

Content

Title :	Regulations Governing Public Tender Offers for Securities of Public Companies <b>Ch</b>
Date :	2016.11.18
Legislative :	<p>3. Twenty-six articles amended and promulgated in full by the Securities and Futures Commission, Ministry of Finance per 19 January 2001 Order Ref. No. (90) Taiwan-Finance-Securities (III) 000190</p> <p>4. Twenty-eight articles amended and promulgated in full by the Securities and Futures Commission, Ministry of Finance per 12 August 2002 Order Ref. No. Taiwan-Finance-Securities (III) 0910142330</p> <p>5. Articles 10 and 20 amended and promulgated by the Securities and Futures Commission, Ministry of Finance per 22 October 2002 Order Ref. No. Taiwan-Finance-Securities (III) 0910005372</p> <p>6. Articles 2, 3, 8 to 12, 14, 19, and 25 amended and issued by the Financial Supervisory Commission, Executive Yuan, per 22 June 2005 Order Ref. No. Financial-Supervisory-Securities-III-0940002712</p> <p>7. Articles 2, 15, 16, and 19 amended and issued, and Articles 7-1 and 15-1 added, per 29 December 2009 Order No. Financial-Supervisory-Securities-Trading-0980069191 of the Financial Supervisory Commission, Executive Yuan</p> <p>8. Articles 2, 5, 9, 14, 21, and 26 amended and issued, and Articles 14-1 and 27-1 added, per 5 July 2012 Order No. Financial-Supervisory-Securities-Trading-1010026927 of the Financial Supervisory Commission</p> <p>9. Articles 14, 14-1 and 18 amended and issued per 25 December 2015 Order No. Financial-Supervisory-Securities-Trading-1040051241 of the Financial Supervisory Commission</p> <p>10. Articles 7-1, 9, 14 to 15, 18, 19 and 24 amended per 18 November 2016 Order No. Financial-Supervisory-Securities-Trading-1050045020 of the Financial Supervisory Commission</p>
Content :	<p>Chapter I General Principles</p> <p>Article 1</p> <p>These Regulations are promulgated according to Paragraph 4 of Article 43-1 of the Securities and Exchange Act (hereinafter "the Act").</p> <p>Article 2</p> <p>"Public Tender Offer" as referred to in these Regulations means purchase of securities from unspecified persons bypassing the centralized securities exchange market or the over-the-counter (OTC) markets, and instead using public announcement, advertisement, radio broadcast, telecommunication, letters, telephone, presentation show, explanation delivering or other methods to make a public offer.</p> <p>The scope of public tender offers to purchase securities under Paragraph 2 of Article 43-1 of the Act includes purchase of issued shares, new shares entitlement certificates, warrants, preferred shares attached with warrants, convertible corporate bonds, corporate bonds attached with warrants, depositary receipts, and any other securities approved by the Financial Supervisory Commission (hereinafter "FSC") of a company, which has already completed the public issuance or supplemental public issuance of the above-mentioned securities in accordance with the Act.</p> <p>No private-placement securities may be the subject of a public tender offer unless supplemental procedures for public issuance have been carried out.</p> <p>Article 3</p>

The term "affiliates" as used in Paragraphs 2 and 4 of Article 43-1, Paragraph 1 of Article 43-3, Paragraph 4 of Article 43-5, Subparagraph 4 of Paragraph 1 of Article 174, and Subparagraph 2 of Paragraph 1 of Article 178 of the Act and in these Regulations refers to any of the following:

1. For an Offeror that is a natural person, it refers to his or her spouse and minor children.
2. For an Offeror that is a company, it refers to an affiliated enterprise as defined in Chapter 6-1 of the Company Act.

Securities held by affiliates mentioned in the preceding paragraph include those held using the names of other persons.

#### Article 4

The term "Tenderer" in these Regulations means a person who intends to sell securities held in the public company being acquired.

#### Article 5

"Securities Related Entities" as referred to in these Regulations means the following:

1. Stock Exchange or OTC Exchange.
2. Securities and Futures Investors Protection Center.
3. Other entities designated by the FSC.

#### Article 6

If the reporting and public announcement by the Offeror do not fall on the same date, the calculation of the period mentioned in Paragraph 1 of Article 43-3 of the Act shall commence from the earlier of the two dates.

