Public mergers and acquisitions in the United Arab Emirates: overview

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M&A ACTIVITY

1. What is the current status of the M&A market in your jurisdiction?

Market

Relatively speaking, stock markets, securities laws and regulations, along with the concept of public company takeovers are rather new to the United Arab Emirates (UAE) and the market is not yet developed when compared to many international markets.

The Dubai Financial Market (DFM) opened for trading in March 2000. This was followed by the Abu Dhabi Stock Market, now the Abu Dhabi Securities Exchange (ADX), which commenced operations in November 2000. The Federal regulatory framework that governs these markets is still evolving. As a result, no comprehensive federal laws applicable to takeovers have yet been enacted in the UAE. However, recent announcements from the UAE’s Securities and Commodities Authority (SCA), indicate that takeover regulations will be issued in the near future.

Nasdaq Dubai, which was formerly known as the Dubai International Financial Exchange, has been operating in the Dubai International Financial Centre (DIFC) since 2005 and was acquired by the DFM in 2010.

The DIFC is a financial free zone established in Dubai pursuant to Federal Decree No 35 of 2004, following an amendment to the UAE Constitution, and is administered by the Government of Dubai. As an independent jurisdiction within the UAE, the DIFC is empowered to create its own legal and regulatory framework for all civil and commercial matters and is exempt from federal civil and commercial laws. The DIFC has its own regulator, the Dubai Financial Services Authority (DFSA), and court system, with rules and regulations based on international standards (including takeover rules modelled on the UK Takeover Code). The DIFC has gained significant traction in attracting many financial institutions to establish a place of business there. Nasdaq Dubai has been granted a licence by the DFSA to operate as an "authorised market institution" under the DIFC Regulatory Law and is therefore regulated by the DFSA.

As the commercial legal system of the DIFC is very distinct from the federal legal framework, the answers provided in this article are generally divided into separate responses for:

- The DIFC (in relation to Nasdaq Dubai).
- The federal legal framework (in relation to the DFM and ADX).

The Abu Dhabi Global Market (ADGM), an international financial centre in the capital of the UAE and was established by Federal Decree in 2013. The ADGM opened for business in October 2015 and is likely to be an alternative to and provide competition for the DIFC. Like the DIFC, it will operate under its own legal and regulatory framework and court system for all civil and commercial matters. Although the ADGM currently has no stock exchange within its free zone jurisdiction, it is likely that a stock exchange will be established in due course. It should also be noted that a full set of takeover rules modelled on the UK Takeover Code have been enacted, which will apply to any company listed on a stock exchange within the ADGM and any company incorporated in the ADGM as a public company. However, as the ADGM has not yet established a stock exchange, for the purposes of this article, consideration has not been given to this market and the responses do not cover the ADGM legal framework.

M&A activity

Although takeover activity in relation to the UAE’s securities exchanges is rare, the level of activity is generally in keeping with other Gulf Cooperation Council (GCC) member states.

There are several factors which contribute to the general lack of public M&A activity in the UAE, which present legal and practical barriers to takeover offers:

- The number of equity issuers on the UAE’s securities exchanges is relatively small. There are fewer than 70 public companies listed on each of DFM and ADX, consisting of mainly UAE companies and issuers from other GCC member states. There are presently only ten equities listed on Nasdaq Dubai, which has instead become a leading exchange for the listing of Sukuk (Islamic bonds) and conventional bonds.

- The initial public offering (IPO) market is slow, largely due to volatility in oil prices and a slowdown in the global economic environment, bringing uncertainty to GCC markets.

- UAE public companies are subject to foreign ownership restrictions (see Question 2A) and tend to be closely held by UAE nationals with significant (sometimes majority) stakes held by:
  - other public companies;
  - federal and local government bodies;
  - prominent UAE and GCC families.

Public companies incorporated in other GCC member states are subject to similar foreign ownership restrictions.

The federal legal framework applicable to public companies listed on the DFM and the ADX does not provide a full, coherent set of rules applicable to takeovers.

The second half of 2016 was dominated by the recommended merger of two of the UAE’s largest banks, National Bank of Abu Dhabi PJSC (NBAD) and First Gulf Bank PJSC (FGB), both listed on the ADX. The merger was approved by the shareholders of each company on 7 December 2016 and is expected to take effect on 1 April 2017. The merger will create the largest bank in the Middle East and North Africa region (with about US$175 billion of assets and a combined market capitalisation of about US$29.1 billion) and the leading financial institution in the UAE.
Aside from the merger between NBAD and FGB, there have been no public takeovers in the UAE during the last two years. However, it is widely anticipated that further mergers may follow, particularly in the banking sector where the economic conditions in the region may prove a catalyst for consolidations, as were witnessed during the global economic downturn in 2007 and 2008.

2. What are the main means of obtaining control of a public company?

**Federal Law**

**Statutory merger.** Historically, the most popular means of acquiring control of a public company incorporated in the UAE is by means of the statutory merger process under the UAE Commercial Companies Law (Federal Law No. 2 of 2015), as amended (Federal Companies Law). Under the Federal Companies Law, one or more companies can merge with another company by:

- A merger agreement being agreed by the merging companies.
- The dissolving company obtaining the approval of its shareholders by special resolution to approve the merger, the merger agreement and to dissolve the company upon the merger becoming effective.
- The acquiring company obtaining the approval of its shareholders by special resolution to approve the merger, the merger agreement and to increase its share capital to permit the issuance of new shares to the shareholders of dissolving company.
- The Securities and Commodities Authority granting approval for the merger.

Unless a higher percentage is specified in a company’s constitutional documents, the quorum requirement for a UAE public company general meeting is 50% of the shareholders and a special resolution requires the approval of 75% of the shareholders represented at the meeting.

Pursuant to the statutory merger process, the acquiring company is the legal successor to the dissolving company and assumes all of its assets and liabilities.

