



REPUBLIC OF KENYA
MINISTRY OF FINANCE
FINANCIAL AND LEGAL SECTOR TECHNICAL ASSISTANCE PROJECT

DRAFT

Securities Industry (Takeovers) Regulations 2009

08 June 2009

**Consultancy assistance to review and strengthen legal and regulatory framework
for the Capital Markets Authority**



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SECURITIES INDUSTRY (TAKEOVERS) REGULATIONS 2009

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**SECURITIES INDUSTRY
(TAKEOVERS) REGULATIONS 2009**

IN EXERCISE of the powers conferred by section 70 of the Securities Industry Act 2009, the Capital Markets Authority has made the following regulations —

**PART I
PRELIMINARY**

1. Citation

These regulations may be cited as the Securities Industry (Takeovers) Regulations 2009.

2. Interpretation

(1) In these regulations, unless the context otherwise requires —

“Act” means the Securities Industry Act 2009;

“Authority” means the Capital Markets Authority established by section 4 of the Capital Markets Authority Act 2009;

“acting in concert” means persons who, pursuant to an agreement, arrangement or understanding (whether formal or informal, whether written or oral, whether express or implied or whether or not having legal or equitable force), actively co-operate to obtain or consolidate control of a listed company through the acquisition by any of them of shares in that company;

“board” means board of directors;

“close relatives” means a person’s spouse, de facto spouse, children, parents and siblings;

“control” means a holding, or aggregate holdings, of shares carrying the right to exercise, or control the exercise of, [25%] or more of the voting rights of shares of a listed company;

“document” includes any announcement, advertisement or takeover offer issued or published by any party to a takeover offer or possible takeover offer in connection with such takeover offer or possible takeover offer;

“exchange of securities takeover offer” means a takeover offer in which the consideration includes securities of the offeror or any other company;

“offeree company” means the listed company in respect of whose shares the takeover offer relates;

“offeror” means the person by or on whose behalf the takeover offer is made or to be made;

“reply document” means the offeree company’s reply document referred to in regulation 15;

“takeover” includes takeovers and merger transactions however effected, including schemes of arrangement that have similar commercial effect to takeovers and mergers, and offers by a parent company for shares in its subsidiary;

“takeover offer” has the meaning given in section 69 of the Act;

“takeover offer document” means the takeover offer document referred to in regulation 13;

“takeover offer period” means the period from the time when a takeover offer is made in writing by the offeror to the board of the offeree company under regulation 5 until the first closing date or, if this is later, the date when such takeover offer becomes or is declared unconditional in all respects or is declared to have lapsed; and

“voting rights” means all the voting rights currently exercisable at a general meeting of a listed company.

- (2) For the purposes of these regulations, persons falling within each of the following classes will be presumed to be acting in concert with others in the same class unless the contrary is established —

- (a) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;
 - (b) a company with any of its directors (together with their close relatives, related trusts and companies controlled by any of the directors, their close relatives and related trusts);
 - (c) a company with any of its pension funds, provident funds and employee share schemes;
 - (d) a fund manager with any collective investment scheme, or other body, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;
 - (e) a financial or other professional adviser, including a broker-dealer, with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser;
 - (f) directors of a company (together with their close relatives, and companies controlled by such directors or their close relatives) which is subject to a takeover offer or where the directors have reason to believe a bona fide takeover offer for their company may be imminent;
 - (g) partners; and
 - (h) an individual with his close relatives and companies controlled by him or his close relatives.
- (3) For the purposes of these regulations, a company shall be deemed to be an associated company of another company if one of them owns or controls [20%] or more of the voting rights of the other or if both are associated companies of the same company.

3. Application of these regulations

These regulations apply to the conduct of all takeover offers, whether voluntary or mandatory, made in respect of listed companies.

PART II

CONDUCT OF TAKEOVER OFFERS

4. Equality of treatment

- (1) All shareholders of the same class of an offeree company shall be given equal treatment by the offeror in relation to the consideration to be paid for their shares, the information to be supplied to them pursuant to these regulations, and any other aspect of the takeover offer.
- (2) Information about companies involved in a takeover offer shall be made equally available to all shareholders as nearly as possible at the same time and in the same manner.
- (3) Except with the prior written consent of the Authority, neither the offeror nor any person acting in concert with it may enter into arrangements to purchase or sell securities of the offeree company, either during a takeover offer or when one is reasonably in contemplation if such arrangements have special conditions which are not extended to all shareholders.