#### Chapter II Reporting and Public Announcement of Public Tender Offer

#### Article 7

Any public tender offer to purchase the securities of a public company shall not be made until after a report has been filed with the FSC and a public announcement made, except under the circumstances set forth in Subparagraphs 1 to 3 of Paragraph 2 of Article 43-1 of the Act. For any competitive public tender offer for securities issued by the same public company, a report of public tender offer shall be filed with the FSC and a public announcement made at least five trading days prior to the expiry date of the original public tender offer period.

#### Article 7-1

An Offeror shall adopt uniform acquisition conditions in the public tender offer, and may not make any of the following modifications to the acquisition conditions:

1. Lower the public tender offer price.
2. Lower the proposed number of securities to be acquired through the public tender offer.
3. Shorten the public tender offer period.
4. Other particulars as prescribed by the FSC.

The Offeror may not change the time, manner, or place for payment of tender offer consideration as specified in the prospectus, provided that this restriction does not apply in the event of a natural disaster or emergency event. The occurrence and cessation of an above-mentioned event shall be determined and announced by the relevant competent authorities pursuant to relevant laws and regulations.

The Offeror may not enter into an agreement or covenant with any specific shareholder of the subject company entitling the shareholder to obtain any

special rights after the shareholder's participation in the tender through an offer to sell, so that there might exist any discrepancy in the substantial acquisition conditions among shareholders.

#### Article 8

Consideration, other than cash, for public tender offers shall be confined to within the following scope:

1. Domestic securities that are either listed on a stock exchange or traded on an OTC market pursuant to the provisions of the Act; the scope of foreign securities [eligible as consideration] shall be as separately prescribed by the FSC.
2. If the Offeror is a public company, stocks or bonds offered and issued thereby; if the Offeror is a foreign company, the scope of stocks or bonds offered and issued thereby [eligible as consideration] shall be as separately prescribed by the FSC.
3. Other property of an Offeror referred to in the preceding subparagraph.

#### Article 9

Before the commencement date of the public tender offer, the Offeror, unless buying back its own shares under Article 28-2 of the Act, shall file a report with the FSC, including the Public Tender Offer Report Form and the following documents, in accordance with Article 7:

1. Public tender offer prospectus.
2. The mandate contract entered into between the Offeror and the mandated institution pursuant to Article 15 of these Regulations.
3. The power of attorney to the Offeror's designated representative for litigious and non-litigious matters if the Offeror does not maintain any domicile or business place in the Republic of China (ROC).
4. Other documentation required by the FSC.

The Public Tender Offer Report Form and accompanying documents must be reviewed by a lawyer and the lawyer shall issue a legal opinion. If the public tender offer requires approval by or effective registration with the FSC or any other competent government authority, a lawyer's opinion shall concurrently be issued thereto.

The Offeror shall provide proof that it has the ability to perform payment of the tender offer consideration.

If the tender offer consideration is to be cash, the proof under the preceding paragraph shall include one of the items in the following subparagraphs:

1. A performance guarantee issued by a financial institution that designates the mandated institution as the beneficiary, and that authorizes the mandated institution to demand in its sole discretion the exercise of the performance guarantee and instruct the allocation of funds for the purpose of payment of the consideration.
2. Written confirmation that the Offeror has the ability to perform payment of the tender offer consideration, issued by a financial adviser with the qualification of a securities underwriter or by a CPA that conducts the business of auditing and attesting the financial reports of public companies, after such CPA or adviser has gained a full understanding of the Offeror and taken reasonable steps to evaluate the Offeror's sources of funds.

The financial adviser or CPA under subparagraph 2 of the preceding

paragraph may not have any interest relationship with the Offeror or with the public company whose securities are being acquired that could affect the adviser or CPA's independence.

On the reporting date of the public tender offer, the Offeror shall simultaneously serve a copy of the Public Tender Offer Report Form, the public tender offer prospectus, and relevant documents referred to in Paragraph 1 to the public company whose securities are being acquired. Before the date the public tender offer begins, the Offeror shall publicly announce the Public Tender Report Form, the particulars in Paragraphs 2 and 3 and the public tender offer prospectus.