The merger of National Bank of Abu Dhabi PJSC (NBAD) and First Gulf Bank (FGB) is being effected using this statutory process and will result in the assets and liabilities of FGB being assumed by NBAD in consideration for the issues of new shares in NBAD to the shareholders of FGB. Following completion of the merger, the FGB shareholders will own about 52% of the enlarged issued share capital of NBAD.

**Contractual tender offers.** Despite the current absence of any specific laws governing takeover offers generally, it is also possible to obtain control of a public company by effecting an unregulated contractual tender offer to the shareholders of the target to acquire all of their shares, with the result that the target company becomes a subsidiary of the acquiring company. The consideration offered to the target’s shareholders can be in the form of cash or new shares in the capital of the offeror (a share-for-share exchange) (see Question 17).

A recent SCA Board of Directors’ Decision amending the Disclosure and Transparency Regulations has clarified that any person or group of connected persons acquiring 50% or more of the share capital of a public company must submit an offer to all shareholders of the company in accordance with the controls, conditions and procedures determined by the SCA. Although no further rules or guidance has been issued by SCA, this Board Decision would appear to rule out partial bids and create a basic mandatory bid rule.

Critically, there are no compulsory acquisition or “squeeze-out” rules, which means that there is no assurance that a bidder will acquire 100% of the shares in the target unless all shareholders accept the offer (see Question 20). For this reason, contractual tender offers are rarely encountered and the statutory merger process, which requires the approval of target's shareholders by special resolution in order to acquire 100% of the shares, is favoured.

**Issuance of convertible bonds.** Control can also be acquired by virtue of a company issuing convertible bonds or Sukuk, which, upon conversion, would give the bondholders control of a majority of the shares in the issuing company. To issue convertible bonds, the company must comply with the applicable provisions of the Companies Law. This involves both:

- Obtaining the special resolution of its shareholders to approve the issuance of bonds, to increase the company's share capital and to disapply statutory pre-emption rights.
- The SCA giving its consent to the bond issuance (in addition, in respect of entities licensed by the Central Bank of the UAE, the conversion of bonds into shares will be subject to the approval of the Central Bank).

**DIFC Law**

The DIFC Markets Law 2012 and the Takeover Rules Module of the Dubai Financial Services Authority (DFSA) Rulebook (DFSA Takeover Rules) (that is, the takeover rules applicable to companies listed on Nasdaq Dubai) contemplate that a takeover can take place by means of any takeover and merger transaction, however effected. This includes:

- Schemes of arrangements which have similar commercial effect to takeovers and mergers.
- Partial offers (subject to DFSA consent).
- Offers by a parent company for shares in its subsidiary.
- Share repurchases by general offer (where appropriate).

For companies incorporated in the DIFC, the DIFC Companies Law does not contain any statutory merger process or provisions that would permit an acquisition to take place by way of scheme of arrangement or similar. A takeover of a DIFC-incorporated company can be effected by means of a general offer in consideration for cash or shares in the capital of the offeror. The offeror can rely on a right to buy-out (squeeze-out) minority shareholders (on the same terms as the offer), where the offeror has received acceptances in relation to 90% of the shares the subject of the general offer. The minority shareholders can exercise a right to require the offeror to buyout their shares on the same terms as the offer if the offeror has not exercised its right to compulsorily acquire the minority’s shares.

**HOSTILE BIDS**

3. Are hostile bids allowed? If so, are they common?

**Federal Law**

To date, there have not been any hostile bids in the UAE.

In relation to the federal legal framework, this is due to the lack of detailed rules regulating how takeover offers are conducted, foreign ownership restrictions and general UAE business culture and customs. Foreign ownership restrictions rule out the possibility of a foreign bidder acquiring control of a UAE incorporated company (and similar restrictions are generally found in other Gulf Cooperation Council member states) (see Question 26). Furthermore, given that UAE public companies tend to be closely held by governmental bodies and prominent families with significant influence and control, it is highly unlikely that any
hostile takeover bid would be launched, let alone be successful, notwithstanding that such a bid may be theoretically possible.

Currently, the Securities and Commodities Authority (SCA) essentially regulates takeover offers on a case-by-case basis and there is no guidance or precedent as to how a hostile bid would be viewed or if the SCA would be minded to allow such a bid to proceed at all (especially if it were considered oppressive or unfair). A recommended takeover offer utilising the Federal Companies Law merger process represents the only means by which 100% of the target's shares can be acquired without obtaining 100% acceptances to the offer. Such a merger can only be initiated with the co-operation and agreement of the board of directors of the target and the SCA, as well as any other relevant federal or local regulator of the target company.

DIFC law
The DIFC legal framework does not differentiate between friendly and hostile bids, leaving open the possibility of hostile bids.

REGULATION AND REGULATORY BODIES

4. How are public takeovers and mergers regulated, and by whom?

Regulatory framework
Federal law. The following federal regulatory framework applies to public takeovers and mergers in the UAE:

- Federal Companies Law.
- SCA Board of Directors' Decision No. 2 of 2001 Concerning the Regulation for Trading, Clearing, Settlement, Transfer of Ownership And Safekeeping of Securities.
- Federal Law No 4 of 2012 on the Regulation of Competition (Competition Law).
- Cabinet Decision No 13 of 2016 Concerning Application of Competition Law.
- ADX Rules (applicable only to ADX-listed companies; DFM has not issued its own set of rules).

DIFC law. The following regulatory framework applies to public takeovers and mergers in the DIFC:

- DIFC Regulatory Law (DIFC Law No 1 of 2004).
- DIFC Companies Law 2009 (DIFC Law No 2 of 2009).
- DIFC Companies Regulations.
- DIFC Markets Law 2012 (DIFC Law No 1 of 2012).
- DIFC Takeover Regulations 2015.
- DIFC Takeover Regulations Rules 2015 (Takeover Code). There is no guidance or precedent as to how a hostile bid would be viewed or if the DIFC would be minded to allow such a bid to proceed at all (especially if it were considered oppressive or unfair).
- DFSA Takeover Rules Module of DFSA Rulebook.
- Nasdaq Dubai Business Rules.

