

30. Conditions

30.1 Subjective conditions

An offer must not normally be made subject to conditions which depend on judgements by the offeror or the fulfilment of which is in its hands.

Notes to Rule 30.1:

1. *An element of subjectivity*

The Executive may be prepared to accept an element of subjectivity in certain special circumstances where it is not practicable to specify all the factors on which satisfaction of a particular condition may depend, especially in cases involving official authorisations, the granting of which may be subject to additional material obligations for the offeror. It would also normally be acceptable in an announcement for an offer to be expressed as being conditional on statements or estimates being appropriately verified.

2. *Invoking conditions*

An offeror should not invoke any condition, other than the acceptance condition, so as to cause the offer to lapse unless the circumstances which give rise to the right to invoke the condition are of material significance to the offeror in the context of the offer.

3. *Listing conditions*

Except with the consent of the Executive, where securities are offered as consideration and it is intended that they should be listed on the Stock Exchange, the relevant listing condition should be in terms which ensure that it is capable of being satisfied only when the decision of the Stock Exchange to admit the securities to listing has been announced by the Stock Exchange.

30.2 Acceptance condition

Except with the consent of the Executive, all offers, ~~whether voluntary or mandatory~~, except partial offers made under Rule 28, shall be conditional upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and persons acting in concert with it holding more than 50% of the voting rights of the offeree company.

A voluntary offer may be made conditional on an acceptance level of shares carrying a higher percentage of the voting rights.

Mandatory offers made under Rule 26 shall be subject to no other conditions, whether as to minimum or maximum levels of acceptances required to be

received or otherwise. It follows that the offer should be unconditional ~~as to acceptances~~—where the offeror and persons acting in concert with it hold more than 50% of the voting rights before such offer is made.

Notes to Rule 30.2:

1. *Acceptances*

An acceptance may not be counted towards fulfilling an acceptance condition unless:-

(a) *it is received by the offeror's receiving agent on or before the last time for acceptance set out in the offeror's relevant document or announcement and the offeror's receiving agent has recorded that the acceptance and any relevant documents required by this Note have been so received; and*

(b) *the acceptance form is duly completed and is:-*

(i) *accompanied by share certificates in respect of the relevant shares and, if those certificates are not in the name of the acceptor, such other documents (e.g. a duly stamped transfer of the relevant shares in blank or in favour of the acceptor executed by the registered holder) in order to establish the right of the acceptor to become the registered holder of the relevant shares; or*

(ii) *from a registered holder or his personal representatives (but only up to the amount of the registered holding and only to the extent that the acceptance relates to shares which are not taken into account under another sub-paragraph of this paragraph (b)); or*

(iii) *certified by the offeree company's registrar or the Stock Exchange.*

If the acceptance form is executed by a person other than the registered holder, appropriate evidence of authority (e.g. grant of probate or certified copy of a power of attorney) must be produced.

2. *Offeror's receiving agent's certificate*

Before an offer may become or be declared unconditional as to acceptances, the offeror's receiving agent must have issued a certificate to the offeror or its financial adviser which states the number of acceptances which have been received which comply with Note 1 [to this Rule 30.2](#) and the number of shares otherwise acquired, whether before or during an offer period.

Copies of the receiving agent's certificate must be sent to the Executive and the offeree company's financial adviser by the offeror or his financial adviser as soon as possible after it is issued.

3. *Convertible securities, warrants and options*

For purposes of the 50% acceptance condition, the Executive should be consulted regarding the offeror's ability to count voting rights attached to shares issuable upon the exercise of conversion or subscription rights attached to convertible securities, warrants or options which the offeror acquires during the offer period. The Executive will normally allow the offeror to count such voting rights for this purpose provided he discloses his intention to do so in the announcement and offer document and first takes all steps which he is required to take to exercise such conversion or subscription rights for all purposes. Such voting rights would then be considered to be outstanding for the purpose of calculating the 50% acceptance condition.

4. *Information to offeror during offer period and extension of offer to new shares*

See the Notes to Rule 6 for information about the offeree company's share capital which is to be supplied to an offeror, and the offeror's obligations in relation to new shares.

5. *Dispensation from 50% acceptance condition*

The Executive may in exceptional circumstances permit an offer to be subject to acceptance by holders of shares carrying less than 50% of the voting rights, ~~for example where an offer by a holder of more than 50% is opposed by someone who wishes to make a higher offer.~~

6. *New shares*

For the purpose of the acceptance condition, the offeror must take account of all shares carrying voting rights which are unconditionally allotted or issued before the offer becomes or is declared unconditional as to acceptances, whether pursuant to the exercise of conversion or subscription rights or otherwise. If in any case, for example, as a result of a rights issue, shares have been allotted in renounceable form (even if provisionally), the Executive should be consulted.

7. *Purchases*

A purchase of shares by an offeror or a person acting in concert with the offeror may be counted towards fulfilling an acceptance condition. For this purpose, a purchase made through the Stock Exchange in the normal course of trading securities on the Stock Exchange and with no pre-arrangement or collusion between the parties to such transaction or their agents may be counted from the time of such dealing on the Stock

Exchange. In all other cases, the purchase may be counted if and when the purchase is fully completed and settled. In the event that a purchase made through the Stock Exchange is not fully settled in accordance with the rules of the Stock Exchange, the Executive may require the offeror and/or its concert parties to take such action as the Executive may determine is appropriate in the circumstances, which may include the issue of a correcting announcement.