5. Takeover offer

- (1) A takeover offer shall —
 - (a) be made in writing in the first instance to the board of the offeree company;
 - (b) shall state the date of the bid and the name and address of the offeror and shall contain —
 - (i) precise particulars of the securities in respect of which the takeover offer is made;
 - (ii) the total consideration payable for the purchase;
 - (iii) how any securities to be issued will rank for dividends, capital and redemption;
 - (iv) when and how the document of title to such securities will be issued; and
 - (v) how, when and where such takeover offer may be accepted.
- (2) A takeover offer shall disclose —
 - (a) details of any existing holding of voting rights in the offeree company —

- (i) which the offeror owns or over which it has control or direction;
 - (ii) which is owned or controlled or directed by any person acting in concert with the offeror;
 - (iii) in respect of which the offeror or any person acting in concert with him has received an irrevocable commitment to accept the takeover offer; and
 - (iv) in respect of which the offeror or any person acting in concert with him holds an option to purchase or warrants or other convertible securities;
- (b) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the takeover offer is subject; and
- (c) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree company and which might be material to the takeover offer.
- (3) A takeover offer shall include confirmation by the financial adviser to the offeror or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the takeover offer.

6. Confidentiality

All parties to a takeover offer or possible takeover offer shall —

- (a) take the greatest care to preserve absolute confidentiality before the takeover offer becomes public knowledge through an announcement made in accordance with these regulations;
- (b) take such steps as are necessary to prevent the creation of a false market in the shares of an offeror or offeree company.

7. Announcements

An announcement is required to be published forthwith —

- (a) by the offeree company, when a firm intention to make a takeover offer is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the takeover offer;
- (b) by the offeree company when, following an approach to it, the offeree company is the subject of rumour and speculation or there is

undue movement in its share price, or a significant increase in the volume of share turnover, whether or not there is a firm intention to make a takeover offer;

- (c) by the offeror when, before an approach has been made, the offeree company is the subject of rumor and speculation or there is undue movement in its share price, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation; and
- (d) by the offeror, immediately upon an acquisition that gives rise to an obligation to make a takeover offer under regulation 40.

Independent advice

8. Board of offeree company

- (1) The board of an offeree company that receives a takeover offer, or is approached with a view to a takeover offer being made, shall, in the interests of its shareholders, retain an independent financial adviser to advise the board as to whether the takeover offer is, or is not, fair and reasonable.
- (2) The independent financial advice, including reasons, shall be obtained in writing and such written advice shall be disclosed to shareholders by including it in its reply document along with the recommendation of the offeree company's board regarding acceptance of the takeover offer.
- (3) A person who has, or had, a connection, financial or otherwise, with the offeror or offeree company of a kind creating or likely to create a conflict of interest, shall not give financial advice to the offeree company.

9. Duty of directors

Directors of an offeror or offeree company shall, at all times when advising the company's shareholders —

- (a) act only in their capacity as directors without regard to their personal or family shareholdings or their personal relationship with the company;

- (b) have regard only to the interests of the company's shareholders, employees and creditors.

Prohibitions

10. No frustrating action

- (1) Immediately after a bona-fide takeover offer has been communicated to the board of an offeree company, or where there are reasonable grounds for the board of an offeree company to believe that a bona-fide takeover offer may be imminent, the offeree board or any member or members thereof shall not at any time thereafter take any action, whether directly or indirectly, in relation to the offeree company's affairs, without the approval of the company's shareholders in general meeting, which could effectively result in —
 - (a) the takeover offer being frustrated; or
 - (b) the shareholders of the offeree company being denied an opportunity to decide on the merits of a takeover offer.
- (2) Without prejudice to the generality of paragraph (1), the board of an offeree company shall not, without such approval —
 - (a) issue any shares;
 - (b) issue or grant options in respect of any unissued shares;
 - (c) create or issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for, shares of the company;
 - (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of a material amount, or otherwise than in the ordinary course of business;
 - (e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or
 - (f) cause the company or any subsidiary or associated company to purchase or redeem any shares in the company or provide financial assistance for any such purchase.
- (3) Where the company is under a prior contractual obligation to take any such action, the Authority shall be consulted at the earliest

opportunity if a waiver is to be sought from the general requirement to obtain shareholders' approval.

