

Companies

COMPANIES (TAKE-OVER BID) REGULATIONS, 2002

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Companies

Cap. 308.

COMPANIES (TAKE-OVER BID) REGULATIONS, 2002

2002/68.

Authority: These Regulations were made on the 3rd July, 2002 by the Minister after consultation with the Barbados Stock Exchange under section 195B(1) of the *Companies Act*.

Commencement: 11th July, 2002.

1. These Regulations may be cited as the *Companies (Take-over Bid) Regulations, 2002*. Citation.

Preliminary

2. In these Regulations,

Interpreta-
tion.

“Exchange” means the Barbados Stock Exchange Inc.;

“market purchase take-over bid” means a purchase of shares of an offeree company made on the floor of the Exchange by the issuer itself or by an insider of the issuer which, when combined with the number of shares purchased by the issuer, insider or their associates and affiliates in the preceding 180 days, shall not exceed 10 per cent of the shares which are not already owned by the issuer, insider and their associates and affiliates.

Application

3. Section 126(4) of the *Securities Act* shall apply to all take-over bids and to any business registered in accordance with the *Companies Act*.

Application
of section
126(4) of
Cap. 318A.
Cap. 308.

Mandatory
offer to all
share-
holders.

4. (1) For the purposes of this regulation, “Regulator” means the Securities Commission.

(2) Where a person directly or indirectly acquires 25 per cent or more of the equity of a company, that person shall deliver by registered mail to the Regulator and to the company at its registered office or principal place of business within 24 hours of the acquisition, a written statement that shall contain the following information:

- (a) the identity, occupation, place of residence and citizenship of the person acquiring the equity in the company; and
- (b) a declaration as to
 - (i) the amount of the equity being acquired in the company and confirming trigger of the take-over code;
 - (ii) the share price at which the equity was purchased;
 - (iii) the purpose of the acquisition;
 - (iv) whether further purchases of equity in the company are intended; and
 - (v) whether that person intends to acquire control of the business or majority shareholding in the company.

(3) Where the declaration made in accordance with paragraph (2)(b) states that the person intends to acquire control or majority shareholding of the company, that person shall mail or deliver a take-over bid circular to each registered shareholder of the company inviting each registered shareholder to tender his shares

- (a) at the same price;
- (b) at a better price; or
- (c) in exchange for other equivalent or better consideration.

(4) The take-over bid circular referred to in paragraph (3) shall be mailed or delivered to each registered shareholder within 7 days of the date of the purchase of the equity, and not less than 28 days before the date on which the take-over bid is to close.

Take-over Bid Circular

5. An offeror making a take-over bid shall mail or deliver to each registered shareholder of the offeree company a take-over bid circular inviting shareholders to tender their shares to the take-over bid. Delivery of circular.

6. (1) A take-over bid circular shall be mailed not less than 28 days before the date on which the take-over bid is to close. Time.

(2) Where the take-over bid is subsequently varied in any material respect, the closing date of the take-over bid shall be extended by 14 days.

7. A take-over bid circular shall contain the following information: Information to be included in take-over bid circular.

- (a) the identity and business background of the offeror;
- (b) a statement of the withdrawal rights of offerees and the dates before which and after which offerees who deposit their shares may exercise those rights;
- (c) the date on which any other time period mentioned in the circular begins or ends;
- (d) the details of the method and time of payment of the money or other consideration to be paid for the shares of the offeree company;
- (e) where the obligation of the offeror to take up and pay for shares under a take-over bid is conditional upon a minimum number of shares being deposited, the details of the condition;
- (f) the number, without duplication, and designation of any securities of the offeree company beneficially owned or over which control or direction is exercised by
 - (i) the offeror;
 - (ii) an associate or affiliate of the offeror;

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- (iii) each director and each officer of the offeror and their respective associates; and
 - (iv) any person known to the directors or officers of the offeror who beneficially owns or exercises control or direction over shares of the offeror carrying more than 25 per cent of the votes attached to shares of the offeror, or, where none are so owned, controlled or directed, a statement to that effect;
 - (g) where known to the offeror or the directors or officers of the offeror, the number and designation of any shares of the offeree company traded by a person referred to in paragraph (f) during the 6 months preceding the date of the take-over bid, including the purchase or sale price and the date of each transaction;
 - (h) details of any contract, arrangement or understanding, formal or informal, between the offeror and
 - (i) any shareholder of the offeree company with respect to the take-over bid; and
 - (ii) any person with respect to any shares of the offeree company in relation to the take-over bid;
 - (i) where the shares of the offeree company are to be paid for wholly or partly in money, details of any arrangements that have been made by the offeror to ensure that the required funds are available to take up and pay for the shares of the offeree company deposited pursuant to the take-over bid;
 - (j) details of any contract or arrangement made or proposed to be made between the offeror and any of the directors or officers of the offeree company, including details of any payment of other benefit proposed to be made or given by way of compensation in respect of loss of office or in respect of their remaining in or retiring from office if the take-over bid is successful;

