

**ORDINANCE NO 13**  
**of December 22, 2003**  
**on a tender offer for buying and exchange of shares**

*Adopted by Decision No. 13-H of the Financial Supervision Commission of 22 Dec., 2003; prom. SG iss. 4 of 16 Jan, 2004; am. and suppl. iss. 109 of 14 Dec., 2004; suppl. iss. 101 of 15 Dec., 2006, am. iss. 82 of 12 Oct., 2007; am. and suppl. iss. 13 of 17 Feb., 2009.*

**Chapter One.**  
**GENERAL PROVISIONS**

**Art. 1.** This Ordinance regulates:

1. the conditions and procedure of carrying out tender offering for buying and/or exchange of shares with voting rights in the general meeting of a public company according to Chapter Eleven, Section II of the Law on Public Offering of Securities (LPOS);
2. the exceptions from the obligation for registration and/or publishing of a tender offer;
3. the conditions and the procedure for carrying out of a competitive tender offer;
4. the contents of the tender offer;
5. the conditions and procedure for withdrawal of a tender offer;
6. the requirements for announcement of the tender offer;
7. (New – SG, iss. 13 in 2009) the conditions and the procedure for realization of the rights under Art. 157a and 157b of LPOS.

**Art. 2.** (1) Tender offering is a public offer for buying and/or exchange of voting shares, issued by a public company – whose shares are subject of a tender offer, carried out under the conditions and procedure of the LPOS and this Ordinance.

(2) The tender offer for exchange of shares shall obligatorily contain an alternative option for buying of voting shares, issued by the public company – whose shares are subject of a tender offer.

(3) The tender offer shall be extended to all remaining shareholders having voting rights in the public company – whose shares are subject of a tender offer, other than the offeror, the persons related to him and/or the persons through which the offeror indirectly, according to Art. 149 para 2 of LPOS, holds shares, including when the tender offeror extends a tender offer for acquiring a part of the voting shares and buys or exchanges such proportionately from the shareholders possessing voting rights.

**Art. 3.** (1) The tender offering shall be carried out in compliance with the provisions envisaged under Art. 150 para 1 of LPOS.

(2) (Cancelled – SG, iss. 13 in 2009)

**Art. 4.** (1) The price offered by the tender offeror, respectively the exchange value per share, issued by the public company – whose shares are subject of a tender offer shall be equal for all other shareholders and shall meet the requirements of Art. 150 para 7 and 8 of LPOS.

(2) (Am. – SG, iss. 13 in 2009) The tender offer under Art. 6 item 1, Art. 10 para 1 and Art. 14 para 1 shall include rationale of the offered price, respectively of the offered exchange value, formed in compliance with Ordinance No. 41 from 2008 on the requirements to the content of the rationale for the price of shares of a public company, including to the application of valuation methods in the cases of transformation, common enterprise agreement and tender offering (Ordinance No. 41).

(3) (Suppl. – SG, iss. 13 in 2009) If, until the time for accepting the offer elapses, the offeror acquires directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS, voting shares at the general meeting of the public company – whose shares are subject of a tender offer, at price higher than that offered in the tender offer, the buying of the shares shall be done at the higher price with regard to all shareholders having accepted the offer before or after the increase in the price.

**Art. 5.** (1) In case that the shareholders' interests are jeopardized, or the provisions of Art. 150 para 1 of LPOS require it, the deputy chairperson of the Financial Supervision Commission in charge of Investment Activities Supervision Division, hereinafter referred to as "deputy chairperson", or the Financial Supervision Commission, hereinafter referred to as "the Commission", may suspend the trading with the shares of the public company – subject of a tender offer.

(2) The power under para 1 herein may also be exercised in relation to other securities over which the tender offer could have impact.

**Art. 5a.** (New – SG, iss. 13 in 2009) The tender offer and the right under Art. 157a of LPOS shall be carried out through an authorized investment intermediary, by using the options of remote admittance via the Central Depository.

The investment intermediary must have capital not less than that envisaged under Art. 8 para 1 of the Markets in Financial Instruments Act.

## **Chapter Two.**

### **CONDITIONS AND PROCEDURE OF CARRYING OUT A TENDER OFFER**

#### **Section I.**

#### **Obligation of Extending a Tender Offer**

**Art. 6.** A person who has acquired directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 50 percent of the votes in the general meeting of a public company shall be obligated, within 14 days from the acquisition:

1. to register with the Commission according to Art. 151 of LPOS a tender offer for buying and/or exchange of shares with voting rights in the general meeting of the public company with shares to be issued by the offeror for the purpose, or
2. to transfer the necessary number of shares, so that he holds directly, through related persons and/or indirectly, according to Art. 149 para 2 of LPOS, less than 50 percent of the votes in the company's general meeting.

**Art. 7.** (1) The obligation under Art. 6 shall occur for the person who:

1. holds in his name shares with voting rights in the public company and/or for whose account the shares are held in the cases of Art. 149 para 2 item 2 of LPOS;
2. holds the largest number of the total number of votes in the cases of acquisition through related persons, as well as in the cases of Art. 149 para 2 item 1 of LPOS, including together with the voting shares possessed under item 1.

(2) In case of acquiring through related persons, as well as in indirect acquisition under Art. 149 para 2 item 1 of LPOS, the persons shall have the right to fulfil jointly the obligation under Art. 6.

**Art. 8.** (1) The obligation under Art. 6 shall be fulfilled within 14 days from:

1. the registration of the acquisition with the Central Depository in the cases under Art. 7 para 1 item 1;

2. the arising of the relatedness, respectively the occurrence of circumstances resulting in change in the number of the held votes or the conclusion of the agreement – in the cases under Art. 7 para 1 item 2.

(2) The obligation under Art. 6 shall be fulfilled within one month from:

1. coming into an inheritance – where the passing over the threshold of 50 percent of the votes in the general meeting is a result of inheritance;

2. the entry in the commercial register of the decision for transformation under Chapter Sixteen of the Commercial Law – where the passing over the threshold of 50 percent of the votes in the general meeting is a result of transformation;

3. the registration of the acquisition of shares with the Central Depository – when the passing over the threshold of 50 percent of the votes in the general meeting is a result of transfer by the company of acquired own shares according to Art. 187a of the Commercial Law;

4. the entry in the commercial register of the reduction of the company's capital under Art. 200, item 2 of the Commercial Law – when the passing over the threshold of 50 percent of the votes in the general meeting is a result of cancellation of shares.