11. No withdrawal of a takeover offer without consent

Where a takeover offer has been made in accordance with regulation 5, except with the consent of the Authority, the offeror shall proceed with the takeover offer unless the takeover offer is subject to the prior fulfilment of an express condition and that condition has not been met.

12. Variation of takeover offers

- (1) An offeror may vary a takeover offer, in relation to the consideration that is offered in respect of the shares proposed to be acquired, by —
 - (a) where a cash sum is offered, increasing the amount of that sum;
 - (b) where shares are offered, increasing the number of those shares;
 - (c) where debentures are offered, increasing the rate of interest payable under those debentures;
 - (d) where debentures are offered, increasing the amount of those debentures;
 - (e) where an option to acquire unissued shares is offered, varying the option by increasing the number of unissued shares that may be acquired under that option.
- (2) An offeror may vary a takeover offer by extending the period during which it remains open.
- (3) Where the consideration that is offered for the shares proposed to be acquired under a takeover offer is varied under paragraph (1), all offeree company shareholders, whether or not they have already accepted the takeover offer, shall be entitled to receive the consideration as so varied.
- (4) Where an offeror varies a takeover offer after the posting of the takeover offer document, he shall forthwith —
 - (a) give to the offeree company written notice of such variation;

- (b) inform shareholders of the offeree company by post accordingly,
and the revised offer shall remain open for at least 28 days from the date of such despatch.

Takeover offer document and timetable

13. Posting of takeover offer document

- (1) Within [21] days of a takeover offer (or, in the case of a securities exchange takeover, 35 days) made pursuant to regulation 5, a takeover offer document, which shall not be dated more than three days prior to despatch, shall be posted by or on behalf of the offeror to the shareholders of the offeree company, and the offeror shall notify the offeree company in writing accordingly.
- (2) In any agreed takeover offer, the offeror and the offeree company may combine the takeover offer document and the offeree company reply document in a composite document to be posted within the same period specified in paragraph (1).

14. Information to be contained in takeover offer document

The takeover offer document shall contain the information required by Schedule 1 together with any other information that the offeror considers relevant to enable the offeree company shareholders to reach a properly informed decision.

15. Information to be contained in offeree company reply document

The offeree company shall send to its shareholders, within 14 days of the posting by the offeror of the takeover offer document, a reply document containing —

- (a) the information set out in Schedule 2;
- (b) the views of its board on the takeover offer with a recommendation as to acceptance or rejection of the takeover offer;
- (c) the written advice of its financial adviser as to whether the takeover offer is, or is not, fair and reasonable and the reasons therefor;
- (d) any other information that it considers relevant to enable its shareholders to reach a properly informed decision.

16. Minimum takeover offer period

A takeover offer shall be open for at least 28 days following the date of posting by the offeror of the takeover offer document.

17. Conditional offers

If the takeover offer is conditional, the takeover offer document shall specify the latest day when the offeror can declare the takeover offer unconditional.

18. Period for acceptance when offer becomes or declared unconditional

(1) Where a conditional takeover offer becomes or is declared unconditional, it shall remain open for acceptance for not less than 14 days thereafter.

(2) Where an announcement is made of an extension of a takeover offer, either the next closing date shall be share or, if the takeover offer is then unconditional, a statement may be made that the takeover offer will remain open until further notice.

(3) Where, under paragraph (2), a statement is made that the takeover offer remains open until further notice, at least 14 days notice in writing shall be given before the takeover offer is closed to those shareholders who have not accepted the takeover offer.

19. Final day

Except with the consent of the Authority, a takeover offer (whether revised or not) may not become or be declared unconditional as to acceptances after the expiry of 60 days from the date of the posting of the takeover offer.

20. Acceptor's right to withdraw

An acceptor shall be entitled to withdraw his acceptance after 21 days from the first closing date of the takeover offer, if the takeover offer has not by then become unconditional, and such entitlement to withdraw shall be exercisable until the takeover offer becomes or is declared unconditional as to acceptances.

