

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2012 No. 55.

**THE CAPITAL MARKETS (TAKEOVERS AND MERGERS)
REGULATIONS 2012.**

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STATUTORY INSTRUMENTS

2012 No. 55.

The Capital Markets (Takeovers and Mergers) Regulations, 2012.

(Under sections 5 and 101 of the Capital Markets Authority Act Cap. 84)

IN EXERCISE of the powers conferred on the Capital Markets Authority by sections 5 and 101 of the Capital Markets Authority Act Cap. 84, these Regulations are made this 24th day of July, 2012.

PART I—PRELIMINARY

1. Title

These regulations may be cited as the Capital Markets (Takeovers and Mergers) Regulations, 2012.

2. Application

(1) These Regulations shall apply to the conduct of all takeover offers and mergers, whether voluntary or mandatory, made in respect of listed companies.

(2) All persons engaged in substantial acquisition of shares, takeover and merger transactions shall observe the general principles set out in part A of the Schedule 2

3. Interpretation

In these Regulations unless the context otherwise requires—

“Act” means the Capital Market Authority Act;

“acting in concert” means a person who pursuant to a formal or informal agreement or understanding actively co-operates through the acquisition by any of them, of shares having voting rights in a public listed company to obtain or consolidate control of that company;

“acquire” means a person who buys a stake in an already existing company;

“acquirer” means a person who, directly or indirectly, acquires or agrees to acquire shares, bonds or voting rights in the offeree or acquires or agree to acquire control over the offeree either by himself or with any person acting in concert with the acquirer;

“acceptable securities” means securities that fall within the definition of securities in the Act.

“associated person” has the same meaning as referred in section 2 of the Act;

“competing takeover offer” means an offer made by a person with respect to the offeree’s voting rights in response to an offer that has already been made to the offeree and that such other person shall be deemed to be the competing offeror;

“Convertible securities” means securities such as warrants, options and other securities that are issued by the offeror or offeree which are convertible into new voting rights of the offeror or offeree.

“counter offer” means a takeover offer made by an offeree to an offeror;

“currency point” has a meaning assigned to it in Schedule 1 of these Regulations;

“de-listing” means to remove the shares of a company from the official list of a stock exchange at which the shares are listed;

“effective control” means the acquisition of shares in a listed company which together with shares if any already held by the offeror or by any other person that is deemed to be associated or related to the offeror or by persons acting in concert with the offeror carry the right to exercise or control the exercise of not less than twenty five percent of the voting rights of the offeree;

“Independent advisor” means a person approved by the Authority who gives advice, makes recommendations, issues reports or furnishes analysis on securities either directly or through publications and includes the following—

- (a) an individual who has at least three years of investment related experience and meets certain standards of professional conduct laid down by a recognized institution; or
- (b) an individual who has an extensive economic investing background including in the fields of economics, accounting, securities analysis and money management;
- (c) a financial consultant being a person who has at least three years of experience in financial industry and has studied and passed examinations on financial planning investment or its equivalent from a recognized institution.

“escrow account” means an account opened at a bank to keep funds used to acquire the company as a commitment by the acquirer;

“listed company” means a company admitted to the official list of the stock exchange;

“merger” means an arrangement by which the assets of two or more companies become vested in or under the control of one company;

“offeror” in relation to a takeover scheme or a takeover offer means a person who acquires or agrees to acquire effective control in the offeree either directly or with any associate or related person or any person acting in concert with the offeror;

“offeree” in relation to a takeover scheme or a takeover offer means a listed company on the stock exchange with shares in which

- the scheme or offer relates;
- “offer period” means the period commencing from the date the offeror sends an offeror’s statement under regulation 5(4), until—
- (a) the first closing date of the takeover offer; or
 - (b) the date when the takeover offer becomes or is declared unconditional as to acceptances, lapses or is withdrawn, if that date is later than that referred to in paragraph (a).
- “Official List” means the register of listed securities maintained by the stock exchange;
- “related company” means a holding or subsidiary company of another company;
- “reverse takeover offer” means a situation where the offeror makes a takeover offer for the voting rights of an offeree by means of an exchange of shares such that if the takeover offer is accepted, the shareholders of the offeree would control the offeror;
- “substantial share holder” means a person who holds at least twenty five percent of the voting rights of the company;
- “takeover” includes a takeover and a merger transaction however effected and includes a similar schemes of arrangement that has similar commercial effect to takeover, merger and offer by a parent company for shares in its subsidiary.
- “takeover offer” means a general offer to acquire all voting rights in the offeree company and includes a takeover scheme;
- “takeover scheme” means a scheme involving the making of offers for acquisition by or on behalf of a person—
- (a) of all voting rights in the offeree company;
 - (b) of a percentage of shares in any company that results in

- the offeror acquiring effective control of the company; or
- (c) of any shareholding in a subsidiary of a company that entitles the acquirer to the distribution of earnings of the subsidiary amounting to 30% or more of the consolidated total earnings of the listed company.

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

PART II—ACQUIRING EFFECTIVE CONTROL

4. Acquiring effective control.

(1) A person shall not make an offer to acquire voting rights of a listed company which together with voting rights already held by that person or persons acting in concert or by associated person or persons or related company entitle that person to exercise effective control in the listed company without complying with the takeover procedure provided for under these Regulations.

(2) Where a person—

- (a) holds more than 15% but less than 50% of the voting rights of a listed company, and who acquires in any one year more than 5% of the voting rights of such company;
- (b) holds 50% or more of the voting rights of a listed company and acquires additional voting rights in the listed company;
- (c) acquires a company that holds effective control in the listed company or together with the voting rights already held by an associated person or related company, resulting in acquiring effective control; or
- (d) acquires any shareholding of 20% or more in a subsidiary of a listed company that has contributed 50% or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition, that a person shall be presumed to have a firm intention to make a takeover of that listed company and required to comply with the

procedure prescribed by regulation 5.

(3) A company that is already in control of 15% but less than 50% of the voting rights of a listed company may without the need to comply with the takeover procedures prescribed by regulation 6, acquire up to an additional 10% in any one year in that listed company up to a maximum of 50%.

