نظـام عمليات الاستحواذ الكبرى

Major Acquisitions Regulation
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Major Acquisitions Regulation

Central Bank Regulation - System of Major Acquisitions

Circular No: 02/2020

Date:

To: All Banks

Subject: Major Acquisitions

Introduction:

The Central Bank seeks to promote the effective and efficient development and functioning of the banking system. To this end, it is necessary to regulate and supervise Major Acquisitions proposed and undertaken by banks and banking groups.

In introducing this Regulation, the Central Bank intends to ensure that Banks adopt prudent approaches to Major Acquisitions within a Regulatory framework in line with leading international practices.

This Regulation is issued pursuant to the powers vested in the Central Bank under the Central Bank Law (Decretal Federal Law No. (14) of 2018).

Where this Regulation includes a requirement to provide information or to take certain measures, or to address certain items listed at a minimum, the Central Bank may impose requirements that are additional to the listing provided in the relevant Article.

The onus is on the Board to demonstrate that it has implemented a comprehensive approach to Major Acquisitions. Banks are encouraged to adopt leading practices that exceed the minimum requirements of the Regulation.

Objective:

The objective of this Regulation to establish a prudential framework for evaluating Banks’ approaches to Major Acquisitions, with a view to:

i. Ensuring the soundness of Banks; and

ii. Contributing to financial stability and the protection of retail customers

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The objective of this Regulation is to establish a prudential framework for evaluating Banks’ approaches to Major Acquisitions, with a view to:

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SCOPE OF APPLICATION:

This Regulation applies to all Banks operating in the UAE. Banks established in the UAE with significant group relationships, including Subsidiaries, Affiliates, or international branches, must ensure that the Regulation is adhered to on a solo and group-wide basis.

Article (1): Definitions

1. **Affiliate**: An entity that, directly or indirectly, controls, is controlled by, or is under common control with another entity. The term control as used herein shall mean the holding, directly or indirectly, of voting rights in another entity, or of the power to direct or cause the direction of the management of another entity.

2. **Bank**: Any juridical person licensed in accordance with the provisions of the Central Bank Law, to primarily carry on the activity of taking deposits, and any other Licensed Financial Activities as defined in Article 65 of the Central Bank Law.

3. **Board**: The Bank’s board of directors.


5. **Central Bank Law**: Decretal Federal Law No. (14) of 2018 regarding the Central Bank & Organisation of Financial Institutions and Activities as amended or replaced from time to time.

6. **Central Bank regulations**: Any regulation, resolution, circular, rule, standard or notice issued by the Central Bank.

7. **Islamic Financial Services**: Shari`ah compliant financial services offered by Islamic Banks and Conventional Banks offering Islamic banking products (Islamic Windows).
8. **Major Acquisition:** An acquisition or investment by a Bank (where assets are being acquired, including shares but not including debt (except convertible debt), the aggregate amount (in one juridical person) of which exceeds 5% of Total Regulatory Capital, or which is deemed in advance by the Central Bank to be a Major Acquisition.

9. **Notification Acquisition:** An acquisition or investment by a Bank (where assets are being acquired, including shares but not including debt), the amount of which does not meet the criteria for a Major Acquisition, but which does exceed 1% of Total Regulatory Capital.

10. **Purchase Price:** Gross amount.

11. **Senior Management:** The executive management of the Bank responsible and accountable to the Board for the sound and prudent day-to-day management of the Bank, generally including, but not limited to, the chief executive officer, chief financial officer, chief risk officer, and heads of the compliance and internal audit functions.

12. **Subsidiary:** An entity (the 'first entity') is a subsidiary of another entity (the 'second entity') if the second entity:

   a. holds a majority of the voting rights in the first entity;

   b. is a shareholder of the first entity and has the right to appoint or remove a majority of the board of directors or managers of the first entity;

   c. is a shareholder of the first entity and controls alone, pursuant to an agreement with other shareholders, a majority of the voting rights in the first entity;

   d. **Or:** if the first entity is a subsidiary of another entity which is itself subsidiary of the second entity.

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8. عملية استحواذ كبرى: عملية استحواذ أو استثمار بواسطة بنك (حيث يجري استحواذ الأصول بما في ذلك الأسهم، ولكن باستبعاد الدين، (باستثناء الدين القابل للتحويل)، ويتجاوز مبلغها الإجمالي (في شخص اعتباري واحد) 5% من إجمالي رأس المال الرقابي، أو يكون قد تم مسبقًا اعتبارها عملية استحواذ كبرى من قبل المصرف المركزي.