Issuance of documents

21. Filing of documents with Authority for comment

(a) All documents shall be filed with the Authority for comment prior to release or publication and shall not be released or published until the

Authority has confirmed in writing that it has no further comments thereon.

- (b) The final copy of the document shall be filed with the Authority and the securities exchange.

22. Publication of documents

All announcements shall be published as a paid announcement in at least [1] daily newspaper having a national circulation in Kenya.

Standard of care and responsibility

23. Prospectus standard

- (1) Each document issued or statement made in relation to a takeover offer or possible offer or during a takeover offer period shall, as in the case of a prospectus issued under the Act, satisfy the highest standards of accuracy and the information given must be adequately and fairly presented.
- (2) The standard required by paragraph (1) shall apply whether the document is issued by the offeror or offeree company, or by an adviser on its behalf, or by any other person in relation to a takeover offer.

24. Directors' joint and several responsibility

All documents shall state that all directors of the offeror or, as the case may be, the offeree company, jointly and severally accept full responsibility for the accuracy of information contained in the document and confirm, having made all reasonable inquiries, that to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration and there are no other facts not contained in the document, the omission of which would make any statement in the document misleading.

25. Profit forecasts and assumptions

- (1) A profit forecast shall be compiled with due care and objectivity by the directors whose sole responsibility it is: Provided that the financial advisers shall report whether or not they are able to satisfy themselves that the forecast has been so compiled and such report shall be set out in the relevant document.

- (2) The assumptions, including the commercial assumptions, upon which any forecast is based shall be share in the document and shall be specific.

Asset valuations

26. Disclosure of valuations

When valuations of assets of either the offeror or offeree company are made in connection with a takeover offer, details of the valuations shall be included in the takeover offer document, reply document or other document.

27. Preparing valuations

Any valuations shall be carried out or confirmed by an independent, professionally-qualified valuer or other expert and the basis of valuation clearly share, and the document shall include a statement that the valuer or other expert has given and not withdrawn his consent to the issue of the document with the inclusion of the valuation in the form and context in which it is included.

Announcement of results of takeover offer

28. Nature of announcement

- (1) The offeror shall immediately inform the Authority and the securities exchange that a takeover offer —
- (a) has been revised or extended;
 - (b) has expired; or
 - (c) has become or has been declared unconditional,

and shall publish an announcement on the following day to that effect in at least [1] daily newspaper having a national circulation in Kenya .

- (2) The announcement shall state the number of shares which the offeror or any person acting in concert with it has or controls, the number of shares for which acceptances of the takeover offer have been received, and the number of shares otherwise acquired by the offeror and any person acting in concert with it during the takeover offer period.

- (3) The announcement shall also specify the percentages of the relevant classes of share capital, and the percentages of voting rights, represented by these numbers.

29. Consequences of failure to announce

- (1) The Authority shall be consulted if an offeror is unable to comply with any of the requirements of regulation 28.
- (2) Where an offeror is unable to comply with any of the requirements of regulation 28, the Authority may require that acceptors be granted a right of withdrawal, on terms acceptable to the Authority, until the requirements of that regulation can be met.

Restrictions on dealings before and during the takeover offer

30. Restrictions on dealings before the takeover offer

- (1) No dealings of any kind in the securities of the offeree company may be transacted by any person who has confidential price sensitive information concerning an actual or contemplated takeover offer or revised takeover offer between the time when there is reason to suppose that an approach or a takeover offer or revised takeover offer is contemplated and the announcement of the approach, the takeover offer, the revised takeover offer, or of the termination of the takeover discussions.
- (2) Notwithstanding paragraph (1), such restriction shall not apply to an offeror, or persons acting in concert with the offeror, in respect of such dealings if such dealings are transacted for purposes of the takeover offer unless the offeror, or a person acting in concert with the offeror, is a director or employee of the offeree company.
- (3) No such dealings may take place in the securities of the offeror except where the takeover offer is not price sensitive in relation to those securities.

31. Restrictions on dealings during the takeover offer period

During a takeover offer period, the offeror and persons acting in concert with the offeror shall not sell any securities in the offeree company except with the prior consent of the Authority and following 24 hours public notice that such sales might be made.

