

18.21.5 control was obtained following a transmission of securities 'causa mortis' as a result of which the person's number of voting rights in the target company increased.

*Details of offer document*

18.22 The offer document shall specify at least the following information:

18.22.1 the terms of the bid;

18.22.2 the identity of the offeror and, where the offeror is a company, the status, name and registered office of that company;

18.22.3 the securities or, where appropriate, the class or classes of securities for which the bid is made;

18.22.4 the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;

18.22.5 the compensation offered for the rights which might be removed as a result of the "breakthrough rule" laid down in Listing Rules 18.51 to 18.56 , with particulars of the way in which that compensation is to be paid and the method employed in determining it;

18.22.6 the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;

18.22.7 details of any existing holdings of the offeror, and of persons acting in concert with him, in the offeree company;

18.22.8 all the conditions to which the bid is subject;

18.22.9 the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;

18.22.10 the time allowed for acceptance of the bid;

18.22.11 where the consideration offered by the offeror includes securities of any kind, information concerning those securities;

18.22.12 information concerning the financing for the bid;

18.22.13 the identity of persons acting in concert with the

offeror or with the offeree company and, in the case of companies, their status, names, registered offices and relationships with the offeror and, where possible, with the offeree company;

18.22.14 the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts to settle any disputes.

18.23 A report on the consideration offered, drawn up by one or more experts who are independent of the offeror or offeree company, shall be appended to the offer document.

18.24 The expert's report must confirm that the offeror has sufficient resources to meet the consideration to be provided on full acceptance of the offer and to pay any debts incurred in connection with the offer.

18.25 The Listing Authority may request that the parties to a bid shall provide the Authority with all the information in their possession concerning the bid at any time on request.

*Sufficient time and information for acceptance*

18.26 The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid.

18.27 The time allowed for the acceptance of a bid shall be determined in the offer document and shall be not less than four weeks nor more than ten weeks from when the offer document is made available to the public.

*The opinion of the board of directors of the offeree company on the bid*

18.28 The board of directors of the offeree company must advise and give its views to the holders of securities on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.

18.29 In this respect, the board of directors of the offeree company shall draw up and make available to the public a document setting out its opinion of the bid and the reasons on which it is based, including its views on the effects of implementation of the bid on all the company's interests and specifically employment, and on the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the company's places of business as set out in the offer document in accordance with Listing Rule 18.22.9.

18.30 The board of directors of the offeree company shall at the same time communicate that opinion to the

representatives of its employees or, where there are no such representatives, to the employees themselves.

18.31 Where the board of directors of the offeree company receives in good time a separate opinion from the representatives of its employees on the effects of the bid on employment, that opinion shall be appended to the document.

*Board of directors to call general meeting*

18.32 During the period referred to in Listing Rule 18.34 below, the board of directors of the offeree company shall obtain the prior authorisation of the shareholders in general meeting given for this purpose before taking any action, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.

18.33 Notice of the meeting convened for the approval of the action referred to above must contain, or be accompanied by, full particulars of the proposed action and a statement explaining the reasons for and significance of such action.

18.34 Such authorisation shall be mandatory at least from the time the board of directors of the offeree company receives the information that a decision has been taken to make a bid until the result of the bid is published or the bid lapses:

Provided that seeking alternative bids does not require such authorisation.

18.35 In the case of decisions taken before the beginning of the period referred to in Listing Rule 18.34 above and not yet partly or fully implemented, the shareholders in general meeting shall approve or confirm any decision which does not form part of the normal course of the company's business and the implementation of which may result in the frustration of the bid.

18.36 For the purpose of obtaining the prior authorisation, approval or confirmation of the shareholders referred to in Listing Rules 18.32 and 18.35 a general meeting can be convened at shorter notice than that stipulated in the Memorandum or Articles of Association provided that the meeting does not take place within two weeks of notification.

*Defensive tactics*

18.37 If a target company has received a takeover notice or has reason to believe that a bona fide offer is imminent, the board of directors of the company must not take or permit any action, in relation to the affairs of the target company that could effectively result in :

18.37.1 an offer being frustrated; or

18.37.2 the holders of securities of the target company being denied an opportunity to decide on the merits of an offer:

Provided that the board of directors of a target company may take or permit the kind of action referred to above if:

18.37.3 the action has been approved by an ordinary resolution of the target company; or

18.37.4 the action is taken or permitted under a contractual obligation entered into by the target company, or in the implementation of proposals approved by the board of directors of the target company, and the obligations were entered into, or the proposals were approved, before the target company received the takeover notice or became aware that the offer was imminent; or

18.37.5 if Listing Rules 18.37.3 and 18.37.4 above do not apply, the action is taken or permitted for reasons unrelated to the offer with the prior approval of the Listing Authority.

Provided that the notice of the meeting containing the proposed resolution for the approval of the action referred to in Listing Rule 18.37.3 above must contain, or be accompanied by:

18.37.6 full particulars of the proposed action; and

18.37.7 the reasons for it; and

18.37.8 a statement explaining the significance of the resolution under these rules.