- (k) details of any business relationship between the offeror and offeree company that is material to either of them;
- (l) where a purpose of the take-over bid is to acquire effective control of the business of the offeree company, any plans or proposals that the offeror has to liquidate the offeree company, to sell, lease or exchange all or substantially all of its assets or to amalgamate it with any other company, or to make any other major change in its business, corporate structure, management or personnel;
- (m) where the offeror intends to invoke the right conferred by section 186 of the Act to acquire the shares of offerees who do not accept the take-over bid,
 - (i) a statement of that intention; and
 - (ii) a statement of the right of an offeree to dissent and to demand the fair value of his shares, and the method by which it may be exercised;
- (n) where reasonably ascertainable, a summary showing, in reasonable detail for the 6 months preceding the date of the take-over bid, the volume of trading and price range of the shares sought to be acquired pursuant to the take-over bid;
- (o) particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the offeree company since the date of the most recent publicly-filed interim or annual financial statements of the offeree company; and
- (p) all other material facts known to the offeror.

8. Where all or part of the consideration being offered is securities of the offeror, a take-over bid circular shall also include:

- (a) the financial statements of the offeror on a *pro forma* basis as of the date of the offeror's financial statement giving effect to the take-over bid based on the information in the most recent publicly-filed financial statements of the offeree company;

Information to be included in circular where part of consideration offered is securities.

- (b) a description of the financial statements of the offeree company relied upon and of the basis of preparation of the *pro forma* financial statements;
- (c) basic and fully diluted earnings per share figures prepared in accordance with international accounting standards based upon the *pro forma* financial statements; and
- (d) a reasonable statement of the plans of the offeror for the offeree company, including a summary of the consolidated financial results on a fully diluted basis.

Circular to include information set out in regulation 14.

9. Where an offeror exercises effective control over the offeree company when the offeror makes a take-over bid, the take-over bid circular shall also contain the information to be included in a directors' circular under regulation 14 where that information is not already contained in the take-over bid circular.

Information to be included in circular where company seeks to repurchase its shares.

10. Where a take-over bid is made by a company to repurchase its own shares, the take-over bid circular shall contain, instead of the information required under regulation 7, the following information:

- (a) the identity of the offeror;
- (b) the information required by paragraphs (b) to (e) and (h) to (j) of regulation 7, and paragraphs (i) to (k) and (q) of regulation 14;
- (c) where reasonably ascertainable, a summary showing, in reasonable detail for the 12 months preceding the date of the take-over bid, the volume of trading and price range of the shares sought to be acquired pursuant to the take-over bid;
- (d) the number, without duplication, and designation of any securities of the company beneficially owned or over which control or direction is exercised by
 - (i) each director and each officer of the company and their respective associates;

- (ii) any person known to the directors or officers who beneficially owns or exercises control or direction over shares of the company carrying more than 10 per cent of the votes attached to shares of the company; and
- (iii) an associate or affiliate of the company or, if none are so owned, controlled or directed, a statement to that effect;
- (e) where known to the directors or officers of the company, the number and designation of any shares of the company traded by a person referred to in paragraph (d) during the 12 months preceding the date of the take-over bid, including the purchase or sale price and the date of each transaction;
- (f) the number and designation of any shares of the company traded, that is, the sales and purchases, by the company during the 12 months preceding the date of the take-over bid, including the purchase or sale price, the date and the purpose of each transaction;
- (g) where known to the directors or officers of the company, whether any person referred to in paragraph (d) accepted or intends to accept the offer in respect of any shares of the company;
- (h) details of the effects of the take-over bid on the company, the persons referred to in paragraph (d) and the offerees;
- (i) the purpose of the take-over bid, including any plans or proposals to liquidate the company, to sell, lease or exchange all or substantially all of its assets or to amalgamate it with any other company, or to make any major changes in its business, corporate structure, management or personnel;
- (j) financial statements of the company prepared for public filing subsequent to the date of its most recent publicly filed financial statements and not previously sent to shareholders;
- (k) the information required by paragraphs (o) and (p) of regulation 14 to be included in a directors' circular;