32. Restrictions on dealings by offeror during non-cash takeover offers

During a takeover offer period for a takeover offer consisting of shares of the offeror traded on a securities exchange (and for which there is no cash alternative) the offeror, and persons acting in concert with him, may not engage in any purchase of the offeror's shares until the later of the date the offeror abandons its intention to conduct the takeover offer and the date the related takeover offer period expires.

33. Dealings before termination of discussions

If takeover discussions are terminated, or the offeror decides not to proceed with a takeover offer after an announcement has been made that takeover offer discussions are taking place or that an approach or takeover offer is contemplated, no dealings in securities of the offeree company by any person privy to this information shall take place prior to an announcement of that position.

Purchases at above takeover offer price

34. Increased offer price

- (1) If the offeror or any person acting in concert with it purchases shares in the offeree company in the market or otherwise during the takeover offer period at above the takeover offer price, then the offeror shall increase the takeover offer to not less than the highest price (excluding stamp duty, any Government tax, and dealing costs) paid for any securities so acquired.
- (2) Immediately after an acquisition giving rise to an obligation under paragraph (1), an announcement shall be made by the offeror stating the number of shares acquired and the price paid during the course of that day.

35. Takeover offers involving a further issue of listed securities

- (1) If the takeover offer involves a further issue of securities of a class already traded on a securities exchange, the current value of the takeover offer on a given day shall be established by reference to the average traded price of such securities traded during the immediately preceding trading period.
- (2) If the takeover offer involves a combination of cash and securities and further purchases of the offeree company's shares oblige the offeror to increase the value of the takeover offer, the offeror shall, as far as

practicable, effect such increase while maintaining the same ratio of cash to securities as is represented by the takeover offer.

Conditions

36. No subjective conditions

Except with the prior written consent of the Authority, a takeover offer shall not be made subject to conditions which depend on the judgment of the offeror or the fulfilment of which is in his hands.

37. Acceptance conditions

- (1) Except with the prior written consent of the Authority all takeover offers, whether voluntary or mandatory, 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 takeover 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.
- (2) Mandatory offers made under regulation 40 shall not be subject to any condition other than that specified in paragraph (1), whether as to the minimum or maximum levels of acceptance required to be received or otherwise.
- (3) A voluntary takeover offer may be made conditional on an acceptance level of shares carrying a higher percentage of the voting rights

Delay before subsequent takeover offer

38. Temporary ban

Except with the prior written consent of the Authority, where a takeover offer has been announced but has not become unconditional in all respects, and has been withdrawn or has lapsed, neither the offeror nor any person who acted in concert with it in the course of the original takeover offer, nor any person who is subsequently acting in concert with any of them, shall within 12 months from the date on which such takeover offer is withdrawn or lapses make a further takeover offer for the offeree company.

39. 6 months delay before acquisition above takeover offer price

Except with the prior written consent of the Authority, if a person, together with any person acting in concert with him holds [25 %] or more of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous takeover offer made by him to the shareholders of that company which became or was declared wholly unconditional, make a second takeover offer to shareholders.

**PART III
MANDATORY TAKEOVER OFFERS**

40. When mandatory takeover offer required

- (1) If —
 - (a) any person acquires, whether by a series of transactions over a period of time or not, shares carrying [25 %] or more of the voting rights of a company;
 - (b) two or more persons are acting in concert, and they collectively hold shares carrying less than [25 %] of the voting rights of a company, and any one or more of them acquires shares carrying voting rights and such acquisition has the effect of increasing their collective holding of voting rights to [25 %] or more of the voting rights of the company,

that person, or the principal members of the concert group, as the case may be, shall extend takeover offers, on the basis set out in these regulations, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares.

- (2) Where a mandatory takeover offer is required under paragraph (1), an announcement shall immediately be made under regulation 7 (d) and a takeover offer shall forthwith be made under regulation 5.
- (3) Takeover offers for different classes of equity share capital shall be comparable.