9. الاستحواذ بالإخطار: عملية استحواذ أو استثمار بواسطة بنك (حيث يجري استحواذ الأصول بما في ذلك الأسهم، ولكن باستبعاد الدين) ويكون مبلغها غير مستوف لمعايير عمليات الاستحواذ الكبرى، ولكنها تتجاوز بالفعل 1% من إجمالي رأس المال الرقابي.

10. سعر الشراء: المبلغ الإجمالي.

11. الإدارة العليا: الإدارة التنفيذية للبنك المسؤولة والمساهمة أمام مجلس الإدارة عن الإدارة اليومية للبنك على نحو سليم وحريص، وتشمل بصورة عامة، بما يشمل ولا يقتصر على، الرئيس التنفيذي، والمدير المالي، ومسؤول المخاطر الرئيسي، ومدير الامتداد، ومدير التنسيق الداخلي.

12. مؤسسة تابعة: تكون الكيان ("الكيان الأول") مؤسسة تابعة لكيان آخر ("الكيان الثاني") إذا كان الكيان الثاني:

   a. يملك أغلبية حقوق التصويت في الكيان الأول؛

   b. مساهم في الكيان الأول، ولديه الحق في تعيين أو إفشاء أغلبية أعضاء مجلس إدارة الكيان الأول أو مديره;

   c. مساهم في الكيان الأول، وبسطر، وحده، عملاً بأحكام اتفاقية مبرمة بينه وبين مساهمين أخرين، على أغلبية حقوق التصويت في الكيان الأول.

   d. أو: إذا كان الكيان الأول مؤسسة تابعة لكيان آخر، يكون هو نفسه مؤسسة تابعة للكيان الثاني.
13. **Total Regulatory Capital**: The sum of a Bank’s Common Equity Tier 1, Additional Tier 1 and Tier 2 capital.

**Article (2): Approval of Major Acquisitions**

1. A Bank shall not acquire any other institution, regardless of its type of activity, nor transfer any part of its liabilities to another person, without obtaining the Central Bank’s prior approval.

2. A Bank must obtain written approval from the Central Bank prior to completing a Major Acquisition. An application for Central Bank approval must provide at a minimum:

   a. A detailed description and analysis of the proposed Major Acquisition including the consideration and value received, funding, and projected impact on the financial position, income statement, and prudential requirements;

   b. Projected impact on the Bank, and if applicable group business model, pro-forma statements of the combined entity, the potential impact on market share and competitive dynamics, customer access, product and services, risk profile, governance (including reporting lines), risk management, internal controls, internal audit, information systems and human resources;

   c. Due diligence report and other relevant documents, including those provided to the Board as part of the Bank’s internal approval process, Banks should consider obtaining Central Bank no objection before entering the due diligence process;

   d. The valuation methodology used to price the Major Acquisition;

   e. An explanation of how the Major Acquisition transaction meets the criteria set out in Article 5 of this Regulation; and

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**المادة (2): الموافقة على عمليات الاستحواذ الكبرى**

1. لا يجوز لأي بنك مرخص استحواذ على أي مؤسسة أخرى،هما كان نشاطها، ولا يجوز تحويل أي جزء من التزاماتها إلى شخص آخر، إلا بعد الحصول على موافقة مسبقة من المصرف المركزي.

2. يتعين على البنك أن يحصل على موافقة كتابية من المصرف المركزي قبل إتمام أي عملية استحواذ كبرى. ويرجى تقديم طلب للحصول على موافقة المصرف المركزي وكذل أدنى يجب أن يقدم البنك ما يلي:

   a) وصفاً تفصيلياً وتحليلاً لعملية الاستحواذ الكبيرة المفترضة، بما في ذلك المقابل والقيمة المستقبلية والتمويل، والتأثير المستقبلي المتوقع على الوضع المالي، وبين الدخل، والمتطلبات التنظيمية؛

   b) التأثير المستقبلي المتوقع على البنك، وعلى مواءم أعمال المجموعة، حسب متغيرات الحال، والبيانات المالية الافتراضية المتعلقة بالكيان المتحد، والتأثير المحتمل على الحصة السوقية والدينميكيات التنافسية، وإمكانية وصول العمالاء والمبيعات، وعوامل الشئون، وملف المخاطر، والبيئة (بما في ذلك التنسيق الإداري)، وإدارة المخاطر، والضوابط الداخلية، والتزامات الامتثال، ونظم المعلومات والموارد البشرية؛