**Art. 9.** Until the publication of the tender offer under the procedure of Art. 154 of LPOS, respectively until the transfer of the shares, the persons under Art. 6 shall not have the right to exercise their voting rights at the general meeting of the public company attaching to all shares held by them.

**Art. 10.** (1) The obligation under Art. 6 item 1 shall also arise for a person who acquires directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 2/3 of the votes in the general meeting of a public company, unless within 14 days from the acquisition the person transfers the necessary number of shares so that he possesses directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS less than 2/3 of the votes in the company's general meeting. Articles 7 – 9 shall apply accordingly.

(2) If the person, within the 14-day period under Art. 6, acquires directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 2/3 of the votes of the general meeting of the company he shall register one tender offer.

**Art. 11.** (1) (Previous text of Art. 11 - SG, iss. 109 in 2004; am. iss. 13 in 2009) The obligation under Art. 6, or under Art. 10 para 1, shall not occur if the person passes over the established thresholds as a result of a privatisation transaction under Art. 32 para 1 of the Privatisation and Post-privatisation Control Act, unless the transaction has been concluded on a regulated market.

(2) (New – SG, iss. 109 in 2004) The obligation under Art. 10 para 1 shall not occur if:

1. (Am. – SG, iss. 13 in 2009) the person owns more than 50% of the votes and passes over the established threshold as a result of increase in capital with rights issued under Art. 112 of the LPOS;

2. (Suppl. – SG, iss. 13 in 2009) the person has carried out a tender offer under Art. 6 item 1 latest one year before exceeding the threshold of 2/3 of the votes, or

3. (New – SG, iss. 13 in 2009) the person has carried out a tender offer under Art. 19a latest one year before exceeding the threshold of 2/3 of the votes, if as a result of such tender offer the person has acquired more than 50% of the votes in the general meeting of the public company.

**Art. 12.** (1) A person who holds directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 50 percent of the votes of a public company's general meeting shall not be entitled, within one year, to acquire on a regulated market directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 3 percent of the shares with voting rights in the general meeting of this company without extending a tender offer

under Art. 16, except in the cases of Art. 10 para 2 and Art. 14 para 4. Art. 9 shall apply accordingly.

(2) The period under para 1 shall start running from the last acquisition according the conditions of para 1, if the same requirement has been met regarding all the preceding acquisitions.

(3) (New – SG, iss. 109 in 2004; am. iss. 13 in 2009) Paragraph 1 shall not apply in the cases where the person has carried out a tender offer under Art. 6, Art. 10 para 1, or under Art. 11 para 2 item 3 latest one year before the acquisition under para 1.

**Art. 13.** A public company may acquire during one calendar year more than 3 percent of its own voting shares in the cases of reduction of the capital through cancellation of shares and redemption only under the conditions and procedure of a tender offer according Art. 16. In this case the requirements for holding at least 5 percent and a minimal redemption amount of more than 1/3 of the voting shares shall not apply.

## **Section II. Right of Extending a Tender Offer**

**Art. 14.** (1) A person who acquires directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 90 percent of the votes in the general meeting of a public company shall have the right, within 14 days from the acquisition, to register with the Commission under Art. 151 of LPOS a tender offer for buying of all remaining shares with voting right at the public company's general meeting. Articles 7 and 8 shall apply accordingly.

(2) A person who, as a result of privatisation under Art. 32 para 1 item 1 of the Privatisation and Post-privatisation Control Act of state participation below 50 percent of the capital, acquires directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS below 90 percent, but not less than 2/3 of the votes in the general meeting of the company, may extend a tender offer under para 1, and in this case the required majority under Art. 119 para 1 item 3 of LPOS shall be 3/4.

(3) The tender offer under para 2 may not be extended before the expiration of 12 months from the conclusion of the sale, respectively from the acquisition of 2/3 of the votes.

(4) (Am. – SG iss. 109 in 2004) If a person under Art. 6, or Art. 10 para 1 acquires simultaneously or within 14 days, directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 90 percent of the votes, he shall fulfil his duty under Art. 6 para 1 item 1, or under Art. 10 para 1, and may also exercise his right under para 1, registering one tender offer.

**Art. 15.** (1) If within 14 days from the acquisition, the person under Art. 14 para 1 does not register a tender offer, he shall be obligated to notify the shareholders, the regulated market and the Commission of his intentions to register a tender offer at least 3 months in advance. The shareholders shall be notified through a publication in two central daily newspapers. The notification shall be sent to the Commission and to the regulated market by the end of the day following the day of the publication under the preceding sentence.

(2) The notification under para 1 shall contain the following information:

1. the name or business name, the seat and address of the person;
2. the name, seat and registered office of the public company – whose shares are subject of the tender offer;
3. the date on which the tender offer will be registered;

4. the intentions of the offeror regarding the future activity of the public company – whose shares are subject of a tender offer, as well as whether he intends to request deletion of the company from the register under Art. 30 para 1 item 3 of the Financial Supervision Commission Act (FSCA).

(3) The person under Art. 14 para 1 shall notify immediately the shareholders, the regulated market and the Commission in accordance with para 1, if the intention for the tender offer is abandoned, including the reasons for that.

(4) Until the publishing of the tender offer, as well as 14 days after the publishing of the results thereof, the person under Art. 14 para 1 shall be obligated, on request, to buy the shares of each shareholder. In such case Art. 4 para 2 shall apply accordingly.

**Art. 16.** A person who holds at least 5 percent of the votes in a public company's general meeting and wishes to acquire directly, through related persons and/or indirectly according to Art. 149 para 2 of LPOS more than 1/3 of the total number of votes in the general meeting of this company, may register a tender offer for buying and/or exchange of the respective number of voting shares. Articles 7 and 8 shall apply accordingly.

**Art. 17.** The tender offer under Art. 16 may be limited to the acquisition of exactly specified number of shares with voting right in the general meeting of the public company – whose shares are subject of the tender offer.