PART III—TAKEOVER PROCEDURE

5. Takeover notice and statement.

(1) A person who intends or proposes to acquire effective control in a listed company shall within twenty four hours—

- (a) from the resolution of its board to acquire effective control in the company; or
- (b) after making a decision to acquire effective control in the company in the case of any other person, announce the proposed offer by press notice and serve a notice of intention, in writing of the takeover scheme containing the particulars set out in sub-regulation (2) to—
 - (i) The proposed offeree at its registered office;
 - (ii) The stock exchange at which the offeree's voting rights are listed; and
 - (iii) The Authority.

(2) The press notice referred to in sub-regulation (1) shall be made after the notice of intention has been served on the proposed offeree and state “that the person intends to acquire or has acquired effective control in the company and has given a notice of intention to make a takeover offer to the company or made application to the Authority for exemption from the takeover requirements, in compliance with this regulation” and shall include the following information in part B of Schedule 2-

- (a) the identity of the proposed offeror and all persons acting in concert with the proposed offeror;
- (b) the identity of the proposed offeree and the stock exchange at

which its shares are listed;

(c) whether the proposed offeror intends to make a takeover offer or apply to the Authority, for exemption from making a takeover offer;

(d) the type and total number of voting rights of the offeree—

(i) which have been previously acquired, held or controlled directly or indirectly by the offeror or a person acting in concert with the proposed offeror;

(ii) in respect of which the proposed offeror or a person acting in concert with the proposed offeror has received an irrevocable undertaking from other holders of voting rights to which the takeover relates to accept the takeover offer; and

(iii) in respect of which the proposed offeror or a person acting in concert with the proposed offeror has an option to acquire;

(e) where applicable, the details of any existing or proposed agreement, arrangement or understanding relating to voting rights referred to in paragraph (d) between the proposed offeror or a person acting in concert with the proposed offeror and the holders of the voting rights to which the takeover relates;

(f) the conditions of the takeover offer, including conditions relating to acceptance, listing and increase of capital;

(3) Where a person has acquired effective control in a company and has no intention of making a takeover offer, that person shall—

(a) make a public announcement containing information that is specified in sub regulation (2) including the broad reasons for

- exemption,
- (b) immediately after having served the notice in writing to the parties specified in sub regulation (1) that person shall apply to the Authority to seek exemption from the takeover requirements under regulation 5.

(4) The offeror shall serve on the offeree within ten days from the date of the notice of intention, an offeror's statement of the takeover scheme containing the information specified in Part C of the Schedule 2.

(5) Where there has been a press notice of an intention to make a takeover offer under sub regulation (1), the proposed offeror shall not withdraw the takeover offer without the prior written consent of the Authority.

(6) The Authority shall on application of the offeror, permit the offeror at any time prior to the offer being made to—

- (a) amend a notice or statement in writing lodged by the offeror under sub regulation (1) and (4); or
- (b) substitute fresh notice or statement in writing of an earlier notice or statement lodged with the offeree under sub regulation (1) or (4) in a manner and subject to the terms that the offeror considers justified by the circumstances of the case, but in any event, time shall begin to run from the date of the first notice or statement in writing.

6. Exemptions.

(1) The Authority may grant an exemption subject to sub regulation (4) in writing to a person or takeover offer or to any class or category or description of persons or takeover offers subject to any conditions, restrictions or limitations as may be imposed by the Authority.

(2) The granting of the exemption under this regulation shall serve the wider interests of the shareholders and the public.

- (3) The circumstances under which the Authority may grant

exemptions from complying with regulation 6 include—

- (a) acquisition for the purpose of strategic investment in a listed company that is tied up with management or any other technical support relevant to the business of the company;
- (b) a management buy-out involving a majority of the employees of the offeree;
- (c) restructuring of the listed company's share capital including acquisition, amalgamation and any scheme approved by the Authority;
- (d) acquiring a listed company in financial distress;
- (e) acquisition of effective control arising out of disposal of pledged securities;
- (f) maintaining domestic shareholding for a strategic reason; and
- (g) any other circumstances which in the opinion of the Authority may warrant an exemption.

(4) These regulations do not require a person who—

- (a) at the commencement of these Regulations, holds 15% or more of the voting rights of a listed company; or
- (b) holds 15% or more of the voting rights in an issuer applying for listing, at the date of listing, to comply with the takeover procedure provided under regulation 6.

7. Offeree's obligation.

(1) Upon receiving the offeror's statement under regulation 5(4), the offeree shall inform the relevant stock exchange and the Authority of this receipt and make an announcement by press notice of the proposed takeover offer within twenty-four hours after receipt of the statement.

(2) The offeree shall include in the press notice under sub regulation (1) all material information contained in the offeror's

statement.

8. Takeover offer.

(1) The offeror shall within fourteen days from the date of serving the offeror's statement made under regulation 6(4), submit to the Authority for approval, the takeover offer document in relation to the takeover offer which shall include information contained in Part D of Schedule 2, the prescribed fee contained in Schedule 3 and any other information that the Authority may require.

(2) The Authority shall make a decision on the offer document within thirty days where the documents are in compliance with the requirements of these Regulations or such other time as may be determined by the Authority except that where the Authority has determined that it is not possible to grant approval within thirty days it shall advise the offeror of the position.

(3) The offer document approved by the Authority shall include the following statement prominently displayed on the first page of the offer document—

“The Capital Markets Authority has approved this document as being compliant with the requirements pertaining to the takeover offer document under the Capital Markets Takeover and Mergers Regulations, 2012.

As a matter of policy, the Capital Markets Authority assumes no responsibility for the correctness of any statements or opinions made in this takeover offer document.

Approval of this takeover document is not to be taken as an indication of the merits of this offer or a recommendation by the Authority to the offeree's shareholders.

If you are in doubt about this offer, you should consult the independent adviser appointed by your board of directors, your broker or other professional advisor.”

(4) The takeover offer document shall be served by the offeror on the offeree within five days from the date of approval of the takeover

document by the Authority.

(5) The offeree shall within fourteen days from the receipt of the approved takeover document circulate to its shareholders the takeover offer document and the independent advisor's circular required under regulation 12.

9. Requirements for takeover offer.

(1) The Takeover offer document shall be dated and shall state that unless varied under regulation 18, it will remain open for acceptance by the offeree for thirty days from the date of service of the takeover offer document by the offeror.

