NEW UAE TAKEOVER REGIME

In a significant development for the UAE public M&A market, the Emirates Securities and Commodities Authority (SCA) has issued new rules that introduce a codified takeover regime in the UAE for the first time. This could be a game changer.

BACKGROUND

Historically, tender offers for shares in public companies have been possible but, in the absence of a codified regime, it has been necessary for bespoke arrangements to be agreed with the regulators on a case by case basis.

The absence of basic mechanisms such as a "squeeze-out" procedure also meant such tender offers carried significant execution risk and could not necessarily deliver full takeovers, which in turn made acquisitions of public companies less attractive.

Resolution No (18/RM) of 2017, regarding the Rules of Merger and Acquisition for Public Shareholding Companies (the M&A Regulations), came into force on 1 August this year and introduces a new codified takeover regime that sets out a framework for implementing tender offers. This includes a number of helpful features that bring a higher degree of certainty to takeovers of public companies in the UAE, alongside the now well established statutory merger route (which will remain more relevant in the context of true mergers).

This briefing provides a high-level overview of the new takeover regime.

APPLICATION

The new takeover regime applies to the acquisition of shares in public joint stock companies (PJSC) listed on the Dubai Financial Market and Abu Dhabi Stock Exchange.

The SCA does, however, retain broad powers to exempt certain types of transactions or investors from the regime – for instance, acquisitions carried out: i) by federal or local government, ii) by a "strategic partner" in certain circumstances, and iii) in the context of restructuring companies in financial difficulty. The SCA may also exempt any other cases as it deems appropriate, if in the public interest.

TYPES OF OFFER

The M&A Regulations contemplate three types of offer that a person or group of associated/related parties (a Bidder) can, or will be required to, make: i) mandatory offers, noting the current mandatory bid threshold has been reduced from a 50% (or more) acquisition of a PJSC's share capital to 30% (plus one share); ii) voluntary offers or iii) partial offers.

KEY FEATURES OF THE TAKEOVER REGIME

The M&A Regulations provide a fairly classical takeover framework and include a number of features one would expect, including:

- Key principles relating to equality of treatment of shareholders and competing bidders, sufficiency of disclosure to enable informed decision making and prohibitions on the target board from acting in a manner that denies the target shareholders the opportunity to assess or respond to a tender offer
- "Squeeze-out" and "sell-out" procedures in respect of minority shares
- Strict confidentiality obligations and announcement triggers
- Dealing restrictions
- Offer timelines
- Minimum price requirements
- Acceptance conditions
- Safe-harbours in respect of conducting diligence on the target
- Fairness opinions in respect of the value of the target
- Cash confirmation requirements
- Lock-out provisions.

Introduction of "squeeze-out" and "sell-out" procedures

Where the Bidder obtains 90% (plus one share) of the target company's share capital:

- "Squeeze-out": new procedure to enable the Bidder to purchase minority shareholding/s.
- "Sell-out": new procedure for minority shareholders holding at least 3% of shares in the target to apply for the purchase of their shares.

SOME PRACTICAL AMBIGUITIES…

Despite providing the basis for a reasonably comprehensive regime, there are certain areas of ambiguity under the new M&A Regulations that remain to be worked through. Some key examples include:

- Interaction of the 30% (plus one share) mandatory offer threshold with foreign ownership restrictions
- Interplay between the M&A Regulations and SCA's Disclosure and Transparency Regulations
- The timing and impact on the bid process of obtaining consents from other regulatory authorities.

CONCLUSION

Although it remains to be seen how the M&A Regulations will operate in practice, with further clarity being obtained in due course (through careful planning, drawing analogies with more established takeover regimes and proactive engagement with the regulators), the introduction of a takeover regime is certainly a positive development. It should facilitate quicker, inorganic growth for public companies, as well as acquisition opportunities for financial investors looking to get involved in the public company space in the UAE.

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