**Art. 18.** (1) In the cases of a tender offer under Art. 17, the offeror shall be obligated to buy and/or exchange all deposited voting shares of each shareholder, who has accepted the tender offer, provided that the total number of deposited shares of all shareholders having accepted the tender offer does not exceed the number of shares set under Art. 17.

(2) If the number of the deposited voting shares of all shareholders who have accepted the tender offer, exceeds the number of shares set according to art. 17, the offeror shall be obligated to buy and/or exchange a proportionate part of the shares deposited by each shareholder having accepted the tender offer.

**Art. 19.** The person under Art. 16 may determine the minimal number of shares with voting right in the general meeting of the public company – whose shares are subject of a tender offer, which must be offered to him, in order the tender offer to be valid.

**Art. 19a** (New – SG. 101/2006; suppl. iss. 13 in 2009) If, as a result of a tender offer carried out under Art.16, the tender offeror acquires more than 50 percent, respectively more than 2/3 of the votes in the general meeting of a public company, no obligation of the tender offeror shall arise for registration of a new tender offering under the procedure of Art. 6 item 1, or Art.10 para 1, only if the tender offering under Art.16 has been addressed to all of the shareholders and the offered price has been determined as not lower than the highest value between:

1. (Am. – SG, iss. 13 in 2009) the fair price of the share calculated according to Ordinance No. 41;
2. (Am. – SG, iss. 13 in 2009) the average weighted market price of the shares for the last 3 months;
3. (New – SG, iss. 13 in 2009) the highest price per share paid by the offeror, by related persons or by the persons under Art. 149 para 2 of LPOS during the last 6 months before the registration of the offer; in the cases when the share price cannot be determined according the preceding sentence, it shall be determined as the higher between the last issue value and the last price paid by the tender offeror.

### **Section III. Competitive Tender Offering**

**Art. 20.** (1) Not later than 3 days before the expiration of the term for acceptance of a tender offer published in accordance with Art. 154 para 1 of LPOS, a competitive tender offer may be published for buying and/or exchange of shares with voting rights in the general meeting of the company – whose shares are subject of a tender offer under the conditions and procedure of Art. 16.

(2) The competitive tender offer shall contain an improvement of the conditions of the initial tender offer in one or more of the following directions:

1. increase of the offered price per share issued by the company – whose shares are subject of a tender offer; or

2. increase of the determined under Art. 17 number of shares with voting right in the general meeting of the company whose shares are subject of the tender offer, or removal of the limitation; or

3. reduction of the determined under Art. 19 minimal number of shares with voting rights in the general meeting of the company – whose shares are subject of a tender offer which should be offered in order for the tender offer to be valid, or removal of the requirement for validity.

**Art. 21.** (1) The time limit for acceptance of the competitive tender offer may not be shorter than 28 days and longer than 70 days from the day of its publishing, except in the cases of para 2 and 3.

(2) (Am. – SG, iss. 13 in 2009) If the time limit for acceptance of a competitive tender offer expires after the time limit for acceptance of an earlier published tender offer, the time limit for acceptance of all earlier published offers shall be extended to the deadline for acceptance of this competitive tender offer regardless of the provision of Art. 150, para 11 of LPOS.

(3) (Am. – SG, iss. 13 in 2009) Subsequent extension of the term for acceptance of a tender offer under Art. 155 para 4 of LPOS shall extend the time limit for acceptance of all tender offers in the cases where the time limit for acceptance of the latter expires before the subsequently extended term, regardless of the provision of Art. 150 para 11 of LPOS.

**Art. 22.** (1) Not later than 7 days after the publishing of the last competitive tender offer, the offeror of the initial tender offer, as well as every offeror of a preceding competitive tender offer, may improve only once the tender offer published by him according the provisions of Art. 20 para 2.

(2) Not later than 7 days after the publishing of the last improved tender offer, the offeror of the last competitive tender offer shall also have the right to improve the terms and conditions only once. Paragraph 1 shall apply accordingly.

(3) (Am. – SG, iss. 13 in 2009) - The improved tender offers shall be registered in the Commission and shall be published immediately in the central daily newspapers where the initial tender offer, respectively the initial competitive tender offers, have been published, if within 3 working days the Commission does not issue a prohibition. Article 151 para 3, Art. 152 and 153 of LPOS shall apply accordingly.

**Art. 23.** The acceptance of the tender offer or of the competitive tender offer may be withdrawn until the expiration of the time limit for its acceptance, respectively of the time limit extended according to Art. 21 para 2 or 3.

## **Section IV. Contents of the Tender Offer**

**Art. 24.** (1) The tender offer for buying of shares shall contain the following data about:

1. the offeror:

a) (Am. – SG, iss. 13 in 2009) if the offeror is a natural person – full name, address, telephone (fax), e-mail and Internet site (web site), if any;

b) if the offeror is a legal entity:

aa) business name, seat, registered office, telephone (fax), e-mail and Internet site (web-site), if any, scope of business and data for changes in the business name, if such have occurred;

bb) full name and address, respectively the business name, seat and registered office of the members of the offeror's management and supervisory body, as well as the full name and address of the persons representing the corporate body, member of a management or supervisory body;

cc) full name and address, respectively business name, seat and registered office of the persons who, directly or through related persons, hold more than 5 percent of the votes in the offeror's general meeting or who may control it, as well as the number of votes they hold and their share in the general meeting of the offeror, respectively the shareholding or the way in which control is exercised over it;

dd) the agreements for exercising voting rights in the offeror's general meeting, so far as such exist and are known to him;

2. the investment intermediary authorised by the offeror – the business name, seat and registered office, number and date of the license for pursuance of activity issued by the Commission, as well as telephone (fax), e-mail and Internet site (web-site) if any;

3. the company – whose shares are subject of a tender offer – the business name, seat and registered office, telephone (fax), e-mail and Internet site (web-site), if any;