   c) تقرير العناية الواجبة والوثائق الأخرى ذات الصلة، بما في ذلك الوثائق المقدمة لمجلس الإدارة كجزء من عملية الموافقة الداخلية للبنك، ويجب على البنك النظر في إمكانية الحصول على عدم مبالاة من المصرف المركزي قبل الدخول في عملية العناية الواجبة؛

   d) منهجية التقييم التي استخدمت لتقييم عمليات الاستحواذ الكبرى؛

   e) توضيح كيفية استيفاء عمليات الاستحواذ الكبرى للمعايير المنصوص عليها في المادة (5) من هذا النظام؛
f. Any other information necessary to enable the Central Bank to reach an informed decision on the merits of the application.

3. Banks must ensure that at all times they do not hold shares (and convertible debt) in commercial companies beyond a limit of 10% of their Total Regulatory Capital.

4. This Regulation does not apply to the purchase of a Subsidiary or Affiliate. Banks are required to seek Central Bank approval separately for any purchases of a commercial entity’s shares which would result in that commercial entity becoming a Subsidiary or Affiliate of the Bank. Where a Bank is fully acquiring or merging with another entity, the Central Bank may approve the transaction beyond the 10% limit.

### Article (3): Board Responsibility

1. The Board is responsible for establishing adequate policies and procedures to ensure that the risks inherent in Major Acquisitions are identified, understood and mitigated to the extent possible. At a minimum, policies and procedures must require:

   a) Approval by the Board; and

   b) Reporting that enables the Board and senior management to monitor and manage the risks on an ongoing basis.

2. Acquisitions, purchase of all or part of a business, or other changes to Bank or group structure may lead to increased risks for the Bank, or if applicable, group. For this reason, all Major Acquisitions must be approved by the Board, in accordance with the Board-approved policy. Elements of the review by the Board, of a Major Acquisition must include, but are not limited to the assessment of:

   a) Risks and impacts on the Bank’s capital, income, liquidity, overall financial position

   b) Risks and impacts on major shareholders and the general public.
and compliance with prudential requirements under a variety of scenarios, particularly with more pessimistic assumptions than in the baseline case;

b) Risks and impacts on existing customer exposures, documentation and services;

c) The extent to which the Bank’s business lines, risk management, legal and regulatory compliance and information technology functions have the necessary expertise, systems and other tools to measure and manage the associated risks.

Article (4): Provision of Information

1. The Central Bank may require from any source whatsoever, such information and perform such investigation as it considers reasonably necessary to evaluate an application, to which end the Central Bank may appoint an agent deemed suitably qualified by the Central Bank.

2. A Bank, which is in possession of information or documentation relevant to a Central Bank review, must present promptly such information or documentation to the Central Bank, or its agent.

3. A person who provides the Central Bank with false, fraudulent, fictitious, materially misleading, or materially incorrect information in relation to an application may be determined by the Central Bank not to be a fit and proper person and thus precluded from being a member of the Senior Management or Board of a Bank.

Article (5): Assessment Criteria

1. A Bank must demonstrate to the satisfaction of the Central Bank that the proposed Major Acquisition would not expose the Bank to undue (prudential and/or consumer protection) risks, hinder effective supervision, or the implementation of corrective measures in the future, including an orderly resolution of the bank, and that the Bank has adequate financial, managerial and organizational resources for the transaction.
2. When the proposed Major Acquisition is to be undertaken by a subsidiary or affiliate of the Bank, the Bank must demonstrate to the satisfaction of the Central Bank that it has the ability to manage any risks arising from the proposed Major Acquisition and that it would not expose the Bank to undue risk, hinder effective supervision, or the implementation of corrective measures in the future, including an orderly resolution of the Bank.

3. The Central Bank will consider each application on its own merits, applying the criteria set out in the Regulation.

4. When the proposed Major Acquisition is outside the U.A.E., the Central Bank requires more enhanced due diligence to be undertaken by the Bank which includes detailing of the political, economic and legal risks of the overseas jurisdiction in question, including country regulations and related authorities’ reputation. Due diligence should also cover market environment with respect to macroeconomic development, and the subsequent impacts it may have, as per Articles 2(2) and 3(1) of this Regulation.

5. The Central Bank will also consider whether the authorities in the host country perform supervision effectively and whether the Central Bank will be able to exercise supervision on a consolidated basis. The Central Bank may not approve a transaction if bank secrecy or other laws, or any other factors, would impair effective consolidated supervision.

