Global Public M&A Guide - Egypt

Effecting a Takeover

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# 4. Effecting a Takeover

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All public company takeovers in Egypt are effected by way of a public tender offer. There are two main forms of tender offers in Egypt:

a voluntary tender offer, in which a bidder voluntarily makes an offer for less than 33.33% of its voting securities or shares issued by the target company, including securities issued by the company conferring the right to acquire voting securities of the target company; and

a mandatory tender offer, which a bidder is required to make if, as a result of an acquisition of the voting securities or shares issued by the target company, including securities issued by the company conferring the right to acquire voting securities of the target company, it crosses (alone or in concert with others) a threshold of 33.33% of the voting securities or shares of the target.

A bidder that intends to launch a tender offer must include in its notification to the FRA a draft information memorandum as well as proof of certain funds from a certified bank in Egypt.

**4.1 Voluntary public tender offer**

The bidder is free to make the tender offer subject to prior approval by the FRA and certain other conditions precedent, such as a minimum acceptance level or a material adverse change condition.

The bidder is, in principle, free to determine the price and the form of consideration offered to the target shareholders absent any pre-existing controlling interest in the target:

The offered price may be paid in cash, securities or a combination of both.

There is no minimum price for a voluntary tender offer, but the legal rules provide that the terms of the tender offer, including the price, must be such that they could reasonably be expected to allow the tender offer to succeed.

**4.2 Mandatory public offer**

In all cases, a mandatory tender offer applies to 100% of the ordinary shares, voting rights and convertible securities of the company. A person who wishes to acquire ordinary shares or voting rights, independently or together with related parties, directly or indirectly, will trigger a mandatory tender offer in the following instances:

If a person acquires one-third or more of the ordinary shares or voting rights of the target company. However, if a person already owns one-third but less than 50% of the share capital or voting rights and they subsequently acquire more than an additional 5% of the share capital or voting rights within 12 consecutive months, they will not trigger a mandatory tender offer except if their ownership reaches 50% of the share capital or voting rights of the target company.

If the ownership of the person reaches 50% or more of the ordinary shares or voting rights of the target company. However, if a person already owns more than 50% but less than two-thirds of the share capital or voting rights and they subsequently acquire more than an additional 5% of the share capital or voting rights within 12 consecutive months, they will not trigger a mandatory tender offer except if their ownership reaches two-thirds of the share capital of the target company.

If the ownership of the person exceeds three-quarters of the ordinary shares or voting rights of the target company, they will trigger a mandatory tender offer. However, if a person already owns two-thirds of the share capital or voting rights but does not exceed three-quarters, and they subsequently acquire more than an additional 5% of the share capital or voting rights within 12 consecutive months, they will not trigger a mandatory tender offer.

In all the above instances, if the bidder undertakes to continue listing the company on the EGX, it shall be required to submit a mandatory tender offer for 100% of the ordinary shares, while subtracting 10%, which is the minimum free float required to remain listed on the EGX. In the event that holders representing more than 90% of the ordinary shares accept such tender offer, proration will be applied in order to maintain the 10% minimum requirement. If the bidder wishes to delist the company from the EGX, the mandatory tender offer must cover 100% of the ordinary shares.

The mandatory tender offer is binding and unconditional, save for the conditions set out in step 5.4 of the timeline below related to the minimum targeted number of shares. The main exceptions to the mandatory tender offer obligation include situations where:

the stake is acquired by a successor;

the stake is acquired within the framework of a corporate merger;

the stake is acquired within the framework of sale by a bank of pledged shares in accordance with the provisions of the Egyptian Banking Law;

there is a group restructuring;

the stake is acquired by financial institutions licensed to undertake underwriting activities;

there has been a decrease of capital due to the cancellation of ordinary shares held in treasury;

all of the company’s shareholders have approved the sale;

there has been a transfer of full ownership of securities owned by a union of employees who are shareholders in the subsidiary companies of state-owned holding companies to restructure such companies and inject additional investments therein; and

there has been an increase to the share capital in cash or through debt-to-equity swaps provided that such is not due to the purchase of subscription rights.

In terms of the price offered and the form of the consideration, the same rules apply as in the case of a voluntary tender offer. In addition:

If the share of the target company was among the active shares on the EGX, the bidder should consider the following when determining the purchase price:

The average closing price of the EGX during the past six months or the average closing price of the company during a period of three months preceding the submission of the tender offer, whichever is higher.

The mandatory offer price must be at least equal to the highest price paid by the bidder (or any person acting as related parties with it) during a period of 12 months preceding the submission of the tender offer;

The aforementioned may be not be considered if the purchase price suggested by the bidder was determined in accordance with a fair value study prepared by an independent financial advisor who is registered with the FRA's register pursuant to the financial valuation standards.

If the share of the target company was not amongst the active shares on EGX, the price shall be determined in accordance with a fair value study prepared by an independent financial advisor who is registered with the FRA's register pursuant to the financial valuation standards.

The consideration offered can consist of cash, securities or a combination of both. A cash alternative must be offered in an amount corresponding to the cash value of any securities offered as consideration at the time of the filing of the tender offer with the FRA.

The offeror may amend the conditions of the tender offer provided that it does so, at the latest, five business days before the elapse of the tender offer period after obtaining the FRA's approval. The FRA will base its approval on whether such amendments will be to the benefit of the transferors of the securities.

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