4. the possessed by the offeror voting shares in the company – whose shares are subject of a tender offer, including:

a) the number, types and the rights of the possessed voting shares, the way of possession (directly, through related persons or indirectly according to Art. 149 para 2 of LPOS), the share from the total number of votes and the date of acquisition;

b) if the offeror is a corporate body – the number, type and rights of the voting shares, possessed by the members of the offeror's management and control body, the way of possession (directly, through related persons or indirectly according to Art. 149 para 2 of LPOS), the share of the total number of votes and the date of acquisition;

c) the data under item 1 regarding the related persons and/or the persons under Art. 149 para 2 of LPOS through whom the offeror possesses voting shares, if such possession exists;

d) (Am. – SG, iss. 13 in 2009) ISIN code, class and number of the voting shares which the offeror does not hold and must request or wishes to acquire;

5. (Am. – SG, iss. 13 in 2009) the offered price per share which may not be lower than the highest value between:

a) the fair price of the shares calculated according Ordinance No. 41;

b) the average weighted market price of the shares for the last 3 months;

c) the highest price per share paid by the offeror, by related persons, or by the persons under Art. 149 para 2 of LPOS during the last 6 months before the registration of the offer; in cases when the price of the shares cannot be determined according the previous sentence, it shall be determined as the higher between the last issue value and the last price paid by the tender offeror;

6. (New – SG, iss. 13 in 2009) the compensation for the shareholders’ rights which may be limited according to Art. 151a para 4 of LPOS, including the procedure and way of its payment and the methods of its determination;
  7. (Prev. item 6 – SG, iss. 13 in 2009) the timeframe of the offer acceptance;
  8. (Prev. item 7 – SG, iss. 13 in 2009) the conditions of financing the acquisition of the shares, including whether the offeror will use its own or loan funds;
  9. (Prev. item 8, am. – SG, iss. 13 in 2009) the intentions of the offeror in relation to the future activity of the company – whose shares are subject of a tender offer, including about:
    - a) transformation or winding up of the company;
    - b) changes in the size of the company’s capital for a period of one year from the conclusion of the transaction;
    - c) the basic activity and financial strategy of the company for the current and the next financial year;
    - d) changes in the members of the management bodies, the personnel and the conditions of the employment contracts, if such are envisaged;
    - e) the policy of dividend distribution;
    - f) the impact which the offering may have on the companies’ officials and venue of operation;
    - g) the offeror’s strategic plans for the two companies.
  10. (Prev. item 9 – SG, iss. 13 in 2009) the procedure of the offer acceptance and the way of paying the price, including data about:
    - a) the place where the shareholders shall file a written application for the offer acceptance and shall deposit the certification documents for the possessed shares;
    - b) the deadline and the way of payment of the price by the offeror;
  11. (Prev. item 10 – SG, iss. 13 in 2009) information on the applicable procedure in case of withdrawal of the tender offer by the offeror;
  12. (Prev. item 11 – SG, iss. 13 in 2009) indication that the acceptance of the tender offer may be withdrawn by a shareholder, who has accepted the offer, until the expiration of the term for its acceptance, as well as the procedure under which the offer shall be withdrawn;
  13. (Prev. item 12 – SG, iss. 13 in 2009) the place where the offeror’s financial statements for the last 3 years are accessible for the shareholders of the company – whose shares are subject of a tender offer, and where additional information about the offeror and his offer may be obtained;
  14. (Prev. item 13 – SG, iss. 13 in 2009) the total sum of the offeror’s expenses related to carrying out of the offer, apart from the funds necessary for buying the shares;
  15. (Prev. item 14 – SG, iss. 13 in 2009) the two central daily newspapers where the offeror will publish the tender offer, the statement of the management body of the public company – whose shares are subject of the tender offer, regarding the acquisition and the result of the tender offer;
  16. (New – SG, iss. 13 in 2009) the applicable law about the contracts between the offeror and the shareholders upon acceptance of the tender offer and the competent court;
  17. (Prev. item 15 – SG, iss. 13 in 2009) other circumstances or documents which, at the offeror’s discretion are of significant importance for the execution of the tender offer;
  18. (Prev. item 16 – SG, iss. 13 in 2009) indication that the Commission shall not be held responsible for the correctness of the data contained in the offer;
  19. (Prev. item 17 – SG, iss. 13 in 2009) indication that the offeror and the authorised investment intermediary shall be jointly liable for damages caused by false, misleading or incomplete information in the offer.
- (2) (New – SG, iss. 13 in 2009) The strategic plan under para 1, item 9, letter “g” shall contain at least:



1. summary;
2. description of the strategic plan's key points;
3. required resources for implementation (personnel, technology, funds and their provision);
4. description of the company's activity for a period of 5 – 8 years;
5. analysis of the environment – competitive advantages, contractors (customers, suppliers), competitors and competitive prices, market potential and volume, market growth;
6. marketing plan – target segments, market coverage strategy, plan of the sales, distribution and advertisement;
7. organization and management;
8. investments;
9. deliverables;
10. time schedule – phases of the strategy implementation.

(3) (Prev. para 2 – SG, iss. 13 in 2009) Enclosed to the offer under para 1 shall be:

1. (Suppl. – SG, iss. 13 in 2009) declaration by the offeror stating that he has informed about the tender offer the management body of the company – whose shares are subject of a tender offer, the representatives of his own employees or the employees when there are no such representatives, and the regulated market on which the shares of the company have been admitted to trading;
2. (Am. – SG, iss. 13 in 2009) Certificate of current court registration of the tender offeror, issued not later than one month before the registration of the tender offer, or other similar document for the offeror – a corporate body;
3. (Am. – SG, iss. 13 in 2009) copies of the documents proving the availability of funds for the tender offer financing, issued not earlier than at the date of the price rationale, and in the cases of issued temporary prohibition – at the date preceding the submission of the corrected tender offer;
4. model forms of an application for the tender offer's acceptance and of application for withdrawal of the tender offer's acceptance.

**Art. 25.** (Suppl. – SG, iss. 13 in 2009) The tender offer under Art. 14 shall contain the data under Art. 24 para 1, with the exception of those under item 4, letter “d” about the number of shares, as well as:

1. indication that after the expiration of the time-limit for the offer acceptance, the company may cease to be public, even without the condition of Art. 119 para 1 item 1 of the LPOS to have been met;
2. statement as to whether the offeror intends to request the company's deletion from the register under Art. 30 para 1 item 3 of FSCA.