Regulatory bodies
The Securities and Commodities Authority is the federal regulator overseeing public companies admitted to trading on the Dubai Financial Market and the Abu Dhabi Securities Exchange, as well as regulating both exchanges.

The Dubai Financial Services Authority regulates Nasdaq Dubai (maintaining the official list) and takeovers of companies admitted to trading on Nasdaq Dubai. At the exchange level, Nasdaq Dubai regulates a number of activities relating to its market through a series of self-made rules.

In addition, the following regulatory bodies may also be relevant:

- UAE Central Bank, which is the federal regulator of banks and other financial institutions operating in the UAE.
- UAE Insurance Authority.
- The Competition Regulation Committee of the Ministry of Economy.

PRE-BID
Due diligence

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid
In addition to publicly-available information, which by comparison to some jurisdictions is relatively limited, a significant level of due diligence would be expected in a friendly bid situation, with rather less reliance placed on representations and warranties from the target or its board (which would not, in any event, provide meaningful protection). The obvious purpose of a due diligence exercise is to verify information relating to the target as well as reviewing the target's legal and financial records to gain a clearer picture of the target's business, assets and liabilities, prior to committing to any announcement of an intention to make an offer or announcement of a merger agreement.

The level of due diligence that can be conducted under the auspices of a mutual confidentiality agreement and the amount of time to be afforded to the bidder is a matter for agreement between the bidder and target.

In addition, for takeovers involving Nasdaq Dubai companies, the DFSA Takeover Rules ensure equality of information between bidders and requires that any information, including particulars of shareholders, given to one bidder or potential bidder, must, on request, be furnished equally and as promptly to another bidder or bona fide potential bidder, even if the other bidder is less welcome.

Hostile bid
In a hostile bid situation, the bidder would only be able to access information within the public domain (as described below) and, in relation to Nasdaq Dubai, information required to be shared with another bidder (friendly or hostile). However, there have not been any hostile bids in the UAE (see Question 3).

Public domain
Federal law. Under the SCA Disclosure and Transparency Regulations, a company listed on the Dubai Financial Market and the Abu Dhabi Securities Exchange is subject to a number of disclosure and reporting obligations (to be made to the Securities and Commodities Authority and the relevant exchange), which broadly dictate what is likely to be publicly available:

- Annual audited financial statements within 90 days of the relevant financial year end.

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• Half yearly financial statements, which must be reviewed by the auditor within 45 days of the relevant period end date.
• Material developments affecting the share price.
• Material decisions of the company’s board.
• Details of acquisition or disposals of major assets.
• Dealings in shares by the company’s board or executive management.
• Changes to the company’s board or executive management.
• Documents and materials sent to the company’s shareholders.
• Any amendments to the company’s articles of association (articles).

DIFC law. For Nasdaq Dubai companies, continuing obligations regarding disclosure and reporting are set out in the DFSA Market Rules Module of the DFSA Rulebook. These rules require disclosure and reporting of information similar to that required by the SCA Disclosure and Transparency Regulations.

Secrecy

6. Are there any rules on maintaining secrecy until the bid is made?

Federal law

There are no specific regulations governing bid secrecy. It is typical for the parties to agree to maintain secrecy under a non-disclosure agreement, until such time as the boards are ready to announce the proposed offer or are required to make an announcement by the Securities and Commodities Authority (SCA) or the relevant stock exchange.

Listed companies are under a general obligation to disclose any material developments affecting the share price. However, disclosure is not required in relation to matters under negotiation, provided the company keeps the relevant stock exchange informed of developments and provides a list of any insiders. However, the stock exchange may, in coordination with the SCA, compel the company to announce the information if either:
• The exchange and the SCA consider that publicly disclosing the information will not affect the interests of the company.
• There is a leakage of the confidential information.

DIFC law

The DFSA Takeover Rules provide that:
• A person privy to confidential information concerning a bid or contemplated bid must treat that information as secret.
• A person concerned in a bid or contemplated bid must take reasonable steps to minimise the chances of an accidental leak of information.
• The bidder or target should maintain appropriate systems and controls to ensure the maintenance of confidentiality (for example, by maintaining a register of information disclosed and to whom).

Other legislation similarly applies to the use and disclosure of confidential information (such as the restrictions and prohibitions under the DIFC Markets Law 2012, including the rules relating to market abuse and insider dealing).

Agreements with shareholders

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

Federal law

There are no regulations that specifically address or prohibit undertakings or commitments being given by key shareholders. However, the Securities and Commodities Authority’s (SCA’s) current ad hoc approach to regulation of takeovers would suggest that these types of arrangements should first be approved by the SCA and the relevant exchange before any steps are taken to make the shareholder an insider.

In practical terms, the takeover transaction may in fact be driven by the major shareholders (who might include government entities, local sovereign wealth funds and prominent families, all with significant influence). The major shareholders may consider it unnecessary to enter into such arrangements on any formal level.

Notably, the shareholder circular relating to the National Bank of Abu Dhabi PJSC and First Gulf Bank PJSC (see Question 1, M&A activity) made no mention of any undertakings or commitments obtained from shareholders of either company to vote in favour of the merger proposals.

DIFC law

Shareholder undertakings or commitments to accept an offer are contemplated by the DFSA Takeover Rules. The DFSA Markets Rules also contemplates that a major shareholder can be made an insider for the purposes of receiving inside information. The general principles of the DFSA Takeover Rules provide that directors of the target must give careful consideration before they enter into any commitment with a bidder (or anyone else) which would restrict their freedom to advise their shareholders in the future.