41. Conditions of mandatory takeover offer

Except with the consent of the Authority —

- (a) takeover offers made under regulation 40 shall be conditional upon, and only upon, the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the takeover offer, will result in the offeror and any person acting in concert with it holding more than [50%] of the voting rights; and
- (b) no acquisition of shares which would give rise to a requirement for a takeover offer under regulation 40 may be made if the making or implementation of such takeover offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements.

42. Consideration

- (1) Takeover offers made under regulation 40 shall, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree company within the preceding 6 months.
- (2) The cash takeover offer or cash alternative shall remain open after the takeover offer has become or is declared unconditional for not less than 14 days thereafter.

43. Restrictions on control by offeror

Except with the prior written consent of the Authority, no nominee of an offeror or persons acting in concert with it may be appointed to the board of the offeree company, nor may an offeror and persons acting in concert with it exercise offeree company voting rights, until the takeover offer document has been posted.

**PART IV
MISCELLANEOUS**

44. Prompt registration of transfers

The board, officials and registrar of an offeree company shall ensure the prompt registration of transfers during a takeover offer period so that shareholders can freely exercise their voting and other rights.

45. Disclosure of acquisitions of [10%] and above

- (1) Following an acquisition or disposal of shares carrying voting rights in a listed company, or rights over such shares, a person shall announce that acquisition or disposal and his total holding not later than 9.00 a.m. on the dealing day following the date of the acquisition or disposal, if —
 - (a) as a result of the acquisition he comes to hold, with any shares or rights over shares already held by him, shares or rights over shares representing [10%] or more but less than [35 %] of the voting rights in a company; or
 - (b) as a result of a disposal his holding of shares or rights over shares decreases from one representing [10%] or more of the voting rights to one representing less than [10%].
- (2) Where two or more persons act by agreement or understanding in the acquisition by one or more of them of shares carrying voting rights in a listed company, or rights over such shares, their holdings and acquisitions shall be aggregated and treated as a holding or acquisition by one person for the purpose of this regulation.
- (3) Disclosure of dealings made pursuant to the requirements of this regulation shall include the following information —
 - (a) the total of the relevant shares in question purchased or sold;
 - (b) the prices paid or received;
 - (c) the identity of the person(s) dealing; and
 - (d) the resultant total amount of relevant shares owned or controlled by the person(s) in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents.

46. Enforcement of regulations

For the purposes of enforcing these regulations, the Authority may —

- (a) require information from all or any of the following —
 - (i) stockbrokers and their representatives
 - (ii) investment advisers and their representatives;

- (iii) officers of the offeror and offeree companies; and
 - (iv) all other parties to the offer;
- (b) exercise its powers of supervision and investigation under Chapter [?] of the Act in relation to any of the persons specified in sub-paragraph (a); and
- (c) where it considers it necessary or expedient to ensure fairness or equality of treatment between shareholders of the offeror and the offeree company, issue directions in writing, either of a general or specific nature, to any of the persons specified in sub-paragraph (a) which direction shall be complied with.

47. Waiver by Authority

- (1) Where the Authority considers it appropriate in the exceptional circumstances of a particular takeover offer, the Authority may in its discretion exempt a party to the takeover from any of the requirements of these regulations.
- (2) A waiver granted under paragraph (1) may be subject to such conditions, restrictions or limitations as may be imposed by the Authority.

SCHEDULE 1

regulation 14

INFORMATION TO BE CONTAINED IN TAKEOVER OFFER DOCUMENT

The takeover offer document shall contain the following statements in a prominent position:

Important

“If you are in doubt as to any aspect of this takeover offer, you should consult a stockbroker, investment adviser, banker, legal adviser, professional accountant, or other professional adviser.”

If you have sold all your shares inyou should at once hand this document and the accompanying form to the purchaser or to the bank or stock, investment adviser or other agent through whom the sale was effected for transmission to the purchaser.”

The document shall include the following information:

The Offeror

1. The name and address of the offeror or any financial adviser or other person who may be acting for the offeror, and of any person acting in concert with any of them. Unless otherwise agreed with the Authority, the takeover offer document shall contain a statement as to whether or not any securities acquired in pursuance of the takeover offer will be transferred to any other persons, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.
2. If either the offeror or any person acting in concert with it is a company, the names of its directors and controlling shareholders.