If the FSC, pursuant to Article 43-5, paragraph 2 of the Act, orders the Offeror to amend any reported content of a public tender offer, the public tender offer period shall be calculated anew from the date the Offeror makes the new report and public announcement.

#### Article 10

An Offeror buying back its own shares in accordance with Article 28-2 of the Act shall publicly announce, and report to the FSC, attaching the Public Tender Offer Report Form and the following supporting documents, before the date the public tender offer begins:

1. The document referred to in Subparagraph 2 of Paragraph 1 of the preceding article.
2. The meeting minutes recording the resolution by the board of directors to buy back the shares.
3. A declaration from a board of directors meeting, stating that, taking into consideration the company's financial condition, there will be no effect on the company's maintenance of capital.
4. The most recent duly disclosed financial report audited or reviewed by a certified public accountant before the board resolution.
5. The opinion of a certified public accountant or securities underwriter on the reasonableness of the buyback price.
6. The documentation required under Article 10 of the Regulations Governing Share Repurchase by Listed and OTC Companies regarding methods for transferring shares to employees or under Article 11 regarding methods for converting shareholding or subscribing shares.
7. Affect on unappropriated retained earnings of the company.
8. Other documentation required by the FSC.

#### Article 11

Any person who individually or jointly with another person(s) intends to acquire within 50 days shares accounting for 20 percent or more of the total issued shares of a public company shall employ a public tender offer to do so.

Where the following conditions are met, the requirement to employ a public tender offer as set forth in the preceding paragraph shall not apply:

1. Transfer of shares between affiliates mentioned in Article 3.
2. Shares obtained under the Taiwan Stock Exchange Corporation Regulations Governing Auction of Listed Securities by Consignment.
3. Shares obtained under the Taiwan Stock Exchange Corporation Rules Governing Purchase of Listed Securities by On-Market Tender Offer or under the Taipei Exchange Rules Governing Purchase of OTC Securities by On-market Tender Offer.

4. Shares obtained under Article 22-2, Paragraph 1, Subparagraph 3 of the Act.

5. Implementing a share exchange under the Company Act, Article 156, paragraph 6, or under the Business Mergers and Acquisitions Act, in which new shares are issued to serve as the consideration for acquiring the shares of another public company.

6. Other conditions in conformity with FSC regulations.

Article 12

"Jointly with another person(s) intends to acquire [...] issued shares of a public company" in the preceding article refers to acquisition by the intending acquirers, for a common purpose, by means such as a contract, agreement, or other form of meeting of minds, of previously issued shares of a public company.

Article 13

During the period from the determination date of a public tender offer until the reporting and public announcement date(s), any person who becomes aware of any information relating to that public tender offer due to his job duties or any other reasons shall keep such information in confidence.

Chapter III The Proceeding of the Public Tender Offer Process

Article 14

The public company whose securities are being acquired shall, within 15 days after its receipt of the copy of the Public Tender Offer Report Form, the public tender offer prospectus, and relevant documents reported and publicly announced by the Offeror pursuant to Paragraph 3 of Article 9, have the following items publicly announced, reported in writing to the FSC for recordation, and copied to the Securities Related Entities:

1. The types, number and amount of shares currently held by the current directors and supervisors and any shareholders with more than 10% of the company's stocks.
2. The board of directors shall make recommendations to the company's shareholders with respect to the status of verification of the identity and financial condition of the Offeror, fairness of the tender offer conditions, and reasonableness of the sources of the tender offer funds, and the specific assenting and dissenting opinions of the directors and their reasons therefor shall be clearly recorded.
3. Whether there were major changes on the company's financial conditions after the delivery of its most recent financial statements, and the contents of such changes.
4. The types, number and amount of shares of the Offeror or its affiliated enterprises as defined under Chapter 6-1 of the Company Act held by the current directors, supervisors or the major shareholders having over 10% of the shareholding of the target company.
5. Other relevant important information.

Shares held by persons in Subparagraph 1 and Subparagraph 4 of the preceding paragraph include those held by his/her spouse and minor children and held under the names of other persons.

The board of directors must fully disclose the verification measures already adopted and the related procedures with respect to the verification conducted under paragraph 1, subparagraph 2, and if an expert is engaged to issue a written opinion, it shall be made public along with the disclosure.

