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THE MANDATORY TENDER OFFER RULES

By Mona Zulficar

The following is a summary of the acquisition rules issued by Ministerial Decree 12 of 2007 as the new Chapter 12 of the Executive Regulations of the Capital Market Law 95 of 1992 (the "Rules").

1. The Rules apply to tender offers launched to acquire the shares and convertible bonds of any listed company on the Egyptian Stock Exchange (EGX) and any company that has offered shares to the public (the Relevant Company or Companies). The Rules and ownership limits, thresholds and restrictions applicable to shares also apply to GDR's issued by the Relevant Companies. Hence the shares and GDR's owned by a shareholder of the Relevant Company are subject to such limits, thresholds and restrictions. However, according to new rules issued by EFSA in March 2013, GDRs have to be delivered for cancellation so that the underlying shares may be released for sale in the tender offer. In other words, no separate tender offer for the DGRs will be recognized by EFSA.
2. The Rules apply to all tender offers for the acquisition of shares and convertible bonds of the Relevant Companies, whether for cash or for shares or a combination of both (Mixed Tender Offers), and whether such tender offers are voluntary or mandatory. The threshold for mandatory tender offers (MTO's) is one third of the issued shares or voting rights of a Relevant Company. Any acquisition below the threshold may be effected in the open market or as a protected transaction, subject to the prevailing rules of the EGX.
3. A MTO for up to 100% of the shares and convertible bonds of a Relevant Company must be launched if the purchaser has acquired or wishes to acquire one third of the issued shares or voting rights of a Relevant Company, directly or indirectly through its related parties. The Rules adopted a broad definition of related parties covering majority owned or controlled affiliates, sister companies, holding companies, companies under actual or common control, directly or indirectly, and parties acting in concert. For natural persons, related parties are relatives up to the second degree.
4. As an exception, the Egyptian Financial Supervisory Authority (EFSA) may waive the MTO requirement if the excess shares purchased by a shareholder directly or indirectly, are not more than 3% above the threshold for MTO's, provided such purchaser disposes of such excess within six months. During such period, the excess shares have no voting rights.



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5. A shareholder who holds, together with its related parties, one third and less than 50% of the shares of a Relevant Company, may creep and increase its shares by not more than 2% during each 12 consecutive months, provided that the MTO obligation would be triggered once ownership exceeds 50% or if the creeping limit is exceeded during any 12 consecutive months. This applies to a shareholder, who holds, together with its related parties, more than 50% and less than 75% of the issued shares of a Relevant Company, where the MTO obligation is triggered once ownership exceeds 75% or if the creeping limit is exceeded during any 12 consecutive months.
6. A MTO must be unconditional and may only, subject to EFSA approval, be conditional upon receiving a minimum of 51% of the issued shares of the Relevant Company or 75% in case the acquisition is intended for the purpose of a merger. EFSA approval is required after the expiration of the MTO period in order to execute less than such required percentages. The shareholder making a MTO may not offer a purchase price that is less than the price offered in a tender offer by such shareholder or any of its related parties during the preceding 12 months. Otherwise the purchaser is free to fix the tender offer price. However, if the price offered, in case of actively traded shares, is less than the latest six months weighted average price of the shares, a fairness opinion from an independent financial adviser must be published by the target company together with the opinion of its board of directors on the fairness of the price offered at least five business days prior to the end of the tender offer period. In such a case the tender offer must be open for at least 20 business days.
7. The Rules provide for certain exceptions from the MTO requirement, provided obtaining EFSA approval. These include transfers due to succession by inheritance or mergers, transfers of pledged shares to creditor banks under Article 105 of the Banking Law, restructuring between companies of the same group, acquisitions by underwriters pursuant to their underwriting commitment and any other case approved by EFSA subject to certain rules to be determined by EFSA.
8. Voluntary and mandatory tender offers are subject to the same general rules. These include the following: (i) Application must be submitted to EFSA together with a short offering memorandum by the offeror or any of the financial or legal advisers approved by EFSA. The application must be accompanied by the proposed tender offer and a letter of commitment from a bank registered in Egypt confirming that funding for the tender offer is available; (ii) EFSA must notify the EGX once a tender offer application has been received, for publication on its screens. EFSA must declare its approval or otherwise within two business days from receipt of satisfactory documentation. EFSA may only reject an application for a tender offer if it violates the applicable laws and regulations, the principles of equality, equal opportunity, transparency or the best practices; (iii) The approved tender offer must be published in two widely circulated daily newspapers within two business days from the EFSA approval, where at least one publication should be in Arabic; (iv) The validity period for tender offers must not be less than 10 business days in general and 20 business days in the event that the target company is required to obtain and publish a fairness opinion from an independent adviser in accordance with Article 338 of the Rules. This applies to mixed tender offers or MTO's



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launched by a shareholder or its related parties. The maximum validity period allowed for tender offers is 30 business days, except in case of competitive tender offers which are subject to specific rules.

9. The Relevant Company may within 15 business days from publication of the tender offer notice, issue a statement announcing the opinion of its board of directors on the significance of the tender offer and its impact on the company, its shareholders and employees and must do so in case the shares of the target company are actively traded on the EGX and the price offered is less than the weighted average price within the preceding six months of the MTO application date, or in case of a Mixed Tender Offer including a swap for shares or a combination of cash and shares. EFSA may require the board of the target company to appoint an independent adviser approved by EFSA to submit a report on the valuation of the tender offer, to be published not later than 15 business days from publication of the tender offer, in case: (i) the offeror or its related parties own 20% or more of the target company, or is a board member or a member of the senior management of the target company, (ii) the shares of the target company are actively traded on the EGX and the price offered is less than the weighted average price within the preceding six months of the MTO application date; (iii) the tender offer is a Mixed Tender Offer including a swap for shares or a combination of cash and shares; or (iv) any other cases as required by EFSA.
10. Article 8 of Law 95 of 1992 which requires any purchaser that would hold more than 10 % of the shares of a company that has offered its shares in a public offering as a result of a proposed transaction, or more than 5% in case the purchaser is a member of the board of directors or an employee of such company, to notify the issuing company, two weeks prior to execution of the transaction, is still valid and applicable.
11. The Rules provide for disclosure requirements applicable to all the parties involved with the tender offer, whether before or after launching the tender offer. The Rules also include strict requirements regarding the obligations of related advisers.
12. An innovation introduced by the Rules to protect the minority shareholders in case a company is 90% owned by a shareholder or its related parties is that EFSA may, at the request of minority shareholders holding at least 3% of the shares within 12 months from the acquisition by such majority shareholder, require the majority shareholder to launch a tender offer to acquire the minority shares. In such a case, the majority shareholder will have to make the tender offer at the MTO acquisition price.
13. During more than six years of application and for several years before issuance, of the MTO Rules, we have handled and successfully closed many tender offers, voluntary and mandatory, and have established precedents, particularly in cases of privatizations, acquisition agreements, mixed tender offers and exceptions to MTO Rules. Those precedents are helpful in facilitating implementation of new transactions.