(2) The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or given to any director of the offeree or any other person that is deemed to be related to the offeree as compensation for loss of office or as consideration for, or in connection with, his or her retirement from the office.

(3) The offer shall state—

- (a) whether or not the offer is conditional upon acceptance of the offer under the takeover scheme, being received in respect of a minimum number of issued voting rights of the offeree and if so, that minimum;
- (b) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment;
- (c) if the shares are to be acquired through a share exchange the proportion of the share exchange and the period within which the offeree's shareholders shall receive the new shares;
- (d) whether the offer is conditional upon maintenance of a minimum percentage of share holding by the general public to satisfy the continuing eligibility requirements for listing; and
- (e) the circumstances that shall apply if the conditions in (a) – (d)

are not fulfilled.

10. Offeree comments on the statement and takeover offer.

(1) Subject to the independent advice required under regulation 12, the board of directors of the offeree company shall within fourteen days after receipt of the takeover offer document under regulation 9(4), issue a statement in form of a circular to the holders of voting rights in the offeree company to which the takeover offer relates, in which it will indicate whether or not the board of directors of the offeree company recommend to holders of the voting rights—

- (a) the acceptance of the takeover offer made;
- (b) the offeror under the takeover scheme; and
- (c) the information contained in Part E of Schedule 2.

(2) The board of directors of the offeree shall disclose in the statement referred to in sub regulation (1) to each holder of the voting rights to which the takeover offer relates all comments and information that the holders of those voting rights and their professional advisers would reasonably require, and would reasonably expect to find in the statement or for the purpose of making an informed assessment as to the merits of accepting or rejecting the takeover offer and the extent of the risks involved in doing so.

(3) Without prejudice to the general effect of sub regulation (2), the statement shall include, but is not limited to, such comments and information on—

- (a) the offeror's stated intentions regarding the continuation of the business of the offeree;
- (b) the offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the offeree, sell its assets or re-deploy the fixed assets of the offeree or make any other major changes in the structure of the offeree;
- (c) the offeror's stated long term commercial justification for the

- proposed takeover offer;
- (d) the offeror's stated intentions with regard to the continued employment of the board of directors, management and employees of the offeree and of its subsidiaries;
 - (e) the reasonableness of the takeover offer, including the reasonableness and accuracy of profit forecasts for the offeree, if the forecast is included by the offeror in the offer document; and
 - (f) any other relevant information.

11. Independent advisor.

(1) The board of directors of the offeree shall appoint an independent advisor approved and licensed by the Authority, on receipt of the offeror's statement under regulation 5(4) in relation to the takeover offer.

(2) the independent advisor appointed under sub regulation (1) shall be an investment advisor or a broker or dealer.

(3) The substance of the advice must be made known to the holders of the class of the shareholders to which the takeover offer relates, in a statement by the offeree to its shareholders.

(4) The board of directors of the offeror shall appoint an independent advisor where the takeover offer being made is a reverse takeover or where the board of directors of the offeror is faced with a conflict of interest situation.

(5) The substance of the advice given to the board of directors of the offeror under sub regulation (2) shall be made known to all the offeror's shareholders.

(6) In the case of a reverse takeover, the board of directors of the offeror shall obtain approval of the holders of voting rights of the offeror for the reverse takeover prior to posting of the offer document to all

holders of voting rights of the offeree to which the takeover relates.

(7) Where the offeror has convertible securities outstanding, the appointed independent advisor shall make known its advice to the holders of those securities, together with the views of the board of directors of the offeror or of the offeree, as the case may be, on the takeover offer or proposal.

(8) The independent advisor's circular shall be sent to the board of directors of the offeree and the Authority prior to being served on the offeree's holders of voting rights to which the takeover offer relates.

(9) The statement required to be sent by the board of directors of the offeree to the offeree shareholders shall be posted to the relevant holders of the voting rights within fourteen days from the date of the offer document being served in accordance with regulation 9(4).

(10) The independent advisor shall disclose all the information in the independent advice as the holders of the voting rights of the offeror, the board of directors of the offeree and all holders of voting rights to which the takeover offer relates and their professional advisors would reasonably require, and would reasonably expect to be informed about, the purpose of making an informed assessment as to the merits of accepting or rejecting the takeover offer and the extent of the risks involved in doing so.

(11) The information required by sub regulation (8) to be included in the circular shall be—

- (a) information which is within the knowledge of the board and of the independent advisor; and
- (b) information which the independent advisor would be able to obtain by making the enquiries as was reasonable in the circumstances.

(12) Subject to sub regulation (9), a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence of which, an employee or agent of the person having duties or acting on behalf of the employer or principal was aware

of at that time.

(13) Without prejudice to the general effect of sub regulation (9), an independent advisor shall include in the circular to the board of directors of the offeree and the offeree shareholders all information and statements required under Part F of Schedule 2.

12. Requirements for independent advisor.

A person shall not be eligible to be appointed as an independent advisor under regulation 11 where that person—

- (a) has an interest of 10% or more of the voting rights of an offeror or offeree at the present time or at any time during the preceding 12 months;
- (b) has a substantial business relationship with the offeror or offeree at the present time or at any time during the preceding 12 months;
- (c) being a company, has a director on its board of directors who is also a director on the board of directors of the offeror, if the offeror is a company or on the board of directors of the offeree, as the case may be;
- (d) is involved in financing the offer by the offeror;
- (e) is a substantial creditor of either the offeror or the offeree, a person is deemed a substantial creditor if:
 - the loan extended represents more than 10% of the loan outstanding in the offeror or the offeree-
 - (i) the loan extended to either the offeror or the offeree represents more than 10% of the latest shareholders' funds of the person based on the latest audited accounts;
 - (ii) the applicant is a lead banker in a syndicated loan extended to either the offeror or the offeree in the last 3

years;

- (f) has a financial interest in the outcome of the takeover offer other than as outlined in paragraphs (a) to (d) above; or
- (g) has been an advisor in planning or restructuring of the offeror or offeree including acquisitions, at any time during the period of 12 months immediately prior to the date of announcement of the takeover offer.