**Article (6): Decision On An Application**

1. The Central Bank may approve the application, whether unconditionally or subject to such conditions, as it may deem necessary; or refuse the application, in which event the Central Bank will inform the applicant of the reasons for the refusal. A Bank shall be notified of the Central Bank’s decision within the period set out in Article 100 of the Central Bank Law.

2. The Central Bank will not make a decision on an application unless it has received all of the required information in the framework of this Regulation, which includes the following:

- Information on the bank’s financial position and current legal status.
- Details of the proposed transaction, including its purpose and expected impact.
- Evidence of the bank’s ability to manage any risks arising from the transaction.
- Assurance that the transaction will not expose the bank to undue risk, hinder effective supervision, or impair the implementation of corrective measures in the future.

3. The Central Bank will consider each application on its own merits, applying the criteria set out in the Regulation.

4. When the proposed Major Acquisition is outside the U.A.E., the Central Bank requires more enhanced due diligence to be undertaken by the Bank which includes detailing of the political, economic and legal risks of the overseas jurisdiction in question, including country regulations and related authorities’ reputation. Due diligence should also cover market environment with respect to macroeconomic development, and the subsequent impacts it may have, as per Articles 2(2) and 3(1) of this Regulation.

5. The Central Bank will also consider whether the authorities in the host country perform supervision effectively and whether the Central Bank will be able to exercise supervision on a consolidated basis. The Central Bank may not approve a transaction if bank secrecy or other laws, or any other factors, would impair effective consolidated supervision.

**المادة (6): القرار بشأن طلب الموافقة**

1. للصرف المركزي أن يتخذ قراراً بشأن طلب الموافقة، سواء بدون شروط، أو بشروط معينة، أو يرفض الطلب، وفي هذه الحالة، سيقوم المصرف المركزي بالإبلاغ بمقداره، بطلب الرفض، بالإضافة إلى تفاصيل الرفض، ويتوقف المصرف المركزي خلال الفترة المخصصة عليها في المادة (100) من قانون المصرف المركزي.

2. لن يتخذ المصرف المركزي قراراً بشأن طلب ما، ما لم يتسلم كافة المعلومات المنصوص عليها في هذا النظام.
information specified in this Regulation as well as any other information the Central Bank may determine is necessary for the review.

Article (7): Notification Requirements

1. A Bank must make a written notification to the Central Bank, detailing any acquisition which meets the definition of a Notification Acquisition within thirty (30) days after the transaction has been made. At a minimum the notification should cover, a description of the transaction, the rationale, details of the approval authority within the bank and the calculation of the percentage of Total Regulatory Capital based on the most recent audited financial statements.

Article (8): Revocation of Approval

1. Should the Central Bank determine that it had approved a Major Acquisition based on an application containing false, fraudulent, fictitious, or in any other way materially misleading or incorrect information, the Central Bank may withdraw its approval and reject the application, or modify its approval through the imposition of one or more conditions, or require the reversal of the transaction.

Article (9): Islamic Banking

1. Banks offering Islamic Financial Services must ensure that any Major Transactions they undertake which fall under the scope of this regulation are done so in accordance with the principles of Islamic Shari’ah and any relevant Higher Shari’ah Authority resolutions/fatwas.

Article (10): Duty to Report to the Central Bank

1. A Bank must provide the Central Bank with such information as is prescribed in this Regulation or may be required by the Central Bank.

2. A Bank must immediately notify the Central Bank when it becomes aware of any new or additional information, which has a material impact on a proposed Major Acquisition.
Article (11): Enforcement & Sanctions

1. Violation of any provision of this Regulation and any accompanying Standards may be subject to supervisory action and administrative & financial sanctions as deemed appropriate by the Central Bank.

2. Supervisory action and administrative & financial sanctions by the Central Bank may include withdrawing, replacing or restricting the powers of Senior Management or members of the Board, providing for the interim management of the Bank, imposition of fines or barring individuals from the UAE banking sector.

Article (12): Interpretation of Regulation

1. The Regulatory Development Division of the Central Bank shall be the reference for interpretation of the provisions of this Regulation.

Article (13): Publication & Application

1. This Regulation shall be published in the Official Gazette in both Arabic and English and shall come into effect one (1) month from the date of its publication.

Mubarak Rashed Al Mansoori
Governor of the Central Bank of the UAE