After receiving documents in connection with a new report and public announcement made by the Offeror pursuant to Article 43-5, paragraph 2 of the Act (hereinafter, a "new report and public announcement"), if the public company whose securities are being acquired must consequently amend the status of verification of relevant matters or its recommendations to the shareholders under paragraph 1, subparagraph 2 herein, it shall, within 15 days, make a new public announcement of the items in that subparagraph, and prepare and submit a written report to the FSC for recordation, with a copy to the Securities Related Entities.

#### Article 14-1

After a public company whose securities are being acquired has received the copy of the Public Tender Offer Report Form, the public tender offer prospectus, and other documents reported and publicly announced by the Offeror under Article 9, paragraph 6, it shall promptly form a review committee, and within 15 days publicly announce the results of the review and the documentation showing that the review committee members meet the requirements under paragraph 4 of the present article.

The review committee of the preceding paragraph shall investigate and review the identity and financial conditions of the Offeror, fairness of tender offer conditions, and reasonableness of the sources of the tender offer funds, and make recommendations to the company shareholders with respect to the present tender offer. The review committee must fully disclose the verification measures already adopted and the related procedures with respect to the verification conducted under paragraph 1, subparagraph 2, and if an expert is engaged to provide a written opinion, it shall be made public along with the disclosure.

The review committee members shall not be fewer than 3 persons. If the public company whose securities are being acquired has independent directors, it shall be composed of the independent directors. If the number of independent directors is insufficient or there are no independent directors, it shall be composed of members selected by the board of directors.

The eligibility conditions for review committee members shall comply with the requirements set out in Article 2, paragraph 1 and Article 3, paragraph 1 of the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies.

The review committee's review results shall require the assent of one-half or more of all the committee members, and the status of verification, the specific assenting or dissenting opinions of the committee members, and their reasons shall be submitted to the board of directors. Article 7, paragraph 2 of the Regulations Governing the Establishment and Related Matters of Special Committees of Public Companies for Merger/Consolidation and Acquisition shall apply mutatis mutandis to the methods for member attendance at the meetings.

The discussions at a review committee meeting shall be included in the meeting minutes. The proceedings of a review meeting shall be recorded in their entirety by the company in audio or video and preserved as evidentiary documentation. Article 10 of the Regulations Governing the Establishment and Related Matters of Special Committees of Public Companies for Merger/Consolidation and Acquisition shall apply mutatis mutandis to

the period and method for preservation of the minutes and relevant evidentiary documentation.

After receiving documents in connection with a new report and public announcement by the Offeror, the public company whose securities are being acquired shall promptly notify the review committee to conduct a review and make a new public announcement of the results of the review within 15 days.

#### Article 15

An Offeror shall mandate the institutions that are permitted by law to handle shareholder services for others to be responsible for the taking Tenderer's deposit of securities, the delivery of public tender offer prospectus, and the receipt and payment of the public tender offer funds or securities, etc.:

A mandated institution shall set up a segregated account for the receipt and payment of funds or securities under the preceding paragraph, and shall perform its fiduciary duties faithfully and with due care.

The mandated institution shall meet the qualifications and requirements specified in the Regulations Governing the Administration of Shareholder Services of Public Companies, and shall not have received any official reprimand or more severe disciplinary action by the FSC in connection with public tender business within the most recent year. This restriction need not apply, however, if concrete steps have been taken to correct the infraction and the FSC has recognized the improvement.

When a mandated institution takes deposit of securities from the Tenderer, it shall issue to the Tenderer a receipt describing the types and number of the securities.

When a mandated institution takes deposit of securities from the Tenderer by means of book-entry via a securities firm or a custodian bank, it shall comply with regulations applying to centralized securities depository enterprises.

#### Article 15-1

An Offeror may use only one mandated institution. Notwithstanding the foregoing, in the case of acquiring securities of a public company that are not listed on the exchange, OTC, or emerging stock market, not more than two mandated institutions are allowed.

If the Offeror is a financial holding company or a subsidiary thereof, it may not engage a subsidiary of the same financial holding company as its mandated institution.