Intentions regarding the offeree company and its shareholders

3. (a) the offeror’s intentions regarding the continuation of the business of the offeree company;

- (b) the offeror's intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company;
- (c) the long-term commercial justification for the proposed takeover offer; and
- (d) the offeror's intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries.

Shareholdings and dealings

- 4. (a) the shareholdings of the offeror in the offeree company;
- (b) the shareholdings in the offeror (in the case of an exchange of securities takeover offer only) and in the offeree company in which directors of the offeror are interested;
- (c) the shareholdings in the offeror (in the case of an exchange of securities takeover offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert);
- (d) the shareholdings in the offeror (in the case of an exchange of securities takeover offer only) and in the offeree company owned or controlled by any persons who, prior to the publication of the takeover offer document, have irrevocably committed themselves to accept or reject the takeover offer, together with the names of such persons; and
- (e) the shareholdings in the offeror (in the case of an exchange of securities takeover offer only) and in the offeree company owned or controlled by a person with whom the offeror or any persons acting in concert with the offeror has any arrangement of an indemnity or option nature, or any other agreement or understanding, formal or informal, of whatever nature, which might be an inducement to deal or refrain from dealing.

If in any of the above categories (a) - (c) there are no shareholdings, this fact shall be share.

If any party whose shareholdings are required by this paragraph to be disclosed has dealt for value in the shares in questions during the period beginning 6 months prior to the takeover offer period and ending with the latest practicable date prior to the publication of the takeover offer document, the details, including dates and prices, shall be share. If no such dealings have taken place, this fact shall be share.

Shares subject of takeover offer and dividends

5. Precise particulars of the securities in respect of which the takeover offer is made and a statement whether they are to be acquired cum or ex any dividend or other distribution which has been or may be declared.

Conditions of takeover offer

6. The price or other consideration to be paid for the securities.
7. All conditions attached to acceptances and in particular whether the takeover offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the takeover offer can become unconditional.
8. A statement whether or not the offeror intends to avail itself of any powers of compulsory acquisition.

Market prices of offeree company's shares

9. (a) The closing price on the securities exchange of the securities of the offeree company which are the subject of the takeover offer —
 - (i) on the latest practicable date prior to the posting of the takeover offer document; and
 - (ii) at the end of each of the calendar months during the period commencing 6 months preceding the commencement of the takeover offer period and ending on the latest practicable date prior to the posting of the takeover offer document.
- (a) The highest and lowest closing market prices with the relevant dates during the period commencing 6 months preceding the commencement of the takeover offer period and ending on the latest practicable date prior to the posting of the takeover offer document.

- (b) If any of the offeree company's securities are not listed on a securities exchange, any information available as to the number and price of transactions which have taken place during the period stipulated in subparagraph (a)(ii) should be share together with the source and, if the offeror has no such information, a statement to that effect.

Cash resources for takeover offer

10. Where the takeover offer is in cash, or includes an element of cash, the takeover offer document shall include confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the takeover offer.

Financial information

11. (a) In the case of an exchange of securities takeover offer the following information about the offeror -
- (i) for the last [3] financial years, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
 - (ii) a statement of the assets and liabilities shown in the last published audited accounts;
 - (iii) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (iv) details relating to the items referred to in (i) above in respect of any interim statement or preliminary announcement made since the last published audited accounts; and
 - (v) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures;

- (b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be share.
- (c) In a highly-leveraged takeover offer, the Authority may require that the takeover offer document contains a description of the financing arrangements.

Arrangements in connection with takeover offer

- 12. Details of any benefit which will be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the takeover offer.
- 13. Details of any agreement or arrangement between the offeror and any of the directors of the offeree company or any person which is conditional on the outcome of the takeover offer or otherwise connected with the takeover offer.

Regulatory obligations

- 14. A statement of the obligations of the offeror and the rights of the offeree company shareholders under regulations 12 (3) and (4), 16, 17, 18, 19, 20, 28 and 29.

Further information in cases of exchange of securities takeover offers

The following additional information shall be given by the offeror when it is offering its securities in exchange for the securities of the offeree company.

- 15. The nature and particulars of its business.
- 16. The date and country of its incorporation.
- 17. The address of its principal office in Kenya.
- 18. The issued share capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting.