The bidder must disclose the number of shares in the target in respect of which it (or persons acting in concert with it) has received commitments to accept an offer at the time the bidder makes an announcement of a firm intention to make an offer and subsequently in the offer document.

Stakebuilding

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply?

Federal law

Immediate post-transaction disclosure is required to the relevant stock exchange (which will co-ordinate with the Securities and Commodities Authority (SCA)) when the shareholding of any person, when aggregated with the shareholdings of its associated group (see below), meets or exceeds 5% of the listed company’s share capital and for every 1% increase over 5%.

Immediate post-transaction disclosure is required to the relevant stock exchange when the shareholding of any person, when aggregated with the shareholdings of its associated group in a parent, subsidiary or affiliate of the listed company, meets or exceeds 10%, and for every 1% increase over 10%.

Any person intending to acquire a number of shares in a listed company must notify the SCA before submitting a purchase order if the proposed acquisition would result in the shareholding of that person (when aggregated with the shareholdings of its associated group) exceeding 30% of the listed company’s shares.
The SCA can veto an acquisition where, in consultation with the relevant exchange, it considers that the transaction would be detrimental to the interests of the market or the national economy.

For these purposes:

- An “associated group” includes:
  - where the person is an individual, or his or her minor children;
  - where the person is a company, any corporate entities that are under common control with the person; and
  - any other person with whom the relevant person has an agreement or arrangement for the purposes of acquiring a controlling stake in the listed company.

- “Control” means the ability to directly or indirectly control or influence any of the following, through the ownership of a percentage of shares or stocks, or pursuant to some other agreement or arrangement that leads to the same influence:
  - the appointment of the majority of members of the company’s board of directors;
  - the decisions issued by the company’s board; or
  - a majority of votes in a general meeting of the company.

DIFC law

Any person acquiring shares in a Nasdaq Dubai company must notify the Dubai Financial Services Authority (DFSA) and the target within five business days of any acquisition of securities carrying more than 5% of the voting rights attaching to all securities, and for any further increase or decrease of 1% above or below 5%.

A person’s holding will be aggregated with its associates, being:

- In the case of an individual:
  - his spouse, children, stepchildren;
  - a trustee of any family trust;
  - any company of which he is a director; and
  - any of his employees or partners.

- In the case of a company:
  - any subsidiary of the company;
  - any director of the company; and
  - any director or employee of any subsidiary.

In either such case, a person who has an agreement or arrangement with the other person with respect to the acquisition, holding or disposal of shares or other interests or under which they undertake to act together in exercising their voting power.

A person is taken to hold relevant securities if it holds a derivative or financial instrument that, on its maturity, will confer on the holder either:

- An unconditional right to acquire the security or investment; or
- The discretion as to its right to acquire the security.

Interests held by the bidder must be disclosed in the announcement of a firm intention to make any bid.

Any dealings by the bidder (and any person acting in concert during the bid period) must be disclosed without delay to the DFSA and otherwise announced on the website of the target and to Nasdaq Dubai, for the purposes of public dissemination.

Agreements in recommended bids

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Federal law

In the context of the statutory merger process, a merger agreement is required by the Federal Companies Law. A copy of the agreement or a summary of its terms must be provided to the shareholders of both companies for their approval in general meetings.

Such a merger agreement will typically contain:

- The terms and conditions of the merger (including the regulatory approvals and other conditions precedent to the merger becoming effective).
- The share exchange ratio to be applied.
- Restrictions on conduct of business.
- Specific obligations required to implement the merger.
- Restrictions in relation to seeking competing proposals from third parties.
- Limited reciprocal representations and warranties.
- Termination provisions for breach, where mutually agreed, or if a lapse date is reached (and not extended).

Similar agreements, such as an implementation agreement, would be expected in relation to tender offers (however, tender offers are not favoured, as there is no assurance that a bidder will obtain 100% control unless it receives 100% acceptances).

Although it is common to include restrictions on the target soliciting competing offers, the likelihood of a rival bidder coming onto the scene is itself extremely remote in the UAE.

DIFC law

Similar agreements would be expected to be used in relation to takeovers of Nasdaq Dubai companies. The DFSA Takeover Rules do not restrict entry into such agreements and accordingly they should be considered against the backdrop of the general prohibition on directors against taking frustrating action and directors’ fiduciary and other duties in the jurisdiction of incorporation.

The DIFC Companies Law provides that the directors of a company incorporated in the DIFC must act honestly, in good faith and lawfully, with a view to the best interests of the company. The DIFC Law of Obligations covers additional matters which are not covered under the DIFC Companies Law. The DIFC Law of Obligations provides that a director has fiduciary duties towards the company (such as duties relating to loyalty, conflict of interest, no secret profits, confidentiality, and care, skill and diligence).

The target board must disclose its position in a circular to the shareholders within 21 days of publication of the offer document. If the offer is recommended, it is usual for the target circular and the offer document to be a joint document. The announcement of a firm intention to make an offer, offer document and target circular would need to disclose the existence of any implementation, exclusivity, break fee (see Question 10) or similar agreement.
**ANNONCING AND MAKING THE OFFER**

**Making the bid public**

10. **Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?**

**Federal law**

There are no regulations specifically addressing break fee arrangements and there is little in the way of common market practice. However, there has been some general gravitation towards western market practices (particularly the UK and the US), where break fees are quite typical. The current regulatory position is that the parties can agree to break fees unless the Securities and Commodities Authority determines otherwise.

When considering any break fee arrangements, the directors of the target or bidder must have regard to their general duties.

**DIFC law**

There are no restrictions on break fees within the DFSA Takeover Rules. However, any such arrangement would first be disclosable in an announcement of a firm intention to make an offer (see Question 9, DIFC law). Again, the scope for directors agreeing break fee arrangements is largely shaped by their directors’ duties and the basic principle (under the DFSA Takeover Rules) that the shareholders should have the opportunity to decide the outcome of an offer on its merits.