#### Article 16

The Offeror, unless buying back shares according to Article 28-2 of the Act, shall serve the public tender offer prospectus to its mandated institution and Securities Related Entities before the commencement date of the public tender offer period; and shall furthermore deliver the public tender offer prospectus to the Tenderer at the Tenderer's request or upon the Tenderer depositing the securities with the mandated institution referred to in Article 15.

The mandated institution mentioned in the preceding paragraph shall deliver the public tender offer prospectus on behalf of the Offeror.

#### Article 17

Before making any modifications to conditions other than those set forth in Paragraph 1 of Article 43-2, the Offeror shall file a report with the FSC

and make a public announcement, and each Tenderer, mandated institution and the public company whose securities are being acquired shall be notified.

#### Article 18

The length of public tender offer period shall not be less than 20 days nor more than 50 days.

If what is provided under Paragraph 2 of Article 7 occurs or for another legitimate reason, the original Offeror may report to the FSC and make a public announcement of an extension of the public tender offer period.

However, the extension period(s) shall not exceed a total of 50 days.

#### Article 19

For purpose of these Regulations, the expression that "the conditions of the public tender offer have been achieved" means that by the expiration of the tender offer period the minimum number of shares for acquisition in the tender offer as set by the Offeror has been reached. If the public tender offer involves any matter that requires the approval of the FSC or other competent authority or that requires an effective registration, the approval shall have been obtained or the effective registration made.

With respect to any of the following matters, the Offeror shall submit a regulatory filing with the FSC and make a public announcement, with a copy thereof to the mandated institution within 2 days counting inclusively from the date of occurrence of the fact:

1. It has obtained approval or effective registration from another competent authority before the conditions of the public tender offer have been achieved.
2. The conditions of the public tender offer have been achieved.
3. The tender offer consideration has been transmitted to the mandated institution's segregated account for public tender offer.
4. After the conditions of the public tender offer have been achieved, the number of securities tendered reaches the maximum number to be purchased. If, on the expiration day of the public tender offer period, the conditions of the public tender offer have not been achieved, or the number of securities tendered exceeds the number to be purchased, for the securities which have been deposited but not transacted, the Offeror shall, on the business day following the expiration of the public tender offer period, return to the Tenderer the securities deposited by the Tenderer.

After the conditions of the public tender offer have been achieved, if the Offeror does not complete the payment by the time for payment of the tender offer consideration as specified in the prospectus, the tenderer may, without issuing any notice of payment due, terminate the contract at its sole discretion. The mandated institution shall, on the following business day, return to the tenderer the securities deposited by the tenderer.

However, if the time to return the securities to the tenderer, as specified in the prospectus, is earlier than the time for payment of tender offer consideration, such stipulation shall govern.

When a Tenderer applies to revoke its offer to sell, it shall do so in writing.

A Tenderer may not revoke its offer to sell after the Offeror has made a public announcement under Paragraph 2, subparagraph 2, unless under any of the following circumstances:

1. A circumstance set out in Article 7, Paragraph 2.

2. The Offeror has submitted a regulatory filing with the FSC and made a public announcement of an extension of the public tender offer period pursuant to Article 18, Paragraph 2.
3. The offer to sell is voidable under any other law.

#### Article 20

When an Offeror buys back its own shares in accordance with Article 28-2 of the Act, shares held by its affiliated enterprises as defined under Article 369-1 of the Company Act, or directors, supervisors, or managers themselves or spouses or minor children thereof, or held under the name of another person, shall not be sold in response to the offer during the period of share buyback by the Offeror.

When a government operated enterprise in which the government holds more than 50 percent of the total issued shares is approved by the Executive Yuan, at the request of the competent authority of the enterprise, to buy back its own shares in accordance with Subparagraph 3 of Paragraph 1 of Article 28-2 of the Act, the restriction set forth in the preceding paragraph may be exempted.

The price in a public tender offer referred to in the preceding paragraph shall not be higher than the closing securities price on the date of public announcement of the public tender offer or the net worth per share on the financial report for the most recent period, whichever of the two is higher; the public tender offer price and the volume of securities to be acquired through the public tender offer shall furthermore not be changed during the public tender offer period.

#### Article 21

When termination of a public tender offer proceeding is approved by the FSC pursuant to Paragraph 1 of Article 43-5 of the Act, public announcement and notice of such to each Tenderer, mandated institution, and the public company whose securities are being acquired shall be made within 2 days of receiving FSC approval for termination of the public tender offer.