**Art. 26.** (Am. – SG, iss. 13 in 2009) The tender offer according to Art. 16 shall contain the data of Art. 24 para 1, with exception of those under item 5 and 11, as well as:

1. information on the purposes of the acquisition;

2. in case that the offeror has set a minimal number of shares which have to be offered to him in order for the offer to be valid, this information shall also be presented;
3. information about the possibility and the conditions on which the tender offer may be withdrawn by the offeror and about the applicable procedure in such cases;
4. the price offered per share as:
  - a) for the shares having a market price, it may not be lower than the average weighted market price of the shares for the last 3 months,
  - b) (Am. and suppl. – SG, iss. 13 in 2009) for the shares without a market price, it may not be lower than the highest price per share paid by the offeror, by related persons or by the persons under Art. 149 para 2 of LPOS during the last 6 months before the offer's registration, as well as rationale of the offered price, containing a description of the used criteria and methods of valuation and formation of the price offered for the voting shares of the company – whose shares are subject of a tender offer, in accordance with Ordinance No. 41, where the tender offeror has reasoned the price offered by him in compliance with Art. 4 para 2.

**Art. 27** (Am. – SG, iss. 82 in 2007) The tender offer for exchange of shares shall contain the respective data under Art. 24 para 1 and 2 and the information under Art.79 para 3 item 2 or para 4 item 3 of the LPOS .

**Art. 28.** The tender offer shall be signed by the offeror and by the investment intermediary authorised to represent him, who both shall declare that it meets the requirements of the law.

## **Section V. Procedure of Carrying out of a Tender Offering**

**Art. 29.** (1) The tender offer shall be registered with the Commission and it may be published if within 14 working days from the date of the offer's registration the Commission does not issue a temporary prohibition, and regarding the offer under Art. 16 – a final prohibition.

(2) If the filed documents are irregular or additional information or proof of the correctness of the data are required, the Commission shall send, within 14 working days from the registration of the offer, a notice of the established irregularities and inconsistencies, or of the additional information and proof needed. In relation to a tender offer under Art. 16, the term under the first sentence shall be 7 working days.

(3) The person shall remove the indicated deficiencies and irregularities, or shall produce the required additional information and documents, within 14 working days from receipt of the notice for that, and in the case of a tender offer under Art. 16 – within 3 working days.

**Art. 30.** (1) (Suppl. – SG, iss. 13 in 2009) On the day of the tender offer's registration, the offeror shall present it also to the management body of the public company – whose shares are subject of a tender offer, to the representatives of his own employees or to the employees where there are no such representatives, as well as to the regulated market on which the shares of the company have been admitted to trading.

(2) The notification under para 1 shall expressly indicate that the Commission has not yet expressed an opinion with regard to the tender offer.

(3) (New – SG, iss. 13 in 2009) The management of the company whose shares are subject of a tender offer shall provide the tender offer to representatives of its employees, or to the employees where there are no such representatives.

**Art. 31.** (1) On registration of a tender offer for buying and/or exchange of voting shares of a public company – whose shares are subject of a tender offer, where the state, or the municipality, is a shareholder, the Commission, by the end of the working day following the day of the registration, shall notify in writing the privatising body about the received tender offer.

(2) Within the terms under Art. 151 para 1 of LPOS the privatising body shall have the right to lay before the offeror additional conditions for acceptance of a tender offer, as well as to require the conclusion of the offered transaction to be done by a privatisation contract.

(3) Holdings with more than 50 percent of state participation in the capital shall have the rights under para 2 on registration of a tender offer under Art. 16 for buying and/or exchange of voting shares in their subsidiaries – whose shares are subject of a tender offer. In such case the acceptance of the tender offer can be made by a written contract.

(4) The application of the procedure under the preceding paragraphs shall not be a condition for approval of the tender offer by the Commission.

**Art. 32.** (1) (Am. – SG, iss. 13 in 2009) Within seven days from receipt of the tender offer registered according to Art. 29 para 1, the management body of the public company – whose shares are subject of a tender offer shall present to the Commission, to the offeror and to the employees' representatives or to the employees where there are no such representatives, a reasoned position on the offered transaction.

(2) The position under para 1 shall contain the following data:

1. (Am. – SG, iss. 13 in 2009) statement by the management body as to whether the offer is fair for the shareholders to whom it is addressed, with a view to the company's development and about the consequences of its acceptance over the company and the employees;

2. information about the existence of agreements in relation to the exercising of the voting rights attaching to shares of the public company – whose shares are subject of tender offer, so far as such is known to the management body;

3. data about the number of shares of the public company – subject of a tender offer, held by the members of the management body and whether they intend to accept the offer;

4. (Am. – SG, iss. 13 in 2009) statement by the management body on the offeror's strategic plans for the company – whose shares are subject of a tender offer, and their eventual impact on the employees and the venue of operation.

(3) (New – SG, iss. 13 in 2009) If within the term under para 1 the management body of the company – whose shares are subject of a tender offer, receives statement of the representatives of the employees regarding the impact of the tender offer on the employees, it shall be enclosed to the management body's statement.

**Art. 33.** (1) (Am. and suppl. – SG, iss. 13 in 2009) The offeror may extend the time limit for the tender offer acceptance within the maximum allowed period under Art. 150 para 11 of LPOS, as well as increase the offered price per share. In such case the purchase of the shares shall be made at the higher price with regard to all shareholders who have accepted the offer before or after the increase of the price.

(2) (Am. and suppl. – SG, iss. 13 in 2009) The changes under para 1 shall be registered with the Commission and shall be presented to the management body of the public company – whose shares are subject of a tender offer, to the representatives of the offeror's employees or to the employees where there are no such representatives, as well as to the regulated market on which the shares of the company have been admitted to trading. The changes shall be published immediately in the two central daily newspapers under Art. 24 para 1 item 15.

(3) (Am. – SG, iss. 13 in 2009) Other changes in the tender offer, beyond those under para 1, shall be registered with the Commission and may be published according para 2 if, within 3

working days, the Commission does not issue a prohibition. Art. 151 para 3, Art. 152 and 153 of LPOS shall apply accordingly.

(4) Changes in the tender offer may not be published later than 10 days before the expiration of the time limit for its acceptance.

**Art. 34.** (1) The tender offer shall be accepted by an explicit written declaration of intention and depositing of the certification documents of the shares with the investment intermediary, or in the Central Depository, as well as by performance of other necessary actions related to the transfer of the shares.