13. Offer to dissenting shareholders.

Where a takeover results in the offeror acquiring 90% of the offeree's voting rights, the offeror shall offer the remaining shareholders a consideration that is equal to the prevailing market price of the voting rights or the price offered to the other holders, whichever is higher

14. Competing takeover.

(1) Where a decision has been reached to make a competing takeover offer, all provisions relating to the takeover procedures shall apply to the competing offer except the notice period.

(2) The competing offeror shall serve the takeover offer document required under regulation 9(4) provided that the document is served at least 10 days prior to the closure of the offer period.

(3) The period under sub regulation (2) applies to any revisions that may be made to the competing offer.

PART IV—TIMING OF OFFER

15. Offer period.

An offeror must keep a takeover offer open for acceptances for a period of thirty days from the date the takeover offer document is first served in accordance with regulation 8(4) or a period as may be determined by the Authority.

16. Conditional offer.

Where the offer is conditional upon acceptances in respect of a minimum percentage of shares being received, the offer shall specify a date not

being more than 30 days from the date of service of the takeover offer or a later date as the Authority may in a competitive situation or special circumstances allow as the latest date on which the offeror can declare the offer to have become free from that condition.

17. Variation of takeover offer.

(1) An offeror may vary the terms and conditions of a takeover offer including increasing the consideration offered to the whole or part of it, but the variation shall be made at least 5 days prior to the closure of the offer period.

(2) The varied takeover offer document shall set out in an appropriate form particulars of the modification of the offeror's statements and information required under part B of Schedule 2 as are necessary having regard to the variations.

(3) The offeror shall serve the varied takeover offer document on the offeree, the Authority and the stock exchange within twenty four hours of making the decision to vary the takeover offer, and upon approval from the Authority, the offeror shall make a public announcement by press notice disclosing material variations to the offer.

18. Withdrawal of offer.

(1) An offeror shall not withdraw a takeover offer without the prior written approval of the Authority.

(2) Where a takeover offer has been withdrawn, the offeror and a person acting in concert or associated with or related to the offeror, shall within 12 months from the date on which the takeover offer was withdrawn not—

(a) make a takeover offer for voting rights that had been the subject of the previous takeover offer; or

(b) acquire any additional voting right of the offeree other than as

provided under regulation 4.

(3) For each month, for a period of 12 months from the date on which the take-over offer is withdrawn, the offeror and all persons acting in concert or associated with or related to this offeror shall furnish the Authority with details of any acquisition by the offeror and persons acting in concert or associated with or related to the offeror of any share of the offeree including any option to acquire any share of the offeree.

(4) Withdrawal of a takeover offer may occur under the following circumstances—

- (a) where the offeree shareholders have rejected the offer;
- (b) where events satisfactory to the Authority occur rendering either the offeror or offeree; both incapable of fulfilling their obligations under the takeover offer; or
- (c) in the case of a counter offer which is accepted by the offeror.

19. Closing of takeover offer.

(1) A takeover offer shall be deemed to close on the last day of the offer period.

(2) A shareholder in the offeree may withdraw acceptance out of his or her own volition at any time before the closing of the offer.

20. Pro-rata Acceptances.

For the purposes of this Regulation “pro rata acceptance” means an allocation of acceptance by the offeror in the proportion of the total number of shares accepted by each offeree shareholder in relation to the percentage upon which the offer was conditional.

21. Announcement of acceptances.

The offeror shall inform the Authority and the stock exchange within ten days after the closure of the offer and announce by way of press notice the total number of voting rights to which the takeover offer relates—

- (a) for which acceptances of the take-over offer have been received after having been served with the takeover offer

- document by the offeror to offeree shareholders in accordance with regulation 8(4);
- (b) held by the offeror and all persons acting in concert with the offeror at the time of serving the offer document to the offeree shareholders in accordance with sub regulation 8(4);
 - (c) acquired or agreed to be acquired during the offer period; and
 - (d) the shareholding structure of the offeree subsequent to the offer.

PART V—OBLIGATIONS OF OFFEROR IN RELATION TO OFFER

22. Identity of offeror.

(1) A person shall not initiate discussions or negotiations with any person in relation to a takeover offer without disclosing the identity of—

- (a) the proposed offeror and all persons acting in concert or associated with or related to the proposed offeror; or
- (b) the ultimate offeror, if applicable.

(2) In this regulation, “ultimate offeror” includes—

- (a) a person in accordance with whose directions and instructions proposed offeror or any person acting in concert with the proposed offeror is accustomed to act;
- (b) a person who has an interest in the proposed takeover offer in accordance with;
- (c) an agreement, arrangement or understanding with the proposed offeror.

23. Evidence of ability to implement the takeover offer.

(1) A person required to make an announcement under regulation 21 shall ensure that the person’s financial advisor is reasonably satisfied that:

- (a) the takeover offer would not fail due to insufficient financial capability of the offeror; and
- (b) every offeree shareholder who wishes to accept the takeover offer will be paid in full.

(2) A person who has no intention of making an offer in the nature of a takeover offer shall not give notice or publicly announce that the person intends to make a takeover offer.

(3) A person shall not make a takeover offer or give notice or publicly announce that the person intends to make such an offer where it has no reasonable or probable grounds for believing that it will be able to perform its obligations if the offer is accepted.

24. Escrow account.

(1) An offeror shall before complying with the issue of a press notice in regulation 6 by way of security for the performance of his or her obligations under these Regulations, deposit in an escrow account the sum specified in sub-regulation (2).

(2) The escrow account amount shall be 10% of the total consideration payable.

(3) The total consideration payable shall be calculated assuming full acceptances, irrespective of whether the consideration for the offer is payable in cash or otherwise.

(4) The escrow account referred to in sub-regulation (1) shall be in the form of—

- (a) a cash deposit with a commercial bank;
- (b) a bank guarantee in favor of the offeree that is payable on demand; or
- (c) deposit of acceptable securities with appropriate margin, with a commercial banker.

(5) A bank reported to in sub regulation (1) shall be one licensed under the Financial Institutions Act.

(6) Where the escrow account consists of a deposit with a commercial bank, the offeror shall while opening the account, empower the independent advisor appointed for the offer to instruct the bank to issue a banker's cheque or demand draft for the amount lying to the credit of the escrow account.