*Equitable price*

18.38 The purchase price for securities that are the object of a mandatory bid must be equitable.

18.39 The equitable price to be paid for securities is the highest price determined by the following criteria:

18.39.1 the price offered for the security should not be below the weighted average price of the security or the security transactions made on a recognised investment exchange during the previous six (6) months;

18.39.2 the price offered for the security should not be below the highest price paid for the security by the offeror or persons acting in concert with the offeror during the previous six (6) months;

18.39.3 the price offered for the security should not be below the weighted average price paid for the security by the offeror or persons acting in concert with the offeror during the previous six (6) months;

18.39.4 the price of the security should not be lower than ten percent (10%) below the weighted average price of the security

within the previous ten trading days.

18.40 If, after the bid has been announced and before the offer closes for acceptance, the offeror or any person acting in concert with him purchases securities that are priced higher than the offer price, the offeror shall increase his offer so that it is not less than the highest price paid for the securities acquired.

#### *Squeeze-out rights*

18.41 Following a bid made to all the holders of the offeree company's securities for all of their securities, Listing Rules 18.42 to 18.45 shall apply.

18.42 Where the offeror holds securities representing not less than ninety percent of the capital carrying voting rights and ninety per cent of the voting rights in the offeree company, or where, following acceptance of the bid, the offeror has acquired or has firmly contracted to acquire securities representing not less than ninety percent of the offeree company's capital carrying voting rights and ninety per cent of the voting rights comprised in the bid, the offeror has the right to require all the holders of the remaining securities to sell him those securities at a fair price and shall take the same form as the consideration offered in the bid or, alternatively, in cash.

18.43 In order to establish a fair price the offeror must appoint an independent expert to draw up a report determining the price considered to be a fair and reasonable value of those securities, which price must however be equivalent to or higher than the equitable price.

18.44.1 To calculate the threshold referred to in Listing Rule 18.42, the voting rights indicated in Listing Rules 18.9.1 to 18.9.3 shall be included and added to the voting rights of the offeror.

18.44.2 Where the securities of the offeree company are divided into different classes, the offeror shall exercise the right of squeeze-out only in the class in which the threshold laid down in Listing Rule 18.42 has been reached.

18.45 If the offeror wishes to exercise the right of squeeze-out he shall do so within three months at the end of the time allowed for acceptance of the bid.

#### *Sell-out rights*

18.46 Following a bid made to all the holders of the offeree company's securities for all of their securities, Listing Rules 18.47 to 18.49 shall apply.

18.47 A holder of remaining securities may require the

offeror to buy his securities from him at a fair price under the same circumstances as provided for in Listing Rule 18.42.

18.48 In order to establish a fair price the holders of the remaining securities must appoint an independent expert to draw up a report determining the price considered to be a fair and reasonable value of those securities, which price must however be equivalent to or more than the equitable price.

18.49 Listing Rules 18.43 to 18.45 shall apply *mutatis mutandis*.

#### *Opting in and Opting out*

18.50 By decision taken in General Meeting, the holders of securities of an offeree company registered in Malta and whose securities are admitted to trading in Malta may:

18.50.1 where the restrictions laid down in Listing Rules 18.51 to 18.56 below do not exist, the holders of the securities may opt to apply any or all of the restrictions (an “opting-in resolution”); or

18.50.2 where the restrictions laid down in Listing Rules 18.51 to 18.56 below exist, the holders of the securities may opt not to apply any or all of the restrictions ( an “opting-out resolution”).

18.50.3 An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”)

18.50.4 The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed and the effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which the opting-in resolution was registered with the Registrar.

18.50.5 An opting-in or opting-out resolution can only be taken after prior written authorisation has been sought and obtained from the Listing Authority:

Provided that if the securities of the offeree company are admitted to trading on regulated markets in other Member States or EEA States, or the offeree company has requested such admission, the relevant regulatory authority of that Member State or EEA State must be notified of the decision taken in accordance with Listing Rule 18.50.

18.51 Any restrictions on the transfers of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Listing Rule 18.27.



18.52 Any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the coming into force of this Chapter, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Listing Rule 18.27.

18.53 Restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect at the general meeting of the holders of the securities which decides on any defensive measures in accordance with Listing Rule 18.32.

18.54 Restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the coming into force of this Chapter, shall not have effect at the general meeting of the holders of the securities which decides on any defensive measures in accordance with Listing Rule 18.32.

18.55 Multiple-vote securities shall carry only one vote each at the general meeting of the holders of the securities which decides on any defensive measures in accordance with Listing Rule 18.32.

18.56 Where, following a bid, the offeror holds 75% or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in Listing Rules 18.51 and 18.52 nor any extraordinary rights of the holders of securities concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of the holders of securities following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.

To that end, the offeror shall have the right to convene a general meeting of the holders of securities at short notice, provided that the meeting does not take place within two weeks of notification.

18.57.1 Where rights are removed on the basis of any one of Listing Rules 18.51 to 18.56, equitable compensation shall be provided for any loss suffered.