**Committed funding**

11. **Is committed funding required before announcing an offer?**

**Federal law**

There are no laws that specifically address questions over the bidder’s funding. However, the bidder’s ability to finance the acquisition is highly likely to be considered by the Securities and Commodities Authority (SCA) as part of its approval process (which is required for any takeover to proceed). In practice, any proposed takeover would need to be discussed in advance with the SCA, including the:

- Valuation of the target.
- Amount and form of consideration payable.

**DIFC law**

The following rules are applicable under the DFSA Takeover Rules:

- An announcement of a firm intention to make an offer must not be made unless the bidder and its financial adviser have proper grounds for believing that the bidder is and will continue to be able to implement the bid.

- The announcement of a firm intention to make an offer containing a whole or partial cash consideration must include confirmation by its financial adviser or another appropriate third party that financial resources are available to the bidder sufficient to satisfy full acceptance of the offer.

- The offer document must contain a description of how the offer is to be financed and the source of the finance, including details of the principal lenders or arrangers of such finance (along with any relevant conditions).

**12. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?**

**Federal law**

The following will generally determine when an offer is made public and the main contents of the announcement (including any indicative timetable):

- The general disclosure obligations (see Question 6, Federal law).

- The parties’ consultations with the Securities and Commodities Authority (SCA) and the relevant stock exchange.

In a friendly takeover, the proposed transaction is made public by the parties releasing a joint statement to the market.

Outside of the statutory merger procedure, there is no specified timetable. However, it should be expected that the SCA, in consultation with the relevant stock exchange, will determine a suitable timetable and will require any proposed timeframe for a tender offer to afford the shareholders a reasonable period of time in order to make an informed decision as to the offer.

Under the statutory merger process the timetable formally commences with the merging companies dispatching circulars to shareholders to convene the general meetings:

- Not less than 15 days’ notice period for the general meeting, although a longer period may be useful to help secure attendance of a quorum.

- During the period of 30 working days from the date of shareholders’ approval, any one or more shareholders holding 20% or more of the shares in a merging company can object to the court to appeal the merger approval.

- Notice of the shareholders’ approval must be sent to creditors and published in two daily local newspapers within ten working days of the general meeting approving the merger. Creditors have a statutory right to apply to object within 30 days of the notice of the shareholder’s approval and to apply to the court to suspend the merger until the creditors’ objections are dealt with.

- Final approval can be given by the SCA following expiry of objection periods (assuming no objections have been raised or are outstanding).

**DIFC law**

Under DIFC law, announcement of a possible offer must be made when either:

- There has been an approach to the target’s board by the bidder, or no approach has been made to the target’s board but there are reasonable grounds to conclude that the bidder’s actions have led to the current situation.

- The target is the subject of rumour and speculation, or where there is an abnormal movement in the price of the target’s shares.

Announcement of a firm intention to make an offer must be made either:

- When notification of a firm intention to make and offer is made to the target.

- When there is an acquisition of shares which could lead to a mandatory bid.

Any announcement of firm intention to make an offer (which can be made as a joint announcement of the bidder and target) must
comply with the content requirements of Rule 2.4 of the DFSA Takeover Rules.

Offer timetable
The offer document must be sent to the target's shareholders within 21 days of the announcement of firm intention to make an offer and must be filed with the Dubai Financial Services Authority (DFSA) at least 24 hours prior to its despatch. The offer timetable is triggered when the offer document is posted to the target's shareholders. The following timetable applies:

- The offer must remain open for at least 35 days following the date on which the offer document is posted.
- After an offer has become or is declared unconditional as to acceptances, it must remain open for acceptance for not less than 14 days after the date on which it would otherwise have expired.
- Within 21 days after the posting date, the target's board must issue a target circular to its shareholders giving its views on the bid.
- A bid that has not become unconditional as to acceptances must lapse and cannot be extended or remain open beyond the 67th day after it was posted.
- After a bid has become or is declared unconditional as to acceptances, a further 21 days is allowed within which all remaining conditions must be fulfilled or waived, otherwise the bid will lapse.

The DFSA may waive or modify the application of the DFSA Takeover Rules relating to closing dates and extensions if it is satisfied that circumstances are appropriate. Normally, a waiver of these rules will only be granted if a competing offer has been announced (in which case both bidders will normally be bound by the timetable established by the posting of the competing offer document).

The offer document and any separate target board circular must be filed with the Dubai Financial Services Authority at least 24 hours before being sent to shareholders.

Offer conditions

13. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

Federal law
Typical conditions attached to a takeover offer are:
- Merger control approval.
- Securities and Commodities Authority (SCA) approval.
- Other governmental or regulatory approvals.

In relation to the statutory merger process, it is typical for the offer to be conditioned on:
- The approval of the shareholders of each of the relevant companies.
- No objections being raised by significant shareholders or creditors leading to the merger being suspended by the court.

Any takeover terms and conditions agreed between the parties, including as to acceptances, would generally be subject to SCA approval.

DIFC law
All material conditions to which the offer or the making of it is to be subject must be set out in a firm intention to make an offer. Normal conditions will include:
- Acceptances. A mandatory offer must be conditional only upon the bidder having received acceptances in respect of shares carrying more than 50% of the voting rights. The minimum acceptance condition in any offer is more than 50% of the voting rights (DFSA Takeover Rules).
- Listing and increase of capital in a securities exchange offer.
- Regulatory approvals.
- Other conditions to the extent reasonably necessary.

Unless with the prior consent of the DFSA, an offer must not be subject to conditions which depend solely on subjective judgements by the directors of the bidder or the fulfilment of which is in their hands.

Bid documents

14. What documents do the target's shareholders receive on a recommended and hostile bid?

Federal law
In relation to a statutory merger, the board members of the merging companies must present the draft merger agreement to the general meeting for approval by the shareholders. The notice convening the general meeting must:
- Be accompanied by a copy or summary of the merger agreement.
- Clearly state the right of any one or more shareholders holding at least 20% of the capital of the company objecting to the merger, to appeal the merger before a competent court within 30 days working from the date of approval of the merger by the shareholders.