(7) Where the escrow account consists of a bank guarantee, that bank guarantee shall be in favor of the offeree company and valid for at least a period commencing from the date of public announcement until 30 days after the closure of the offer.

(8) The offeror shall, where the escrow account consists of securities, empower the commercial bank to realize the value of the escrow account by sale or otherwise, except that, where there is any deficit on the realisation of the value of the securities, the commercial bank shall be liable to make good the deficit.

(9) Where the escrow account consists of a bank guarantee or approved securities, they shall not be returned until after completion of all obligations under these Regulations.

(10) Where there is any upward variation of an offer, consequent upon a competitive bid or otherwise, the value of the escrow account shall be increased to equal at least 10% of the consideration payable upon that variation.

(11) Where the escrow account consists of a bank guarantee or deposit of approved securities, the offeror shall also deposit with the bank a sum of at least 1% of the total consideration payable, as and by way of security for fulfillment of the obligations under these Regulations by the offeror.

(12) The Authority shall in case of non-fulfillment of obligations under these Regulations by the offeror forfeit the escrow account either in full or in part.

(13) The escrow account deposited with the bank in cash shall be released only in the following manner—

- (a) the entire amount to the offeror upon withdrawal of the offer with the approval of the Authority;
- (b) to the offeror on completion of all obligations under these Regulations, and upon certification by the investment advisor where the offer is for exchange of shares or other secured instruments;
- (c) the entire amount to the commercial bank, in the event of forfeiture for non fulfillment of any of the obligations under these Regulations, for distribution to the target companies, the stock exchange and to the shareholders who had accepted the offer in the following manner, after deduction of expenses, if any, of the commercial bank and the registrars to the offer—
 - (i) one third of the amount to the target company;
 - (ii) one third of the amount to the Authority for credit investor education, research, grievance redressal and similar purposes as may be specified by the Authority from time to time;
 - (iii) the residual one third to be distributed pro-rata among the shareholders who have accepted the offer.

25. Payment of consideration.

(1) In case of non fulfillment of the obligations under these regulations by the offeror, the commercial bank shall ensure realization of the escrow amount by way of foreclosure of deposit, invocation of bank guarantee or sale of securities.

(2) For the amount of consideration payable in cash, the offeror shall, with in a period of 21 days from the date of closure of the offer, open a special account with a commercial bank and deposit in it a sum that would, together with the amount lying in the escrow account, if any, make up the entire sum due and payable to the shareholders as

consideration for acceptances received and accepted in terms of these Regulations and that purpose, transfer the funds from the escrow account.

(3) The unclaimed balance standing to the credit of the account referred to in sub regulation (2) at the end of three years from the date of deposit of that amount, shall be transferred to a fund of the Authority for use as the Authority may determine.

(4) In respect of consideration payable by way of exchange of securities, the offeror shall within 30 days from the date of closure of the offer, ensure that the securities are actually issued and dispatched to the shareholders.

(5) The offeror shall within a period of 21 days from the date of closure of the offer, complete all procedures relating to the offer including payment of consideration to the shareholders who have accepted the offer.

(6) Where the offeror is unable to make payment to the shareholders within a period of 21 days due to non receipt of the requisite statutory approvals, the Authority may, if satisfied that such non receipt of approvals was not due to willful default of the offeror or failure of the offeror to diligently pursue the application for such approval, grant an extension of time for the purpose subject to the offeror agreeing to paying interest to the shareholders for delay beyond 21 days as may be specified by the Authority.

26. Favourable deals.

The offeror shall not enter into any agreement, arrangement or understanding to deal in or make purchases or sales of voting rights of the offeree, either during a takeover offer or when such a takeover offer is reasonably in contemplation by the offeror, if such agreement, arrangement or understanding to deal have attached to them favorable conditions which are not being extended to all offeree shareholders.

27. Convertible securities.

(1) Where a takeover offer is made for the voting rights of an offeree and the offeree has issued convertible securities, the offeror shall

make a takeover offer to purchase those securities and shall make appropriate arrangements to ensure that the interests of holders of convertible securities are safeguarded.

(2) The offeror shall serve the takeover offer document to purchase the securities referred to in subregulation (1) to the holders of the convertible securities at the same time that the takeover offer document is served on the offeree shareholders in accordance with regulation 8(4).

(3) The takeover offer to holders of convertible securities referred to in sub regulation (1) may be affected by way of a scheme approved at the meeting of the holders of the convertible securities.

28. Sales and disclosure by the offeror during the offer period.

(1) The offeror shall not sell any voting rights to which the offer relates during an offer period

(2) A person acting in concert with the offeror shall not sell any voting rights or assign any voting rights to which the takeover relates other than to the offeror.

(3) The following persons shall disclose the total number and price of all voting rights of the offeror and offeree which are dealt in for their own account—

- (a) the offeror and all persons acting in concert with the offeror;
- (b) any chief executive, a director or an officer of the offeror who occupies or acts in a senior managerial position in the offeror, by whatever name called and whether or not he or she is a director;
- (c) a person who is an associated person in relation to persons referred to in paragraphs (a) and (b); and
- (d) a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraphs (a), (b), or (c).

(4) The disclosure under subsection (3) shall be made to the relevant stock exchange and the Authority and announced by way of a press notice, within 24 hours after relevant transaction.

(5) All dealings in voting rights of the offeror and offeree made by an associated person for the account of investment clients who are themselves not associated persons shall be similarly disclosed to the relevant securities exchange and the Authority at such time and in such manner as is provided in sub regulations (3) and (4) respectively.

PART VI—OBLIGATIONS OF OFFEREE IN RELATION TO OFFER

29. Information to be provided by offeree to offeror

An offeree shall provide the offeror with the following information—

- (a) a list and addresses of the offeree's shareholders;
- (b) published annual accounts and reports including the latest half-yearly results of the offeree and its subsidiaries; and
- (c) a copy of the competing offeror's statement in the case of a competing offer.

30. Frustration of offers by the offeree.

(1) The offeree shall not after contact with the offeror or its agents or in any event on receipt of the notice of intention of takeover offer under regulation 6(1), if the offeree has reason to believe that a bona fide takeover is imminent, or during the course of a takeover offer—

- (a) issue any authorized but unissued shares of the offeree;
- (b) issue or grant options in respect of any unissued shares of the offeree;
- (c) create or issue or permit the creation or subscription of any shares of the offeree;
- (d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of the offeree or any of its subsidiaries; or

(e) enter into or allow contracts for or on behalf of the offeree to be entered into otherwise than in the ordinary course of business of the offeree.