18.57.2 The amount of equitable compensation to be granted to the person who suffers loss as a result of any act or omission that would, but for the provisions of Listing Rules 18.51 to 18.56, be a breach of agreement, shall be determined by the offeror in the offer document as required by Listing Rule 18.22.5.

18.57.3 Where the holder of the rights removed on the basis of any one of Listing Rules 18.51 to 18.56 feels that

the compensation offered by the offeror in accordance with Listing Rule 18.57.2 above is insufficient, such person may apply to the court for the court to determine the amount of compensation it considers just and equitable against any person who would, but for Listing Rules 18.51 to 18.57, be liable to the holder of such rights for committing or inducing the breach.

18.58 Listing Rules 18.53 to 18.56 shall not apply to securities where the restrictions on voting rights are compensated for by specific pecuniary advantages.

18.59 Listing Rules 18.50 to 18.58 shall not apply when the Government of Malta holds securities conferring special rights in the offeree company.

### *Competing bids*

18.60.1 Any person may, during the acceptance period, launch a bid to compete with the initial bid made by the offeror. Such bids are called competing bids.

18.60.2 Where competing bids are made for the securities of the offeree company, the provisions of this Chapter shall apply to each such bid.

18.61 A person shall announce his decision to launch a competing bid and must inform the Listing Authority of the bid.

18.62 The person making a competing bid shall, not later than twenty one calendar days from announcing his decision to bid, draw up an offer document as provided for in Listing Rule 18.22.

18.63 The holders of securities of the offeree company shall have the right to choose between the initial bid and any competing bid.

18.64 Where there are competing bids and the initial offeror does not withdraw his bid, the period for acceptance of the initial bid shall be extended automatically to the time allowed for acceptance of the competing bid as provided for in the offer document:

Provided that the time allowed for the acceptance period of the competing bid shall be not less than four weeks from when the offer document of the competing bid was made available to the public;

Provided further that the time allowed for the acceptance period of the initial bid and the competing bid together must not exceed ten weeks from when the offer document of the initial offer was made available to the public.

18.65 The extension of the acceptance period shall be communicated to the Listing Authority and made public.

### *Revision of a bid*

18.67 An offeror may revise a bid only in the following circumstances:

18.67.1 to increase the consideration;

18.67.2 to increase an existing component to the consideration;

18.67.2 to add a cash component to the consideration;

18.67.3 to extend the time allowed for the acceptance of a bid but not beyond the maximum period of ten weeks as provided in Listing Rule 18.27

18.68 The offeror may revise the terms of the bid at any time not later than fourteen calendar days before the end of the period allowed for acceptance of a bid.

18.69 The offeror shall communicate to the Listing Authority his intention to revise the bid prior to the revised bid being made public.

18.70 Notwithstanding the provision of Listing Rule 18.27, where a bid has been revised, the time allowed for the acceptance of the revised bid shall be automatically extended by fourteen days:

Provided that the extension does not go beyond the maximum period of ten weeks as provided in Listing Rule 18.27.

18.71 On announcing his intention to revise a bid, the offeror shall without delay draw up and make public a supplementary document setting out the amendments to the offer document, which revised document shall be communicated to the Listing Authority prior to it being made public.

18.72 Where the revision of a bid increases the consideration offered, the offeror must provide the increased consideration to each person whose securities are taken up, whether or not the person accepted the offer before or after the revision was made.

18.73 The conditions of the revised bid shall also stipulate that shareholders who have made an offer to the offeror have the right to withdraw their acceptances or offers.

### *Lapsing of a bid*

18.74 The takeover bid automatically lapses if, at the end of the acceptance period, none of the holders of securities of the offeree company have taken up the offer. In the event that the offer was not successful the offeror is not authorised to make a new offer for the same offeree company during a period of one year from when the bid lapses.

18.75 The offeror and the offeree company shall without delay inform the Listing Authority and announce the lapsing of the bid.

*Disclosure of the results of bids*

18.76 The offeror and the offeree company shall inform the Listing Authority and make public the necessary, relevant and complete results of the takeover by not later than ten calendar days from the closing of the acceptance period.

18.77 The announcement about the results shall contain at least the following information:

18.77.1 the absolute number of securities of every kind of securities acquired by the offeror during the acceptance period;

18.77.2 the ratios of the different classes and types of securities that were included in the takeover bid;

18.77.3 separate calculations for the participation and voting rights acquired by the offeror and persons acting in concert.

*Irrevocability of bids*

18.78 When a bid has been announced in accordance with Listing Rule 18.15, it may be withdrawn or declared void only in the following circumstances:

18.78.1 where there are competing bids and the offeror decides to withdraw his bid as provided for in Listing Rule 18.64;

18.78.2 where a condition of the bid announced in the offer document in accordance with Listing Rule 18.22.8 is not fulfilled;

18.78.3 in exceptional circumstances and with the authorisation of the Listing Authority, explaining why the bid cannot be put into effect for reasons beyond the control of the parties to the bid.

18.79 The offeror shall without delay announce the decision to withdraw the bid.