It is typical for the merging companies to send a joint circular to their shareholders (largely conforming to Western (legal) standards), including:
- Information on the proposed merger and its terms and conditions (see also Question 12).
- A summary of the merger agreement.
- The timetable for the proposed merger.
- Fairness opinions from financial advisers in relation to the valuation and share exchange ratio.
- Risk factors.
- Information on the enlarged group (including details of the proposed directors of the surviving company) and in relation to each of the merging companies.
- Pro forma financial information on the enlarged group.
- Notices convening the general meetings of the merging companies.

Outside of the statutory merger procedure, there are no requirements on specific documents to be sent to the shareholders in a takeover process, and this will instead be determined by the Securities and Commodities Authority on a case-by-case basis.

DIFC law
For Nasdaq Dubai companies, the offer documents and any target board circular must meet the minimum content requirements
under the DFSA Takeover Rules. These content requirements are generally in line with Western standards.

The minimum content requirements are set out in the appendices of the DFSA Takeover Rules, as follows:

- In its offer document, the bidder must disclose the information specified in Appendix 1, together with any other relevant information to enable the target’s shareholders to reach a properly informed decision.
- For a securities exchange offer, the bidder must provide information relating to its financial affairs as required by Appendix 1, A1.2.
- In its target circular, the target’s board must disclose the information specified in Appendix 2 (whether recommending acceptance or rejection of the offer), together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the offer.

In a recommended bid, the target board circular will normally form part of the overall offer document. In a hostile bid, the target board circular would be sent separately.

**Employee consultation**

15. Are there any requirements for a target’s board to inform or consult its employees about the offer?

There are no information or consultation requirements under UAE law.

Under the DFSA Takeover Rules, the bidder must disclose in the offer document its intentions in relation to the continued appointment of the directors and the employment of the employees of the target and of its subsidiaries.

**Mandatory offers**

16. Is there a requirement to make a mandatory offer?

**Federal law**

In 2015, a Securities and Commodities Authority (SCA) Board Decision was passed, which amended the SCA Disclosure and Transparency Regulations by containing a new provision. This provision simply states that any person or group of connected persons acquiring 50% or more of the share capital of a public company must submit an offer to all shareholders of the company in accordance with the controls, conditions and procedures determined by the SCA. However, further guidance and procedures have not yet been issued (see also Question 29).

**DIFC law**

The DFSA Takeover Rules include a mandatory bid rule modelled on the rule set out in the UK Takeover Code. This bid rule will be triggered if 30% or more of the voting shares of the target are acquired by any person (or together with their concert parties).

Mandatory bids made under the DFSA Takeover Rules must, for each class of shares involved, be in cash or accompanied by a cash alternative that is not less than the highest price paid by the bidder (or any person acting in concert with it) for shares of that class during the bid period and within the preceding six months.

**CONSIDERATION**

17. What form of consideration is commonly offered on a public takeover?

**Federal law**

The most common form of consideration offered is a share-for-share exchange under the statutory merger process. Cash or shares can also be used under a tender offer, provided they are made with the Securities and Commodities Authority’s approval. However, the statutory merger process is the only mechanism to ensure 100% ultimate ownership unless 100% acceptances are received under the tender offer.

**DIFC law**

In the DIFC, consideration can be:

- In cash or accompanied by a cash alternative. A purchase for “cash” includes a contract or arrangement where the consideration consists of a debt instrument capable of being redeemed in less than three years.
- Shares in the bidder or some other person under a securities exchange offer.

In relation to a securities exchange offer, the bidder must comply with the additional content requirements under DFSA Takeover Rules that are applicable to the offer document.

Mandatory offers must be made in cash or be accompanied by a cash alternative.

18. Are there any regulations that provide for a minimum level of consideration?

**Federal law**

The Securities and Commodities Authority approval process is likely to require approval of the valuation of the target’s shares (as was the case under the predecessor to the Federal Companies Law), as well as the shares of the acquirer being offered as consideration in relation to a statutory merger or exchange offer.

**DIFC law**

Mandatory offers must be made in cash or be accompanied by a cash alternative at not less than the highest price paid by the bidder (or any person acting in concert with it) for shares of that class during the offer period and within the preceding six months.

If 10% or more of the target has been acquired for cash by the bidder (or any concert party) in the six months preceding a bid, or if any shares are purchased for cash by the bidder (or any concert party) during the offer period, the offer must be made in cash or include a cash alternative offer must be made at no less than the highest price paid during the offer period or within six months prior to its commencement.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

There are no restrictions under federal law or DIFC law concerning the consideration that a foreign bidder can offer to shareholders.

However, for takeovers regulated by the Securities and Commodities Authority (SCA), the SCA may choose to impose such
conditions and restrictions as it sees fit on grounds of public policy or national interest.

**POST-BID**

**Compulsory purchase of minority shareholdings**

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

**Federal law**

There is no compulsory purchase provided for under UAE federal law. However, the statutory merger process can be achieved with the approval of 75% of the target’s shareholders represented at the meeting (quorum required is 50% of all the voting rights in the company) convened to approve the merger, assuming the shareholders of acquiring company similarly approve the merger.

**DIFC law**

In relation to DIFC-incorporated entities only, being those to which the DIFC Companies Law applies, the compulsory purchase (squeeze-out) of minority shareholders can be made within 120 days of the close of the offer if the bidder has acquired, or has unconditionally contracted to acquire, 90% in value of the target’s shares the subject of the offer. Likewise, the remaining minority can require the bidder to purchase their shares (sell-out) if the bidder does not exercise its squeeze-out rights. In either case, the bidder is entitled, and is bound, to acquire those shares on the terms of the offer.