(2) A person, having accepted the tender offer according para 1, shall have the right to withdraw his acceptance at any time until the expiration of the term for the offer acceptance.

**Art. 35.** The transaction shall be considered concluded at the time of expiration of the term for the offer acceptance, or of the extended term under Art. 155 para 4 of LPOS.

## **Section VI. Announcement of a Tender Offer**

**Art. 36.** (1) Within 3 days after the expiration of the time limit under Art. 151, para 1, or under Art. 153 para 1 of LPOS, the offeror shall:

1. (Am. – SG, iss. 13 in 2009) publish the tender offer and the statement of the management body of the public company – whose shares are subject of a tender offer, if such has been pronounced, in the central daily newspapers under Art. 24 para 1 item 15;

2. submit the tender offer and the statement of the management body of the public company – whose shares are subject of a tender offer, if such has been produced, to the regulated market on which the shares of the company are traded;

3. (Suppl. – SG, iss. 13 in 2009) submit the tender offer to the management body of the public company – whose shares are subject of a tender offer, to the representatives of his own employees and to the representatives of the employees of the company – whose share are subject of a tender offer, or to the employees where there are no such representatives;

4. (New – SG, iss. 13 in 2009) submit the tender offer to the shareholders in the states where the shares of the company – subject of a tender offer, are admitted to trading.

(2) (New – SG, iss. 13 in 2009) In the cases under para 1 item 4 the tender offeror shall submit the tender offer to he shareholders in an electronic way, through the web site of the company – whose shares are subject of a tender offer, the authorized investment intermediary, the regulated markets on which the shares have been admitted to trading or in other appropriate manner.

(3) (Prev. para 2, am. – SG, iss. 13 in 2009) The data under Art. 24 para 1 item 8, 9 and 17 and under Art. 27, as well as the rationale under Art. 24 para 1 item 5 may be published in summary in the daily newspapers under Art. 24 para 1 item 15, and the offeror shall be obligated to indicate the place where the tender offer is accessible for the shareholders.

(4) (Prev. para 3, am. – SG, iss. 13 in 2009) All advertisements and publications in connection with the tender offer shall indicate the issue and the date of the daily newspapers under Art. 24 para 1 item 15 where the tender offer has been published.

(5) (Prev. para 4 – SG, iss. 13 in 2009) The management body of the public company – whose shares are subject of a tender offer, shall announce immediately the tender offer and its statement by putting a notice at a prominent and easily accessible place on the company's premises, indicating explicitly the place where these documents shall be provided at the shareholders' disposal.

(6) (Prev. para 5, am. – SG, iss. 13 in 2009) The offeror, or the authorised by it investment intermediary, and the management body of the public company – whose shares are subject of a tender offer, shall present to the deputy chairman proof of fulfilment of their obligations under para 1, 4 and 5 within 3 days after their fulfilment.

**Art. 37.** (1) (Am. – SG, iss. 13 in 2009) Within three days after the expiration of the term for the offer acceptance, the offeror shall publish the result of the tender offer in the daily newspapers under Art. 24 para 1 item 15 and shall notify the Commission and the regulated market on which the shares of the public company –subject to tender offering, have been admitted to trading.

(2) The offeror, or the authorised by him investment intermediary shall present to the deputy chairman copies of the publications under para 1 within 7 days after the publication.

(3) (New – SG, iss. 13 in 2009) In the event that the offeror reaches as a result of the tender offer directly, through related persons or indirectly in the cases under Art. 149 para 2 of LPOS at least 95 per cent of the votes in the general meeting of the public company, this circumstance shall immediately be published according to para 1 together with explanation of the conditions and procedure under which the rights under Art. 157a and 157b of LPOS can be realized, including explicit indication of the price determined in accordance with Art. 44b. Within the term of the preceding sentence the offeror shall also submit the information to the Commission, and to the regulated market on which the shares of the public company – subject of the tender offer, have been admitted to trading.

## **Section VII.**

### **Conditions and Procedure for Withdrawal and Termination of a Tender Offer**

**Art. 38.** (1) The offeror may not withdraw the offer after it is published, unless the offer cannot be executed due to circumstances beyond the offeror's control, the time limit for its acceptance has not expired and when the Commission has approved it.

(2) (Suppl. – SG, iss. 13 in 2009) On the day of registration of the withdrawal of the tender offer with the Commission, the offeror shall inform of the withdrawal the management body of the public company – whose shares are subject of a tender offer, the representatives of his own employees or the employees, where there are no such representatives, as well as the regulated market on which the shares of the company have been admitted to trading. The notification shall explicitly point out that the Commission has not yet expressed an opinion on the withdrawal.

(3) The Commission shall pronounce a decision on the withdrawal according the procedure of Art. 151 para 1, Art. 152 and 153 of LPOS.

(4) (Am. – SG, iss. 13 in 2009) Within 7 days after the offeror's notification about the approval issued by the Commission under para 1, he shall publish a notice for the withdrawal of the tender offer in the two central daily newspapers according Art. 24 para 1 item 15.

(5) The Commission shall notify immediately the regulated market, as well as the investment intermediary or the Central Depository, where the certification documents of the shares have been deposited, about the issued under para 1 approval for the withdrawal of the tender offer.

(6) Upon withdrawal of the tender offer, the effect of the prohibition under Art. 9 shall be reinstated until the publication of a subsequent tender offer.

(7) The tender offer may also be withdrawn by accepting a competitive tender offer not later than 10 days before the expiration of the time limit for acceptance of a competitive tender offer, or of

the time limit, extended according to Art. 21 para 2 or 3. In this case shall apply the procedure of Art. 39.

**Art. 39.** (1) The tender offer under Art. 16 may be withdrawn after its publication, without the conditions under Art. 38 para 1 to be present.

(2) (Suppl. – SG, iss. 13 in 2009) The offeror shall register the withdrawal of the tender offer with the Commission and shall notify the management body of the public company – whose shares are subject of a tender offer, the representatives of his own employees or the employees, when there are no such representatives, the regulated securities market where the shares of the company have been admitted to trading, as well as the investment intermediary or the Central Depository, where the certification documents of the shares have been deposited, about the withdrawal of his offer.