- (l) the information required by paragraph (d) of regulation 14 to be included in a take-over bid circular;
- (m) a summary of any appraisal, known to the directors or officers of the company, its material assets or securities within the two-year period preceding the date of the take-over bid;
- (n) where shares of the class subject to the take-over bid were offered to the public by the company during the 5 years preceding the date of the take-over bid, the offering price per share, and the aggregate proceeds received by the company;
- (o) the frequency and amount of dividends with respect to shares of the company during the 2 years preceding the date of the take-over bid, any restrictions on the ability of the company to pay dividends and any plan or intention to declare a dividend or to alter the dividend policy of the company;
- (p) a general description of the consequences of the take-over bid to the company and offerees under the *Income Tax Act*;
- (q) where offerees are to be solicited otherwise than by mail, the identity of all persons employed or retained by the company for that purpose, the material features of any contract or arrangement for the solicitation, the parties to the contract or arrangement and the cost or anticipated cost thereof;
- (r) a statement of the expenses incurred or to be incurred in connection with the take-over bid; and
- (s) all other material facts known to the directors or officers of the company.

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Where
offeror is a
company.

11. Where the offeror is a company, a take-over bid circular shall contain a statement, signed by one or more directors, that the contents and the sending of the circular have been approved by the directors of the offeror.

Permissible Conditions

- 12.** A take-over bid must be made without conditions except the condition that it may be withdrawn where
- Conditions allowing withdrawal.
- (a) a specified percentage of the shares that are outstanding and not already owned is not tendered;
 - (b) a government or government agency moves to prevent it from proceeding or to alter the status of the offeree company materially; or
 - (c) a natural disaster or the directors of the offeree company intervene between the making of the offer and the closing date to materially change the value or nature of the offeree company.

Directors' Circular

- 13.** Where a take-over bid is made to the shareholders of a company, the directors of that company shall in a directors' circular
- Information to be provided in directors' circular.
- (a) provide up-to-date information relevant to the company and the position of the directors;
 - (b) provide a recommendation to shareholders concerning acceptance of the take-over bid;
 - (c) disclose what course of action the directors plan to take; and
 - (d) disclose the other information required by regulation 14.
- 14.** A directors' circular shall also contain:
- Other information.
- (a) the number, without duplication, and designation of any securities of the offeree company beneficially owned or over which control or direction is exercised
 - (i) by each director and each officer of the offeree company and their associates; and

(ii) where known to the directors or officers, by each person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to shares of the offeree company;

or, where none are so owned, controlled or directed, a statement to that effect;

(b) where the offeror is a company, the number, without duplication, and designation of any securities of the offeror beneficially owned or over which control or direction is exercised

(i) by each director and officer of the offeree company and their associates; and

(ii) where known to the directors or officers, by each person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to shares of the offeree company,

or, where none are so owned, controlled or directed, a statement to that effect;

(c) where known to the directors or officers of the offeree company, the number and designation of any shares of the offeree company or of the offeror traded by a person referred to in paragraph (a) or (b) during the 6 months preceding the date of the take-over bid, including the purchase or sale price and the date of each transaction;

(d) where the offeror is a company, the number and designation of any securities of the offeror beneficially owned or over which control or direction is exercised by the offeree company;

- (e) the number and designation of any shares of the offeree company or of the offeror traded by the offeree company during the 6 months preceding the date of the take-over bid, including the purchase or sale price, the date and the purpose of each transaction;
- (f) where the directors
 - (i) make a recommendation in relation to the take-over bid, a statement of the recommendation and the reasons for the recommendation; or
 - (ii) do not recommend acceptance or rejection of a take-over bid, the reasons for their failure to make a recommendation and, if a reason is a division among the directors, the nature of the division;
- (g) whether
 - (i) a director or officer of the offeree company or an associate of such director or officer; or
 - (ii) where known to the directors or officers, any person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to the shares of the offeree company,has accepted or intends to accept the offer in respect of any shares of the offeree company;
- (h) whether
 - (i) a director or officer of the offeree company or an associate of a director or officer; or
 - (ii) where known to the directors or officers, any person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to shares of the offeree company,

has any interest in any material contract to which the offeror is a party and, if so, details of the nature and extent of the interest;

