

## **EPE Special Opportunities Limited (“ESO” or the “Company”)**

### **Statement of shareholder rights in relation to disapplication of the City Code on Takeovers and Mergers (the “Code”)**

*Defined terms used in the Circular dated 1 August 2018 shall have the same meanings when used in this document, unless the context otherwise requires.*

#### **Introduction**

EPE Special Opportunities Limited is incorporated in the Bermuda. As such, Shareholders do not receive the protections afforded by the Code in the event that there is a subsequent offer to acquire their Ordinary Shares. Brief details of the Panel, the Code, the protections given by the Code and the legal and regulatory environment in Bermuda in respect of takeovers are described below.

#### **The Code**

The Code is issued and administered by the Panel. The Code and the Panel operate principally to ensure that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover and that shareholders of the same class are afforded equivalent treatment by an offeror. The Code also provides an orderly framework within which takeovers are conducted. In addition, it is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

#### **The General Principles and Rules of the Code**

The Code is based upon a number of General Principles which are essentially statements of standards of commercial behaviour. For Shareholders information, these General Principles are set out in Section 1 of Part V. The General Principles apply to all transactions with which the Code is concerned. They are expressed in broad general terms and the Code does not define the precise extent of, or the limitations on, their application. They are applied by the Panel in accordance with their spirit to achieve their underlying purpose.

In addition to the General Principles, the Code contains a series of Rules, of which some are effectively expansions of the General Principles and examples of their application and others are provisions governing specific aspects of takeover procedure. Although most of the Rules are expressed in more detailed language than the General Principles, they are not framed in technical language and, like the General Principles, are to be interpreted to achieve their underlying purpose. Therefore, their spirit must be observed as well as their letter. The Panel may derogate or grant a waiver to a person from the application of a Rule in certain circumstances.

#### **Protections given up as part of the Code**

A summary of key points regarding the application of the Code to takeovers generally is set out in Section 2 of Part V of the Circular dated 1 August 2018, and have been extracted below.

Attention is drawn in particular to the rules relating to mandatory offers set out in Rule 9 of the Code. In summary, a mandatory offer is required to be made under Rule 9 of the Code, broadly where: (i) any person acquires shares which (taken together with shares in which persons acting in concert with him are interested) carry 30 per cent. or more of the voting rights of a company; or (ii) if any person, together with any persons acting in concert with him, is interested in shares carrying not less than 30 per cent. of the voting rights of a company but does not hold more than 50 per cent. of such voting rights and such person, or any persons acting in concert with him, acquires an interest in any other shares which increases the percentage of shares carrying voting rights in which he is interested.

The Company considers that as at the date of the Circular dated 1 August 2018, the two managing partners of the Company's investment adviser, EPE (Giles Brand and Hiren Patel), together with Delphine Brand (the wife of Giles Brand) and EPE Finance Limited (an entity wholly owned by Giles Brand), who collectively hold approximately 23.6 per cent. of the current issued Ordinary Shares (excluding Ordinary Shares held in treasury), should be considered to be acting in concert for the purposes of the Code, (herein referred to as the Concert Party). In addition, the Panel may consider, for the purposes of the Code, that certain further persons and/or entities, such as other employees of EPE who also own Ordinary Shares, should be included in the Concert Party. However, as at the date of Circular (dated 1 August 2018), the Company has not sought to discuss this with the Panel.

Shareholders should note that if the Concert Party subsequently increased its shareholding to 30 per cent. of more of the Ordinary Shares, it would not be required to make a general offer for the Company under Rule 9.1 of the Code. Notwithstanding the fact that the Shareholders do not receive the protections afforded by the Code now that Migration has been completed, as described in further detail in paragraph 2 above, the Board has concluded that the Migration is in the best interests of the Company as the Board believes that Bermuda offers a more appropriate VAT, legal and regulatory environment for the Company going forwards.