(3) (Am. – SG, iss. 13 in 2009) By the end of the working day following the day of the registration and notification under para 2, the offeror shall publish a notice of the withdrawal of the tender offer in the two central daily newspapers under Art. 24 para 1 item 15.

**Art. 40.** Within 3 days after the receipt of the notification under Art. 38 para 5 or Art. 39 para 2, the investment intermediary or the Central Depository shall ensure a return of the certification documents of the shares to the shareholders who have accepted the offer.

**Art. 41.** (1) The tender offer shall be terminated upon the expiration of the initial, respectively of the extended time limit, for its acceptance.

(2) The transfer of the shares – subject of the tender offer from the accounts of their holders on the offeror’s account shall be made after the expiration of the time limit for the offer acceptance.

(3) The tender offeror shall pay the price of the shares to the shareholders who have accepted the offer, or shall perform the necessary actions for transfer of the issued by him shares in the cases of exchange, within 7 working days after the expiration of the time limit for the offer acceptance.

**Art. 42.** The tender offer shall also be cancelled if the offeror withdraws his offer in accordance with Art. 38 and 39.

**Art. 43.** (1) The tender offer may be terminated by the Commission before the expiration of the term for its acceptance, if upon and after its publishing the provisions of LPOS and its implementing instruments have been violated.

(2) The tender offer may also be terminated where in relation to the offered transaction there are instituted proceedings by the Commission for Protection of the Competition and it decides that there is a violation of the Competition Protection Act.

(3) The Commission shall publish its decision for termination of the tender offer on its Internet site and shall notify immediately the tender offeror, the regulated securities market where the shares of the public company – subject to tender offering, have been admitted to trading, the investment intermediary where the certification documents for the shares have been deposited and the Central Depository.

**Art. 44.** Upon termination of a tender offer under Art. 43, shall be reinstated the effect of the prohibition under Art. 9 on exercising the voting rights in the general meeting of the shareholders of the public company – whose shares are subject of the tender offer.

**Chapter Two “a”**  
**(New – SG, iss. 13 in 2009)**  
**CONDITIONS AND PROCEDURE FOR REALIZATION OF THE RIGHTS UNDER**  
**ART. 157a AND ART. 157b OF LPOS**

**Section I.**  
**(New – SG, iss. 13 in 2009)**  
**Purchase of Shares under Art. 157a of LPOS**

**Art. 44a.** (New – SG, iss. 13 in 2009) (1) Entitled to make a request for purchase to all other shareholders whereby to obligate them to transfer to him the shares held by them shall be a person who:

1. has carried out a tender offer for the purchase and/ or exchange of all other voting shares in the public company's general meeting according to Chapter Eleven, Section II of LPOS; and

2. as a result of such tender offer has acquired directly, through related persons or indirectly in the cases under Art. 149 para 2 of LPOS at least 95 per cent from the votes in the general meeting of the public company.

(2) In case of acquisition through related persons, as well as in case of indirect acquisition under Art. 149 para 2 of LPOS, the persons may jointly exercise the right under para 1.

(3) The request for purchase under para 1 shall be addressed to all shareholders with voting right in the company, other than the person who has carried out the tender offer, related to him persons and/ or the persons through whom the offeror indirectly under Art. 149 para 2 of LPOS owns shares.

**Art. 44b.** (New – SG, iss. 13 in 2009) The shares held by the other shareholders shall be transferred against payment by the person under Art. 44a para 1 of price which shall be at least equal to:

1. the price of the tender offer whereby the threshold under Art. 44a para 1 item 2 is reached when the making of the tender offer has been obligatory;

2. the price of the tender offer whereby the threshold under Art. 44a para 1 item 2 is reached when the making of the tender offer has been voluntary and provided that the person under Art. 44a para 1 has acquired not less than 90 per cent of the voting shares proposed under such tender offer;

3. the fair price of the shares calculated according Ordinance No. 41 in all other cases.

**Art. 44c.** (New – SG, iss. 13 in 2009) (1) The right under Art. 44a para 1 shall be exercised after the issuance of approval by the Commission.

(2) The person under Art. 44a para 1 may file an application for the issue of approval within a three-month period of expiration of the term for the tender offer's acceptance according to Art. 44a para 1 item 2, enclosed to which he shall submit:

1. request for purchase containing respectively the data under Art. 24 para 1 item 1 – 4, 7, 8, 10, 11 and 14 – 19, the price determined according to Art. 44b as well as indication that:

a) after the expiration of the term under Art. 44e para 1 the shares – subject of the request for purchase, from the accounts of the shareholders who failed to fulfil their obligation under Art. 44e para 1 shall be transferred to the account of the person under Art. 44a para 1 in compliance with Art. 157a para 7 of LPOS on the strength of the law.

b) according to Art. 119 para 1 item 4 of LPOS, if all voting shares in the general meeting of the public company under Art. 157a of LPOS have been purchased, then such company shall cease to be public as from the decision of the deputy chairperson for deletion from the register;

2. evidence for open bank account under Art. 44f para 2 and information on the procedure and conditions under which the account shall be kept;

3. model form of an application for acceptance of the request for purchase;

4. the documents under Art. 24 para 3 item 2 and 3.

(3) The request shall be signed by the person under Art. 44a para 1 and by the investment intermediary under Art. 5a who shall declare that it satisfies the requirements of the law.

(4) The persons under para 3 shall be jointly liable for the damages caused by false, misleading or incomplete data in the request.

(5) The Commission shall pronounce within 14 days of receiving the application for the issue of approval. Articles 152 and 153 of LPOS shall apply accordingly.

**Art. 44d.** (New – SG, iss. 13 in 2009) Within three days of the approval issuing, the person under Art. 44a para 1 in compliance with Art. 36 shall submit to the company and to the regulated market on which the shares have been admitted to trading, the request for purchase and shall publish it in the central daily papers according to Art. 24 para 1 item 15.

**Art. 44e.** (New – SG, iss. 13 in 2009) (1) Within one-month period of publishing the request for purchase, the other shareholders in the company – whose shares are subject of a tender offer, are obligated to perform all required factual and legal actions for the transfer of the held by them shares to the person under Art. 44a para 1. Article 34 shall apply accordingly.