(2) Subregulation (1) shall not apply if the transactions referred to in paragraphs (a) to (e) of that subregulation have arisen under a bona-fide contract which has been entered into prior to the time when those obligations arose, subregulation (1) and which is not designed to frustrate a takeover offer or change the activity of the offeree.

31. Disclosure of dealings by the offeree.

(1) During the offer period, the total number and price of all voting rights of the offeror and the offeree which are dealt in by the following persons shall be disclosed by them respectively—

(a) the offeree;

(b) substantial shareholders of the offeree;

(c) any chief executive, a director or officer of the offeree who occupies or acts in a senior managerial position in the offeree, by whatever name called, and whether or not he is a director;

(d) a person who is an associated person in relation to persons referred to in paragraphs (a), (b), and (c); and

(e) a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraph (a), (b), (c) or (d)

(2) The disclosure under sub regulation (1) shall be made to the relevant stock exchange and the Authority and announced by way of press notice within 24 hours of the transaction, after the trading hours.

(3) All dealings in voting rights of the offeror or the offeree made

by an associated person for the account of investment clients who are not themselves associated persons shall be similarly disclosed to the relevant stock exchange and the Authority, at such time and in such manner as provided in sub regulations (1) and (2) respectively.

32. Restrictions on dealings before and during the offer.

(1) On completion of the takeover offer, the offeree shall ensure prompt transfer of the accepted voting rights to the offeror in the register of members maintained as required under the rules of the stock exchange or the Securities Central Depositories Act, 2009 (Act 2 of 2009) in the case of electronic transfer and registration.

(2) During an offer period—

- (a) the offeror and persons acting in concert with the offeror shall not deal in any securities in the offeree company except with the prior approval of the Authority and in case of a listed company, after issuing a one working public day notice to the stock exchange; and
- (b) the offeror and persons acting in concert with him, shall not deal in shares traded on a stock exchange for which there is no cash alternative.

(3) Where discussions are terminated or the offeror decides not to proceed with an offer after an announcement has been made that offer discussions are taking place or that an approach or offer is contemplated, a person privy to that information shall not deal in securities of the offeree company prior to an announcement of the position. (restrictions on dealings before and during the offer).

PART VII—MISCELLANEOUS

33. False or misleading information.

(1) A person shall not—

- (a) provide or cause to be provided to the holders of voting rights or their professional advisors any document or information in

- a takeover offer that is false or misleading;
- (b) provide or cause to be provided to the holders of voting rights or their professional advisors any document or information in a takeover offer from which there is material omission; or
 - (c) engage in conduct relating to a takeover offer which is misleading or deceptive or is likely to mislead or deceive holders of voting rights or their professional advisors.

(2) Where information or a document has been circulated or provided to holders of voting rights or their professional advisors and the person who provided the information or document, or engaged in the conduct becomes aware that—

- (a) the document or information—
 - (i) was false or misleading; or
 - (ii) contains a material omission;
- (b) the conduct in question was misleading or deceptive, the person shall immediately disclose the fact to the Authority and the relevant stock exchange and make an announcement by way of press notice containing such matters as were necessary to correct the false or misleading matter, the omission, or conduct, as the case may be.

34. Submission of information and compliance with directions.

A person involved in a takeover scheme, merger or compulsory acquisition shall submit such information to the Authority as the Authority may require from time to time.

35. Offences and penalties.

- (1) Where any person—
 - (a) refuses or fails to furnish any document, paper or information

which he or she is required to furnish by or under these Regulations;

- (b) refuses or fails to comply with any order or direction of the Authority made or issued under these Regulations; or
- (c) contravenes or otherwise fails to comply with the provisions of these Regulations, the Authority may, if it is satisfied after giving the person an opportunity of being heard, that the refusal, failure or contravention was willful, impose a civil penalty or a sum of money not exceeding two hundred currency points as may be specified in the order.

(2) In case of a continuing default, the Authority may impose a further sum calculated at a rate of five currency points for every day after the issue of the order during which the failure or contravention continues.

36. Suspension of trading during takeover.

In the event of a takeover, no trading of shares of the security of the offeree shall be suspended except for the purpose of enabling the offeree to disclose information on the takeover or as may be directed by the Authority for the purpose of obtaining material information on the offer.

37. Issuance of shares in a subsidiary.

(1) No issuance of shares of a subsidiary of a listed company comprising—

- (a) twenty five percent or more of the share capital of that subsidiary; or
- (b) ten percent or more of the share capital of the subsidiary, that has contributed to twenty five percent or more to the average turnover in the latest three financial years of the listed company (preceding the proposed issuance of shares),

shall be made without full disclosure through an information circular to the shareholders of the listed company, of all relevant information

relating to the transaction for which the shares are being issued subject to the prior approval of the issue of such shares by the Authority.

(2) The information circular referred to in paragraph (b) shall be subject to prior approval by the Authority

38. Issue of shares in a subsidiary de-listing.

(1) Any person who directly or indirectly controls the exercise of seventy five percent or more of the votes attached to the voting rights of a company listed at the stock exchange shall upon the passing of a resolution in the manner prescribed in subregulation (2) to remove the shares from the official list of the stock exchange at which the shares are listed, be taken to have an intention to takeover that company and shall immediately apply the procedures prescribed for takeover as a pre-condition to the removal from listing.

(2) A security of a listed company shall not be de-listed unless—

- (a) there is a special resolution at which a minimum of 75% of security holders of the company are represented; or
- (b) there is no objection to the proposed withdrawal from at least 10% of the holders of the security and with the approval of the Authority.

(3) The Authority may require the delisting by reason of non-compliance with the listing requirements.

(4) Subject to these Regulations, the listed company shall notify the Authority and the relevant stock exchange and make an announcement through a press notice within twenty four hours after the decision by its board of directors to recommend to the holders of any listed security the delisting of that security but the announcement shall state that the delisting shall be subject to the approval of the Authority.

39. Extension of time.

The Authority may extend the time for compliance with any provision of these Regulations.