19. Whether or not the shares being offered will rank pari passu with the existing issued shares of the company, and if not, a precise description of how the shares will rank for dividends and capital.
20. The number of shares issued since the end of the last financial year of the company.
21. The highest and lowest closing market prices in respect of the offeror's shares with the relevant dates during the period commencing 6 months preceding the commencement of the takeover offer period and ending on the latest practicable date prior to the posting of the takeover offer document.
22. Details of options, warrants and conversion rights affecting shares in the offeror company.
23. Details of any re-organization of capital during the two financial years preceding the date of the takeover offer.
24. Details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect.
25. Details of any material litigation to which the company is, or may become, a party.
26. Details of every material contract entered into by the offeror and its subsidiaries not more than two years before the date of the takeover offer, not being a contract entered into in the ordinary course of the business carried on or intend to be carried on by the company.
27. How and when the documents of title to the securities will be issued.
28. Whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree company or by any other associated transaction. If there will be no effect, this fact shall be share.

SCHEDULE 2

regulation 15

INFORMATION TO BE CONTAINED IN OFFEREE COMPANY'S REPLY DOCUMENT

The offeree company's document shall include the following information:

Views of offeree company board

1. Whether the directors of the offeree company recommend that the shareholders shall accept or reject the takeover offer, or a statement that the directors do not wish to make a recommendation (with reasons for the recommendation or for making no recommendation). A copy of the written advice of the offeree company's financial advisers shall also be given.
2. Whether the directors and any person dealing directly on their behalf intends to accept the takeover offer.

Directors' shareholdings in offeree company

3. The aggregate shareholdings in the offeror and in the offeree company in which the directors of the offeree company are interested shall be share. If any securities in the offeree company have been purchased or sold by such persons within 6 months before the announcement of the takeover offer, details of the numbers, prices and dates shall be given.

Shareholdings in the offeror

4. The shareholdings in the offeror company in which the following persons are interested:
 - (a) the offeree company, the offeree company's holding company and any subsidiary or fellow subsidiary;
 - (b) each director of the offeree company; and
 - (c) the offeree company's financial advisor, the advisor's holding company or any subsidiary or fellow subsidiary.

If any shares in the offeror company have been purchased or sold by such persons within 6 months before the announcement of the takeover offer, details of the numbers, prices and dates shall be given.

Share capital of offeree company

5. The issued share capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting.
6. The number of shares issued since the end of the last financial year of the offeree company.
7. Details of options, warrants and conversion rights affecting shares in the offeree company.
8. If any of the securities of the offeree company are not listed on a securities exchange, any information available as to the number and price of transactions which have taken place during the period commencing 6 months preceding the commencement of the takeover period and ending on the last practicable date prior to the posting of the takeover offer document should be share together with the source and, if the offeree has no such information, a statement to that effect.

Financial information

9. (a) The following information about the offeree company:
 - (i) for the last [3] financial years, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
 - (ii) a statement of the assets and liabilities shown in the last published audited accounts;
 - (iii) all material changes in the financial or trading position or prospects of the company subsequent to the last

published audited accounts or a statement that there are no known material changes;

(iv) details relating to items referred to in (i) above in respect of any interim statement or preliminary announcement made since the last published audited accounts; and

(v) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures;

(b) Where, because of a change in accounting policy, figures are not comparable to a material extent, this shall be disclosed and the approximate amount of the resultant variation shall be share.

Material contracts

10. Details of every material contract entered into by the offeree company and its subsidiaries more than two years before the date of the takeover offer, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the company.

Arrangements affecting directors

11. Details of any benefit to be given to any director or officer of the offeree company as compensation for loss of office or otherwise in connection with the takeover offer.

12. Details of any agreement between any director or officer of the offeree company and any other person that is conditional on the outcome of the takeover offer or otherwise connected with the takeover offer.

13. Details of any material contract entered into by the offeror in which any director or officer of the offeree company has a material personal interest.

Directors' service agreement

14. Details of any service contracts with the offeree company or any of its subsidiaries or associated companies in force for directors or officers of the offeree company which have more than 12 months to run, or which have been entered into or amended within 6 months before the announcement of the takeover offer.