The preceding paragraph shall apply mutatis mutandis in the event the FSC, pursuant to Article 43-5, paragraph 2 of the Act, orders amendment to any reported content of a public tender offer.

#### Article 22

The Offeror shall, within 2 days from the public tender offer period's expiration date as provided under Article 18 of these Regulations, report to the FSC and publicly announce the following matters:

1. The name or trade name, and domicile or location of the Offeror.
2. The name of the public company whose securities are being acquired.
3. The types of the securities acquired.
4. The public tender offer period.
5. If the tender offer purchase is conditioned upon that the shares number to be sold has reached the projected shares number to be acquired, the description of whether such condition has been satisfied.
6. The number of the securities to be sold and the actual number sold.
7. The time, manner and place for payment of the purchase consideration.
8. The delivery time, manner, and place for the transacted securities.

On the date of public announcement pursuant to the preceding paragraph, the Offeror shall notify the Tenderers respectively of the sale-related matters.

#### Article 23

If the shares number to be sold has exceeded the projected shares number to be acquired, the Offeror shall purchase the shares pro rata from all the Tenderers, and shall return those shares which have been deposited but the transaction of which not yet consummated to the original Tenderers.

For listed or OTC company securities, the Offeror shall distribute the stocks according to the proportion of the amounts reported by the individual sellers up to a limit of one thousand stocks. If there are stocks left over, the Offeror shall buy the stocks in the random order prescribed by the circumstances.

#### Article 24

"Legitimate reason" in Paragraph 3 of Article 43-5 of the Act refers to any of the following:

1. Circumstances set forth in Paragraph 2 of Article 7.
2. Where consent has been given by a resolution of the board of directors of the public company whose securities are being acquired, as evidenced by supporting documents. However, this shall not apply where the entirety of the body of directors of the public company whose securities are being acquired does not conform to the provisions of Article 26 of the Act.
3. Where the Offeror's failure to complete the public tender offer in the previous instance was caused by another domestic competent authority not yet having issued its review results, and that authority subsequently made a decision of approval.
4. Other legitimate reasons.

#### Chapter IV Supplementary Provisions

#### Article 25

Report or application documentation submitted under these Regulations shall be prepared and bound in the format prescribed by the FSC; the same shall apply any supplements or corrections thereto.

#### Article 26

When an Offeror or a public company whose securities are being acquired makes a public announcement pursuant to Article 7, 9, 10, 14, 14-1, 17 to 19, 21, or 22 of these Regulations, the public announcement shall be complete after it has transmitted the required content of the public announcement to the Market Observation Post System.

When an Offeror that is not a public company is to make a public announcement under these Regulations, the announcement shall be made by the mandated institution by the method of the preceding paragraph.

#### Article 27

An Offeror who acquires, individually or jointly with another person(s), over 10% of the outstanding shares of a public company shall be exempted from the requirement to file an acquisition report under Paragraph 1 of Article 43 of the Act for the shares acquired through that public tender offer.

#### Article 27-1

The provisions of these Regulations shall apply mutatis mutandis to a public tender offer for shares of a primary exchange-listed (or OTC-listed) company or emerging stock company as defined in Article 3 of the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers.

Public tender offers for shares of primary exchange-listed (or OTC-listed) companies or emerging stock companies shall be confined to already issued shares that are listed and traded on the domestic stock exchange or OTC market or registered as emerging stock. Reporting documents or notifications that the Offeror is required to serve on the foreign company whose securities are being acquired shall be served on the domestic litigious and non-litigious agent designated by the foreign company under the Act.

In the case of a public tender offer for country-of-listing shares or Taiwan depositary receipts of a secondary exchange-listed (or OTC-listed) company as defined in Article 3 of the Regulations Governing the Offering and Issuance of Securities by Foreign Issuers, the Offeror shall give notice of the information related to the tender offer to the domestic litigious and non-litigious agent designated by the foreign company under the Act. After receiving the notice, the domestic agent of the secondary exchange-listed (or OTC-listed) company shall promptly transmit the information related to the tender offer to the Market Observation Post System.

Article 28

These Regulations shall become effective on the date of promulgation.

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Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System