40. Establishment of a takeover committee.

(1) The Authority may establish a subcommittee that shall consider all applications with respect to substantial acquisitions, mergers and takeovers and advise the Authority accordingly.

(2) The committee shall consist of members of the Authority and at least two other qualified persons as shall be appointed by the Authority.

(3) Where a committee has been established under subregulation (1), the chief executive of the stock exchange shall be invited to the meetings of the committee.

(4) The sub-committee in exercise of its delegated responsibility may invite the offeror, the offeree, the independent advisor or any other person whose input is necessary for the purposes of facilitating the takeover.

(5) The decision of the committee shall be subject to the approval of the Authority.

(6) Where the application has been disapproved, the Authority shall give reasons for the disapproval.

SCHEDULE 1

Regulation 3

A currency point is equivalent to twenty thousand shillings.

SCHEDULE 2

regulation 3 (2)

PART A - GENERAL PRINCIPLES FOR CONDUCT OF SUBSTANTIAL ACQUISITIONS, TAKEOVERS AND MERGERS

The fundamental principles of mergers, acquisitions and takeovers which is the objective of these Regulations and to which all persons exercising powers under, applying or interpreting these Regulations are to have regard to are—

1. Equality of treatment.

All shareholders shall be treated equally and shareholders of the same class are to be treated similarly.

2. Offer.

If control of a company changes or a company is acquired or is merged, a general offer to all other shareholders is required.

3. Information to shareholders.

During the course of an offer or where an offer is in contemplation, neither an offeror nor the offeree company or any of their respective advisers may furnish information to some shareholders that is not available to other shareholders.

4. Announcements.

(1) An offeror shall announce an offer only after careful and responsible consideration and this shall apply to acquisitions which may lead to an obligation to make a general offer.

(2) The offeror and its financial advisers should be satisfied that it can and will continue to be able to implement the offer in full.

5. Sufficiency of information and time.

(1) Shareholders shall be given sufficient information, advice and time to

reach an informed decision on an offer and relevant information shall not be withheld.

(2) Documents and advertisements issued in connection with acquisition, takeovers and mergers shall be prepared with the highest possible degree of care, responsibility and accuracy.

6. Full and prompt disclosure.

(1) All persons concerned with acquisitions, takeovers and mergers shall make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of an uninformed market.

(2) Parties involved in offers must take care that statements are not made which mislead shareholders of the market.

7. Protection of the minority.

Rights of control should be exercised in good faith and the oppression of minority or non controlling shareholders is prohibited.

8. Duties of directors.

Directors should have regard to the interests of the shareholders as a whole and not to their own interests or those derived from personal and family relationships and the shareholders they represent.

9. Independent advice.

A board which receives an offer or is approached with a view to an offer being made shall seek independent advice in the interests of the company's shareholders.

10. Limitation on directors' action.

The boards of an offeror and of an offeree company and their respective advisers and associates have a primary duty to act in the best interests of their shareholders, they shall observe limitations in connection with acquisitions, takeovers and merger transactions on the manner in which the pursuit of those interests can be carried out.

11. No frustration of offer by offeree board.

At no time after a bonafide offer has been communicated to the board of the offeree company or after the Board of the offeree company has reason to believe that a *bonafide* offer might be imminent, may any action be taken by the Board of the offeree company in relation to the affairs of the company without the approval of shareholders at a general meeting.

12. Uniformity of offer terms.

Where an acquisition, takeover or merger transaction is reasonably in contemplation or where a written offer has been made to or shares have been purchased from one or more shareholders of an offeree company, any subsequent general offer made by or on behalf of the same offeror or any person acting in concert with it, to the shareholders of the same class shall not be on less favourable terms.

13. Prospectus standard.

(1) All documents shall be prepared with the same standard of care as if it were a prospectus and this shall apply irrespective of whether the document is issued by the company or by an adviser on its behalf or by any other person in relation to an offer.

(2) Persons who issue any document referred to in subparagraphs (1) shall ensure that it remains accurate and up to date throughout the offer period and shall notify shareholders of any material change as soon as possible.

14. Cooperation with Authority.

All parties concerned with acquisitions, takeovers and mergers are required to cooperate to the fullest extent with the Authority and to provide all relevant information.

PART B - INFORMATION REQUIRED TO BE INCLUDED IN THE PUBLIC ANNOUNCEMENT OF AN OFFER

1. The public announcement referred to in these Regulations shall contain the following information:

- (a) the identity of the acquirer, and if the acquirer is a company the name, incorporation or registration number, the identity of the promoters and or the persons having control over such companies and the group if any to which the companies belong;
- (b) the total number and percentage of shares proposed to be acquired from the public, subject to a minimum number of shares to be acquired under these Regulations;
- (c) the minimum offer price for each fully paid up share;
- (d) the mode of payment of the consideration;

- (e) the paid up share capital of the offeree, the number of fully paid up and partly paid up shares;
- (f) the existing holdings of the acquirer in the shares of the offeree, including holdings of persons acting in concert with him or her (if any);
- (g) salient features of the agreement, such as the date, the name of the seller, the price at which the shares are being acquired, the manner of payment of the consideration and the number and percentage of shares in respect of which the acquirer has entered into the agreement to acquire the shares or the consideration, monetary or otherwise for the acquisition of control over the offeree as the case may be;
- (h) the highest and the average price paid by the acquirer or persons acting in concert with him or her for acquisition, of any of the shares of the offeree made by him or her during the twelve month period prior to the date of the public announcement;
- (i) the object and purpose of the acquisition of the shares and future plans, if any, of the acquirer for the offeree, including disclosure whether the acquirer proposes to dispose of or otherwise encumber any assets of the offeree in the succeeding two years except in the ordinary course of business of the offeree, except that where the future plans are set out, the public announcement shall also set out how the acquirer proposes to implement those future plans;
- (j) the date of determining names of shareholders to whom letters of offer would be sent;
- (k) the date by which individual letters of offer would be posted to each of the shareholders;
- (l) the date of opening and closure of the offer and the manner in which and the date by which, the acceptance or rejection of the offer would be communicated to the shareholders;
- (m) the date by which the payment of consideration would be made for the shares in respect of which the offer has been accepted;

- (n) disclosure to the effect that firm arrangement for financial resources required to implement the offer is already in place, including details regarding the sources of the funds whether domestic that is from banks, financial institutions, or otherwise or foreign;
- (o) the name of the bank where the escrow account required under regulation 25 is maintained;
- (p) provisions for acceptance of the offer by persons who own the shares but are not the registered holders of shares;
- (q) statutory approvals, if any, required to be obtained for the purpose of acquiring the shares under the Companies Act, the Act and any other applicable laws; and
- (r) any other relevant information as is essential for the shareholder to make an informed decision with regard to the offer.