**Restrictions on new offers**

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

**Federal law**

Under federal law, there are currently no restrictions on a fresh offer being made if a bidder fails to obtain control of the target. A subsequent offer is theoretically possible, but would be subject to the approval of the Securities and Commodities Authority.

**DIFC law**

For Nasdaq Dubai companies, if a bidder fails to obtain control of the target and a bid lapses, the bidder (or any person acting in concert with the bidder) cannot do any of the following for 12 months from the date on which the bid is withdrawn or lapses:

- Make a fresh bid for the relevant shares of the target (including a partial bid).
- Acquire any shares of the target if the bidder or any concert party would thereby become obliged to make a mandatory offer.
- Acquire shares or rights over shares carrying in aggregate (taken together with shares or rights held by concert parties) 30% or more of the voting rights of the target.

The restrictions also apply following a partial bid which could result in a holding of not less than the 30% and not more than 50% of the voting rights of the target, whether or not the bid has become or is declared unconditional, the period of 12 months runs from that date.

**De-listing**

22. What action is required to de-list a company?

**Federal law**

In the context of the statutory merger process, the Securities and Commodities Authority (SCA) can (and will be requested to) cancel the listing of the target company where the target company is merged with another company and its separate legal personality comes to an end.

A company can voluntarily apply for its listing to be cancelled by the SCA, which can be made in conjunction with the conversion of the company from a public joint stock company into a private company in accordance with the procedures set out in the Federal Companies Law.

**DIFC law**

The DIFC Markets Law and the DFSA Markets Rules provide for the de-listing of securities from the official list where a merger or takeover has taken place. Application for voluntary de-listing (together with relevant supporting documentation) can be made in writing to the Dubai Financial Services Authority and Nasdaq Dubai.

The steps to be taken to de-list the target from Nasdaq Dubai will also be described in the offer document, as part of the description of the proposed implementation and the mechanics of the offer (as well as stating whether the bidder intends to avail itself of any powers of compulsory acquisition).

**TARGET’S RESPONSE**

23. What actions can a target’s board take to defend a hostile bid (pre- and post-bid)?

**Federal law**

The legal and practical impediments to takeovers described in Questions 7 and 26 mean that hostile bids in the UAE are highly unlikely and there is no precedent for them. Consequently, there is no developed law or practice relating to takeover defences or taking frustrating actions.

The board would not be restricted from taking defensive action, provided the directors comply with their duties, which primarily require directors to:

- Act honestly and loyally, taking into consideration the interests of the company and its shareholders.
- Not to engage in fraud, abuse of power, violations of law or the company’s constitution, or mismanage the company.

**DIFC law**

It is a general principle of the DFSA Takeover Rules that no action can be taken by the board of the target, without the approval of the shareholders in a general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.

During the course of an offer, or if the target board has reason to believe that a bona fide offer might be imminent, certain actions (except in pursuance of a contract entered into earlier), are prohibited without the approval of the shareholders to the relevant proposal given in general meeting. Such actions include:

- Issuing shares or issuing, creating or granting options or securities over or convertible into shares.
- Material acquisitions or disposals.

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• Contracts otherwise than those performed in the ordinary course of business.
• Paying any dividend which is abnormal as to timing and amount.

The target board circular is the primary defence document in which the board can set out its views on the merits of the offer.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

None are applicable under UAE federal law or DIFC law.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable?

Regulatory approvals

Takeovers occurring in the banking sector require the approval of the UAE Central Bank. Takeovers involving an insurance company licenced by the UAE Insurance Authority require the consent of that authority.

A bank or financial institution carrying on banking business must obtain the UAE Central Bank’s approval before it enters into any transaction which would result in it acquiring 5% or more of the shares of any listed company.

Other regulatory approvals may be required depending on the activities of the target. Typically, regulatory approvals are obtained after other conditions precedent are satisfied (for example, shareholder approval of merging companies). However, the parties can still approach the regulators for initial approval before a deal is announced.

Historical transactions in the UAE show that the risk of regulators refusing to grant approvals in relation to public company M&A is quite low. This is due to:

• The nature of the entities and the key shareholders involved.
• The fact that there is no market history of hostile takeover offers.

UAE merger control

Under the UAE’s federal competition regime, prior approval from the Competition Regulation Committee of the Ministry of Economy (Competition Committee) is required for any proposed economic concentration (including by merger or acquisition) that would result in a market share in excess of 40% of the relevant market. This requirement applies to domestic M&A transactions as well as any international M&A transactions creating a notifiable (greater than 40%) economic concentration in the UAE.

The concerned parties must make an application for merger approval no later than 30 days prior to completing the relevant transaction. The Competition Committee then has 90 days (extendable by a further 45 days) to review the transaction and issue a resolution. Once it has reviewed the transaction, the Competition Committee can do one of the following:

• Approve the proposed merger if it does not negatively affect competition or if the positive economic effects on competition outweigh the negative effects.
• Approve the proposed merger subject to the parties giving undertakings to meet conditions or obligations specified by the Competition Committee.
• Reject the proposed merger.

If no resolution is issued by the Competition Committee prior to the expiry of the 90 day review period (or as extended), the proposed transaction is deemed approved.

There are exemptions for:

• Small to medium-sized enterprises (SMEs).
• Entities owned (at least 50%) or controlled by the federal government or the government of any Emirate.
• Certain sectors specified as exempt (which are subject to sectoral regulation). The exempted sectors are:
  - telecommunications;
  - financial services;
  - cultural activities (written, audio, visual);
  - oil & gas;
  - pharmaceutical;
  - postal services;
  - water & electricity;
  - waste disposal & sanitation;
  - transport.

As the merger control regime is new to the UAE, there is no practical experience of how the merger approval timetable might interact with a public takeover process.