(2) The transfer of the shares – subject of the request for purchase, from the accounts of the shareholders who failed to fulfil their obligation under para 1, on the account of the person under Art. 44a para 1, shall be made after the expiration of the term under para 1 in accordance with Art. 157a para 7 of LPOS on the strength of the law.

(3) The transaction shall be considered concluded at the moment of expiration of the term under para 1.

(4) The rights attaching to the shares – subject of the request for purchase, shall pass over the person under Art. 44a para 1 with the registration of their transfer at the Central Depository.

**Art. 44f.** (New – SG, iss. 13 in 2009) (1) The person under Art. 44a para 1 shall pay the price for the shares – subject of the request for purchase, within 7 working days after expiration of the term under Art. 44e para 1.

(2) The cash necessary for payment of the price of the shares – subject of the request for purchase, to the shareholders in the cases under Art. 44e para 2 shall be kept by the person under Art. 44a para 1 in a separate bank account opened in favour of the beneficiaries of the receivable.

(3) The account under para 2 may not be closed before the lapse of the prescription period for payment of the receivable.

**Art. 44g.** (New – SG, iss. 13 in 2009) (1) Within three days of expiration of the term under Art. 44f para 1 the person under Art. 44a para 1 shall inform the Commission of:

1. the accomplished purchase of all shares with right to vote in the general meeting of the public company according to Art. 157a of LPOS;

2. the number of shareholders who fulfilled their obligation under Art. 44e para 1 within the set period and the shares held by them;



3. the number of shareholders who failed to fulfil their obligation under Art. 44e para 1 within the set period and the shares held by them;
  4. the fulfilment of his obligations in compliance with the approved by the Commission request for purchase under Art. 44c para 2 item 1;
  5. the amount of the transferred cash in the opened bank account under Art. 44f para 2, the conditions and procedure under which payments shall be made in favour of the beneficiaries of the receivables, enclosing also the respective proof evidencing these circumstances.
- (2) Within the term under para 1 the information under item 1 – 3, as well as the conditions and the procedure under which the payments to the beneficiaries of the receivables will be effected, shall be submitted to the company and the regulated market on which the shares have been admitted for trading, and shall be published in the daily newspapers according to Art. 24 para 1 item 15.
- Art. 44h.** (New – SG, iss. 13 in 2009) The request for purchase may be withdrawn by the person under Art. 44a para 1 under the procedure of Art. 38.

**Section II.**  
**(New – SG, iss. 13 in 2009)**  
**Purchase of Shares under Art. 157b of LPOS**

**Art. 44i.** (New – SG, iss. 13 in 2009) Entitled to make a request for purchase to a tender offeror, whereby to obligate him to acquire the held by the shareholder shares shall be a shareholder in a public company in relation to which:

1. a tender offer has been carried out for the purchase and/ or exchange of all other shares with right to vote in the general meeting of the public company according Chapter Eleven, Section II of LPOS; and
2. as a result of it the offeror directly, through related persons or indirectly in the cases under Art. 149 para 2 of LPOS has acquired at least 95 per cent of the votes in the general meeting of the public company.

**Art. 44j.** (New – SG, iss. 13 in 2009) The tender offeror is obligated to purchase the shares – subject of the request under Art. 44i against payment of the price indicated in the publications under Art. 37 para 3.

**Art. 44k.** (New – SG, iss. 13 in 2009) (1) The right under Art. 44i shall be exercised by making a written request to the tender offeror for purchase of the held by the shareholder shares.

(2) The person under Art. 44i can make a request for purchase within a three-month period of the expiration of the term for acceptance of the tender offer under Art. 44i item 2.

(3) The request for purchase shall contain:

1. full name, domicile and address, or business name, UIC, seat and registered office of the shareholder, and if a foreign person – similar identification data;
2. business name, UIC, seat and registered office of the investment intermediary which in its capacity of a registration agent under Art. 56 para 1 item 1 of Ordinance No. 38 from 2007 on the requirements for the activities of the investment intermediaries (prom. SG, iss. 67 in 2007; am. iss. 60 in 2008) shall make the transfer of the shares – subject of the request for purchase.

3. the shares – subject of the request for purchase.

**Art. 44l.** (New – SG, iss. 13 in 2009) Within a 30-day period of receiving the request for purchase under Art. 44i the tender offeror shall perform all required factual and legal actions for the acquisition of the held by the person under Art. 44i shares.

**Art. 44m.** (New – SG, iss. 13 in 2009) (1) Within a three-day period of expiration of the term under Art. 44k para 2 the tender offeror shall inform the Commission of:

1. the accomplished purchase of all shares with right to vote in the general meeting of the public company under Art. 157b of LPOS;

2. the number of shareholders who made a request for purchase under Art. 44i;

3. the fulfilment of his obligations under Art. 44l;

(2) Within the term under para 1 the information under item 1 and 2 shall be submitted to the company and to the regulated market on which the shares have been admitted for trading, and shall be published in the daily newspapers according to Art. 24 para 1 item 15.

### **Chapter Three. ADMINISTRATIVE PUNITIVE PROVISIONS**

**Art. 45.** (1) Any person who commits or admits the commission of offences of this Ordinance shall be punished according Art. 221 of LPOS.

(2) The acts about established violations shall be drawn up by officials authorised by the deputy chairman, and the penalty warrants shall be issued by the deputy chairman.

(3) The establishment of offences, the issuing of, appeal against and enforcement of penalty warrants shall be carried out in accordance with the Law on Administrative Offences and Sanctions.

#### **Additional Provisions**

**§ 1.** The provisions of this Ordinance shall apply accordingly in relation to closed-end investment companies.

#### **Transitional and Final Provisions**

**§ 2.** In any pending procedures for tender offers, the Commission, where needed, shall assign a deadline for the persons to bring them in compliance with the provisions of this Ordinance.

**§ 3.** This Ordinance is issued pursuant to § 16 para 1 of the Transitional and Final Provisions in relation to Art. 150 para 2 item 10, Art. 154 para 1, sentence two and Art. 157a of LPOS and was adopted with Decision No 13-H of December 22, 2003 by the Financial Supervision Commission.

**§ 4.** The Financial Supervision Commission shall issue guidance on the Ordinance application.