- (i) details of all service contracts of directors and officers of the offeree company or any of its affiliates with more than a 12-month period remaining or, if there are no such contracts, a statement of that fact;
- (j) where a contract referred to in paragraph (i) has been entered into or amended within the 6 months preceding the date of the take-over bid, the details of the contract replaced or amended;
- (k) details of any contract or arrangement made or proposed to be made between the offeror and any of the directors or officers of the offeree company, including details of any payment or other benefit proposed to be made or given by way of compensation in respect of loss of office or in respect of their remaining in or retiring from office if the take-over bid is successful;
- (l) where known to the directors or officers of the offeree company, the details of any special contract, arrangement or understanding, formal or informal, made or proposed to be made between the offeror and any shareholder of the offeree company with respect to the take-over bid;
- (m) where reasonably ascertainable, a summary showing, in reasonable detail for the 6 months preceding the date of the take-over bid, the volume of trading and the price range of the shares sought to be acquired pursuant to the take-over bid if such information is not disclosed in the take-over bid circular or if, in the opinion of the directors of the offeree company, such information is not adequately disclosed therein;
- (n) financial statements of the offeree company prepared for public filing subsequent to the date of its most recent publicly-filed financial statements and not previously sent to shareholders;

- (o) where the information contained in the most recent financial statements of the offeree company is materially misleading because of events subsequent to its preparation, a statement of the material events necessary to correct any such misleading representations;
- (p) details of any information known to any director or officer of the offeree company concerning any material change in the prospects of the offeree company since the date of the last financial statements of the offeree company;
- (q) where a director or officer of the offeree company intends to purchase shares of the offeree company during a take-over bid or where he knows of the existence of such an intention on the part of any person, a statement of the intention and the purpose of such purchases, or if no such intention is known to exist, a statement to that effect; and
- (r) all other material facts known to the directors or officers of the offeree company.

15. (1) The directors of an offeree company shall send a directors' circular to each shareholder of the offeree company, to the offeror and to the Exchange.

Directors'
circular to
be dis-
tributed.

(2) Where it is not possible for the directors to mail the directors' circular within 10 days of the date of the take-over bid, they shall cause a press release to be issued stating when that circular will be forthcoming and, in any case, the directors shall send the circular not later than 7 days before the take-over bid terminates.

Miscellaneous

16. (1) All offeree shareholders must receive exactly the same consideration or choices of consideration.

Considera-
tion to be
offered.

(2) A currently controlling shareholder may not sell out without all shareholders having the same opportunity at the same time and the same price.

(3) A company may not repurchase more than 10 per cent of its own shares, except on a take-over bid made equally to all shareholders or where the amount is not more than 10 per cent, it is done by way of a market purchase take-over bid, made on the Exchange by posted bids which are open to any seller and subject to the prior approval of the shareholders in a General Meeting.

Time for withdrawal of shares.

17. A shareholder may withdraw his shares from a take-over bid at anytime up to 2 business days prior to the close of the offer.

Offeror to announce his intentions.

18. (1) Within 2 business days after the close of a take-over bid the offeror must announce whether he is proceeding with the offer or whether there is an unfulfilled condition which he is invoking in order to withdraw the offer and return the shares.

(2) Where the take-over bid is withdrawn, the shares must be returned forthwith.

(3) A withdrawing offeror is liable for any damages resulting from the tardy return of deposited shares.

(4) If the offeror elects to complete the take-over bid, he must take up and pay for the shares within 30 days of the closing of the offer.

Appointment of manager.

19. (1) The offeror on a take-over bid shall appoint one or more members of the Exchange as manager, one of whom must be a clearing and settling member.

(2) Shares shall be tendered directly or through other members of the Exchange to the manager appointed under paragraph (1).

(3) Where other members of the Exchange are involved in the processing of tenders, the manager shall pay them a reasonable commission for processing the tenders.

Declaration of trade.

20. A shareholder who owns 10 per cent or more of the shares of a listed company shall declare every trade of those shares to the Exchange within one week of each such trade.

21. A market purchase take-over bid for the shares of a listed company, made in accordance with these Regulations, shall be deemed to have been made through the Exchange.

Market
purchase
take-over
bid.