

RULE 13. CONDITIONS AND PRE-CONDITIONS TO AN OFFER

13.1 SUBJECTIVITY

An offer must not normally be subject to conditions or pre-conditions which depend solely on subjective judgements by the offeror or the offeree company (as the case may be) or, in either case, its directors or the fulfilment of which is in their hands. The Panel may be prepared to accept an element of subjectivity in certain circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition or pre-condition may depend, especially in cases involving official authorisations or regulatory clearances, the granting of which may be subject to additional material obligations for the offeror or the offeree company (as the case may be).

13.2 REQUIREMENT TO USE ALL REASONABLE EFFORTS

Following the announcement of a firm intention to make an offer, an offeror must use all reasonable efforts to ensure the satisfaction of any conditions or pre-conditions to which the offer is subject.

13.3 ACCEPTABILITY OF PRE-CONDITIONS

(a) The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the making of an offer will be subject.

(b) Except with the consent of the Panel, an offer must not be announced subject to a pre-condition unless the pre-condition involves an official authorisation or regulatory clearance relating to the offer and either:

- (i) the offeree company agrees to the pre-condition; or
- (ii) the authorisation or clearance is a material official authorisation or regulatory clearance.

13.4 FINANCING CONDITIONS AND PRE-CONDITIONS

(a) Subject to Rules 13.4(b) and (c), an offer must not be made subject to a condition or pre-condition relating to financing.

(b) Where the offer is for cash, or includes an element of cash, and the offeror proposes to finance the cash consideration by an issue of new securities, the offer must be made subject to any condition required, as a matter of law or regulatory requirement, in order validly to issue such securities or to have them listed or admitted to trading (see Note). Any such condition must not be waivable and the Panel must be consulted in advance.

(c) In exceptional cases, the Panel may be prepared to accept a pre-condition relating to financing either in addition to another pre-condition permitted by Rule 13.3 or otherwise, for example where, due to the likely period required to obtain any necessary material official authorisation or regulatory clearance, it is not reasonable for the offeror to maintain committed financing throughout the offer period. In such a case:

- (i) the financing pre-condition must be satisfied (or waived), or the offer must be withdrawn, within 21 days after the satisfaction (or waiver) of any other pre-condition or pre-conditions permitted by Rule 13.3; and
- (ii) the offeror and its financial adviser must confirm in writing to the Panel before announcement of the offer that they are not aware of any reason why the offeror would be unable to satisfy the financing pre-condition within that 21 day period.

(d) If, at any time, the offeror or its financial adviser becomes aware, or considers it likely, that the offeror would be unable to satisfy a financing pre-condition, it must promptly notify the Panel.

NOTE ON RULE 13.4

Conditions necessary for the issue, listing or admission to trading of new securities

Conditions which will normally be considered necessary for the purposes of issuing new securities or having them listed or admitted to trading include:

- (a) *a condition relating to the passing of any resolution necessary to create or allot the new securities and/or to allot the new securities on a non-pre-emptive basis (if relevant); and*
- (b) *where the new securities are to be admitted to listing or to trading on any investment exchange or market, any condition required to give effect to a legal or regulatory requirement relating to the listing and/or admission to trading of those securities (see also Rule 24.10).*

13.5 INVOKING CONDITIONS AND PRE-CONDITIONS

(a) An offeror may only invoke a condition or pre-condition so as to cause the offer not to proceed, to lapse or to be withdrawn with the consent of the Panel. The firm offer announcement and the offer document must each incorporate language which appropriately reflects this requirement. The Panel will normally only give its consent if the circumstances which give rise to the right to invoke the condition or pre-condition are of material significance to the offeror in the context of

the offer. This will be judged by reference to the facts of each case at the time that the relevant circumstances arise.

(b) The following will not be subject to Rule 13.5(a):

- (i) the acceptance condition (see Rule 9.3 and Rule 10.1);
- (ii) a condition relating to the approval of a scheme of arrangement by the offeree company's shareholders or to the sanctioning of the scheme by the court;
- (iii) where the offeror proposes to finance cash consideration by an issue of new securities, a condition required under Rule 13.4(b);
- (iv) where securities are offered as consideration, a condition required to give effect to a legal or regulatory requirement relating to the issuance, listing and/or admission to trading of those securities (see the Note on Rule 13.4);
- (v) a condition required to give effect to a legal or regulatory requirement, or a requirement of the offeror's articles of association (or equivalent), for the offeror's shareholders to approve the implementation of the offer;
- (vi) a term relating to the long-stop date of a contractual offer (but see the separate requirements of Rule 12.1 and Rule 12.2);
- (vii) a condition relating to a long-stop date of a scheme of arrangement or a specific date by which the shareholder meetings or the court sanction hearing must be held (see Sections 3(b) and (c) of Appendix 7 and also the separate requirements of Section 3(g) of Appendix 7); and
- (viii) any other condition or pre-condition that the Panel has agreed will not be subject to Rule 13.5(a) in the particular circumstances.

(c) The firm offer announcement and the offer document must state which conditions and, in the case of a firm offer announcement, pre-conditions are not subject to Rule 13.5(a).

(d) The firm offer announcement and the offer document must state that any condition or, in the case of a firm offer announcement, pre-condition that is subject to Rule 13.5(a) may be waived by the offeror.

13.6 INVOKING OFFEREE PROTECTION CONDITIONS

An offeree company should not invoke, or cause or permit the offeror to invoke, any condition to an offer unless the circumstances which give rise to the right to invoke the condition are of material significance to the shareholders in the offeree company in the context of the offer.

NOTE ON RULE 13.6***When an offeree protection condition may be invoked***

The circumstances in which the offeree company will be allowed to invoke, or cause or permit the offeror to invoke, a condition will not necessarily be restricted to those in which the Panel would permit an offeror to invoke a condition. In deciding whether an offeree company may invoke, or cause or permit the offeror to invoke, a condition, the Panel will take into account all relevant factors.