

Tender Offer Communiqué: Recent Developments

Legal Alert

On 27 February 2015, the Capital Markets Board (the **CMB**) issued the Regulation on the Amendment to the Tender Offer Communiqué (II-26.1.a) (the **Amendment**). The Amendment contemplates certain changes to the: **(1)** pricing mechanism in a mandatory tender offer (the **MTO**), **(2)** applicable exemptions to the MTO triggering events; and **(3)** the changes to the voluntary tender offer (the **VTO**).

(1) The calculation method of the MTO price differs depending on whether (i) the target entity is listed or not; (ii) the target entity's management control is changed directly or indirectly; or (iii) different share groups exist in the target entity.

(i) The MTO price for a listed entity cannot be lower than the highest price determined as follows:

(a) the six-months arithmetical average of the daily adjusted weighted stock price, such six-months ending on the day preceding the date on which execution of an agreement regarding the share transfer of such listed entity has been disclosed; and

(b) the highest amount paid for the acquisition of same type of shares, by the acquirer launching the MTO, during the six months period preceding the start of the MTO, including the share acquisition triggering the MTO.

Further, while the MTO price is calculated based on a share transfer/purchase agreement; secondary obligations which may be considered as part of the purchase price and conditional payments shall also be taken into account for the MTO price.

(ii) In addition to the (a) and (b) mentioned hereinabove, a valuation report shall also be prepared by taking into account the differences between the privileged share groups, where the management control is obtained through an indirect acquisition. Separately item (a) above will not be considered when calculating the MTO price for public entities which are not listed on the stock exchange, whether triggered as a result of a direct or indirect acquisition.

(iii) If there are different share groups in the target entity, where all share groups are not subject to the MTO triggering event the MTO price cannot be lower than the highest price determined as follows:

(a) the price determined in the valuation report, by taking into account the differences between the privileged share groups;

(b) the highest amount paid by the acquirer, including the acquisition of the shares triggering the MTO (although the relevant legislation does not explicitly indicates, the amount paid by the

acquirer for the shares triggering the MTO must include any ancillary obligations (such as adjustment or earn-out mechanisms) under the relevant agreement), for acquisition of the group of shares, which is not subject to the MTO triggering event, during the six months preceding the date of the public disclosure on the execution of the agreement with respect to the MTO triggering event; or

(c) if the share groups which are not subject to the MTO triggering event are traded on the stock exchange, the six-month arithmetical average of the daily adjusted weighted average share price, ending on the day preceding the date on which execution of an agreement with respect with respect to the MTO triggering event has been publicly disclosed.

(2) As per the Amendment, sharing the management control of the target entity between a purchaser and a controlling shareholder through a written agreement, as a result of the acquisition of a certain portion of the shares by the purchaser from the controlling shareholder, provided that the purchaser holds at most 50% of the voting rights, does no longer trigger the launch of an MTO.

(3) Under the Amendment certain modifications are also made to the VTO process. The VTO can also be addressed to a portion of the target entity's shares and accordingly the scope of the VTO can be changed (such as the increase in the amount of target shares within the scope of the VTO) during the term of the VTO.

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