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

The following foreign ownership/participation restrictions are applicable to UAE companies:

• Under the Federal Companies Law, ownership of non-UAE nationals is limited to 49% and the chairman and the majority of the board of directors of UAE public companies must be UAE nationals.
• Constitutional documents of many UAE-incorporated public companies restrict foreign ownership to lesser percentages, although several major companies have raised their foreign ownership limits in anticipation of an increase in foreign investment.
• Companies that carry out certain regulated activities may also have further restrictions in addition to those stipulated in the Federal Companies Law (for example, in the insurance sector, foreign ownership is limited to 25%).

Similar restrictions are generally applicable to public companies incorporated in other Gulf Cooperation Council (GCC) member states that are admitted to trading on the Dubai Financial Market or the Abu Dhabi Securities Exchange. In certain circumstances, there is some reciprocal relaxation of the statutory restrictions as applicable to nationals of other GCC member states.

There are no foreign ownership restrictions for companies incorporated in the DIFC by virtue of DIFC laws. However, for companies listed on Nasdaq Dubai the above considerations may also be relevant if:

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The listed entity is subject to ownership restrictions under the laws of its jurisdiction of incorporation.

The constitutional documents of the listed entity contain foreign ownership restrictions.

Ultimate beneficial ownership of a listed entity’s operating subsidiaries or affiliates is tested in jurisdictions of operation. For example, an ultimate beneficial ownership test would be applied to a DIFC company that has operating subsidiaries incorporated in the non-free zone areas of the UAE, in order to ensure the ownership restrictions in the Federal Companies Law are complied with.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

There are no foreign exchange control regulations in the UAE. However, the UAE is a party to the Arab-Israeli boycott, which imposes restrictions on dealings with Israel persons and currency.

There is presently no withholding tax on interest or dividends in the UAE.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

Federal law

There are no disclosure restrictions or requirements other than those outlined in Question 8 and the general restrictions on insider trading, exploitation of unpublished price-sensitive information and market abuse under the SCA Law and the SCA Disclosure and Transparency Regulations.

DIFC law

Following the announcement of the offer (and during the offer period), the following restrictions/disclosure requirements apply:

• Dealings in relevant securities (of the bidder or the target) by the bidder or the target, and by any person acting in concert, their or his own account the account of clients, must be disclosed forthwith by the person concerned to the Dubai Financial Services Authority and to the market.

• Disclosure of dealings in relevant securities of a bidder is only required following:

• an announcement of a securities exchange offer; or

• the earlier commencement of an offer period if it has not been announced that any offer is likely to be solely in cash.

• The bidder and persons acting in concert with it must not sell any securities in the target.

REFORM

29. Are there any proposals for the reform of takeover regulation in your jurisdiction?

Federal law

Takeover laws. The Securities and Commodities Authority (SCA) has recently indicated that it will issue resolutions regulating public company acquisitions. The limited information presently available suggests that the regime will include compulsory acquisition by shareholders holding 30% or more of any public company and will likely resemble Western capital markets acquisitions regimes.

Specific regulation has been widely anticipated since 2015, on account of enabling provisions contained in the Federal Companies Law and a SCA Board of Directors’ Decision issued in 2015 (Decision No 18 of 2015 on Amendment of Some of the Articles of Disclosure and Transparency Regulations), which indicated that transactions will be required to take place in accordance with the controls, conditions and procedures determined by the SCA.

Relaxation of foreign ownership limits. The Federal Companies Law (applicable to companies incorporated in the UAE other than free-zone companies) limits ownership of non-UAE nationals to 49% (see Question 20). In October 2016, the UAE Ministry of Economy announced that a draft foreign investment law, which aims to enhance the investment environment in the UAE and facilitate the attraction of greater foreign direct investment to various sectors of the UAE economy, is in the final stages of approval. It is anticipated that the law will allow 100% foreign participation in certain designated sectors. However, it is not yet clear when the new law is likely to be enacted or which sectors it will cover and therefore the precise impact on possible public company M&A is not yet ascertainable.

DIFC law

There are no proposals by the Dubai Financial Services Authority to reform the takeover regulation applicable to the DIFC.
ONLINE RESOURCES

UAE Securities & Commodities Authority
W www.sca.gov.ae
Description. Official website of the UAE Securities and Commodities Authority (SCA) containing official, up-to-date federal laws and rules and regulations issued by the SCA. English language translations are for guidance only. The Arabic language versions will be binding.

Dubai Financial Market
W www.dfm.ae
Description. Official website of the Dubai Financial Market (DFM) containing official, up-to-date federal laws and rules and regulations issued by the SCA and DFM. English language translations are for guidance only. The Arabic language versions will be binding.

Abu Dhabi Securities Exchange
W www.adx.ae
Description. Official website of the Abu Dhabi Securities Exchange (ADX) containing official, up-to-date federal laws and rules and regulations issued by the SCA and the ADX. English language translations are for guidance only. The Arabic language versions will be binding.

Dubai International Financial Centre
W www.difc.ae
Description. Official website of the Dubai International Financial Centre (DIFC) containing official, up-to-date copies of laws establishing the DIFC and primary and secondary legislation issued by the DIFC. DIFC laws are issued in English language.

Dubai Financial Services Authority
W www.dfsa.ae
Description. Official website of the Dubai Financial Services Authority (DFSA), the financial services regulator of the DIFC, containing official, up-to-date copies of financial services laws and rulebooks applicable to the DIFC, all issued in English language.

Nasdaq Dubai
W www.nasdaqdubai.com
Description. Official website of Nasdaq Dubai, containing official up-to-date copies of all rules and regulation issued by Nasdaq Dubai, all issued in English language.

Abu Dhabi Global Market (including ADGM Financial Services Regulatory Authority)
W www.adgm.com
Description. Official website of the Abu Dhabi Global Market (ADGM) containing official, up-to-date copies of laws establishing the ADGM and primary and secondary legislation issued by the ADGM and by its financial services regulator, the ADGM Financial Services Regulatory Authority. ADGM laws are issued in English language.
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