### **Legal and regulatory environment in Bermuda in respect of takeovers**

Legal and regulatory environment in Bermuda in respect of takeovers In Bermuda there is no legislation or code that specifically regulates takeovers nor is there any regulatory body that oversees takeovers. Accordingly, under Bermuda law: (i) hostile bids are allowed; (ii) there are no rules regulating stake building and no corresponding provisions which allow a Bermuda company to investigate the beneficial ownership of its shares; (iii) there are no consultation requirements in connection with a proposed takeover; (iv) there is no restriction on the type of consideration that can be offered and no regulations that provide minimum levels of consideration; (v) there are no specific provisions regulating bid announcements or setting out any timetables for an offer to be made to, and accepted by, a target's shareholders; (vi) generally, there is no requirement that a bid is made for a specific percentage of a target's shares; and (vii) there are no restrictions on a bidder launching a new offer for, or buying shares in, a target after it has failed to obtain control of the target. Shareholders should also be aware that under Bermuda law a bidder making an offer for a target company can, in certain situations, utilise the provisions of the Bermuda Companies Act to acquire the shares of shareholders who do not accept an offer.

### **The general principles of the Code**

1. All holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected.
2. The holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business.
3. The board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid.
4. False markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted.
5. An offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration.
6. An offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

### **Detailed application of the Code**

The following is a summary of key provisions of the Code which apply to transactions to which the Code applies. Shareholders should note that, such protections afforded by the Code have been given up as a result of the Company being incorporated in Bermuda.

#### Equality of treatment

General Principle 1 of the Code states that all holders of securities of an offeree company of the same class must be afforded equivalent treatment. Furthermore, Rule 16.1 requires that, except with the consent of the Panel, special arrangements may not be made with certain shareholders in the Company if there are favourable conditions attached which are not being extended to all shareholders.

#### Information to shareholders

General Principle 2 requires that holders of securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on a bid. Consequently, a document setting out full details of an offer must be sent to the offeree company's shareholders.

#### The opinion of the offeree board and independent advice

The board of the offeree company is required by Rule 3.1 of the Code to obtain competent independent advice on an offer and the substance of such advice must be made known to its shareholders. Rule 25.2 requires that the board of the offeree company must send to the offeree company's shareholders and persons with information rights its opinion on the offer and its reasons for forming that opinion. That opinion must include the board's views on: (i) the effects of implementation of the offer on all the company's interests, including, specifically, employment; and (ii) the offeror's strategic plans for the offeree company and their likely repercussions on employment and the locations of the offeree company's places of business. The circular from the offeree company must also deal with other matters such as interests and recent dealings in the securities of the offeror and the offeree company by relevant parties and whether the directors of the offeree company intend to accept or reject the offer in respect of their own beneficial shareholdings. Rule 20.1 states that information about the companies involved in the offer must be made equally available to all offeree company shareholders as nearly as possible at the same time and in the same manner.

#### **Basis for the Board deciding not to incorporate Code provisions to the Company's New Articles**

With the Migration, the Board decided not to incorporate provisions equivalent to the mandatory offer rules set out in Rule 9 of the Code, or any other provisions of the Code, into the New Articles approved and adopted as part of the Migration. The Board made this decision having obtained legal advice that the Company will not be a company to which the Code applies following completion of the Migration. In addition, the Board considered legal advice that such provisions (when included in the constitutional documents of a company that is not subject to the Code) would typically grant considerable discretion to the board of directors of the relevant company to determine matters that would be determined by the Panel in the case of a company that is subject to the Code and that the exercise of, or failure to exercise, their powers by the directors of the relevant company could potentially lead to personal liability for the directors in circumstances where such exercise, or failure to exercise, amounted to a breach of their duties as directors under applicable law (albeit that the Directors would have the benefit of the indemnification provisions in the New Articles). In addition, the Board understands that the Panel has a body of precedent and wealth of experience in interpreting the Code, while no such precedent exists in Bermuda and a Bermuda court would not be expected to have the expertise that the Panel or a UK court would have in interpreting provisions based on the Code.