PART C - INFORMATION REQUIRED TO BE INCLUDED IN THE OFFEROR'S STATEMENT OF INTENTION

1. The statement shall contain the following—
 - (a) Date and signature of two directors of the offeror.
 - (b) Names, descriptions, and addresses of all directors of the offeror.
 - (c) A summary of the principle activities of the offeror company.
 - (d) A list of major shareholders and subsidiaries of the offeror.
 - (e) A summary of audited financial statements, in particular—
 - (i) balance sheet;
 - (ii) income statement;
 - (ii) statement of the changes in equity;
 - (iv) cash flow statement; and
 - (v) basic and diluted earnings per share.
 - (f) The number, description and amount of marketable securities in the

offeree held by or on behalf of the offeror, or if none are so held, a statement to that effect.

2. If the consideration for the acquisition of shares under the takeover scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be made to secure payment of the cash consideration and if no such arrangements have been or will be made, shall contain a statement to that effect.

3. If the consideration for the acquisition of shares under the takeover scheme is to be satisfied in whole or in part by a share exchange, the statement shall contain details of the arrangements that have been, or will be made to transfer the shares and the proportion of the shares being exchanged, and if no such arrangements have been or will be made, shall contain a statement to that effect.

4. The statement shall set out whether or not it is proposed in connection with the takeover scheme that any payment or other benefit shall be made or given to any director of the offeree or of any company which related to the offeree or as—

- (a) consideration for, or in connection with, his or her retirement from office and if so, particulars of the proposed payment or benefit in respect of the director.
- (b) whether or not there is any other agreement or arrangement made between the offeror and any of the directors of the offeree in connection with or conditional upon the outcome of the scheme, and if so, particulars of any agreement or arrangement.
- (c) whether or not there has been within the knowledge of the offeror any material change in the financial position or prospects of the offeree since the date of the last balance sheet laid before the offeree in the general meeting and if so, particulars of any such change.
- (d) whether or not there is any agreement or arrangement by which any shares acquired by the offeror in accordance with the scheme will or may be transferred to any other person, and if so—
 - (i) the names of the persons who are party to the agreement or arrangement and the number, description of the shares which will or may be so transferred; and

- (ii) the number, if any, and description and amount of shares of the offeree company held by or on behalf of each of those persons, or if no such shares are so held, a statement to that effect.

5. Paragraph 1 to 4 apply where the consideration to be offered in exchange for the shares of the offeree consists in whole or in part of marketable securities issued or to be issued by the offeror or by any company.

6. Where the marketable securities are quoted or dealt in on a securities exchange, the statement shall state that fact and specify the stock exchange concerned and indicate—

- (a) The latest available market sale price prior to the date on which notice of the takeover scheme is given to the offeree.
- (b) The highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales including the latest market sale price immediately prior to the public announcement.
- (c) Where the securities are listed in more than one securities exchange, it is sufficient compliance with paragraph 5 if information with respect to the securities is given in relation to the stock exchange at which there have been the greatest number of recorded dealings in the securities in the three months immediately preceding the date on which the notice of the takeover scheme is given to the offeree.

PART D - INFORMATION REQUIRED TO BE INCLUDED BY THE OFFEROR IN A TAKEOVER OFFER DOCUMENT

regulation 8

1. The offeror shall disclose in the offer document all such information as the offeree shareholders and their professional advisors would reasonably require.

2. The offeror shall state the following in the offer document-

- (a) The identity of the ultimate offeror as required under regulation 23.
- (b) Information regarding the offeror including the names of its directors and the names of the shareholders who hold notifiable interest in the offeror and the extent of their holdings.

- (c) Whether the offeror has any intentions regarding the continuation of the business of the offeree and if so, stating the offeror's intentions.
- (d) The offeror's stated intentions regarding any major changes to be introduced in the business, or regarding strengthening the financial position of the offeree, whether the plans include a merger, including any plans to liquidate the offeree, sell its assets or re-deploy the fixed assets of the offeree or make any major changes in the structure of the offeree, and if so, stating the offeror's intentions.
- (e) Whether there are any long term commercial justifications for the proposed takeover offer, and if so, stating the long term commercial justifications; whether the offeror has any intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries and if so, stating the offeror's intentions.
- (f) Where the takeover offer is for cash, either in part or in whole, the offer must include confirmation by a financial advisor of the offeror that the offeror is financially capable to accept and carry out the takeover offer in full.
- (g) In addition, the offer document should also include a statement that the offeror and the offeror's financial advisors are satisfied that—
 - (i) the take-over offer would not fail due to insufficient financial capability of the offeror; and
 - (ii) every shareholder who wishes to accept the take-over offer will be paid in full.
- (h) The following shall also be included in the offer document—
 - (i) a statement as to whether or not any agreement, arrangement or understanding exists between the offeror or any person acting in concert with it and any of the directors, past directors, shareholders or past shareholders having any connection with or dependence upon the takeover offer, and full particulars of any such agreement, arrangement or understanding;
 - (ii) in this paragraph "past directors" or "past holders of voting rights" means any person who was during the period of six months immediately prior to the date of the written notice of the takeover offer, a director or a holder of the voting rights, as

the case may be;

- (iii) a statement as to whether or not any voting rights acquired in pursuance of the takeover offer will be transferred within a foreseeable period from the date of the offer document to any other person, together with the names of the parties to any such agreement, arrangement or understanding and particulars of all securities in the offeree held by such persons, or a statement that no such securities are held; and
- (iv) settlement of the consideration to which any holder is entitled under the takeover offer will be implemented in full in accordance with the term of the takeover offer without regard to lien, right of set off, counter claim or other analogous rights to which the offeror may otherwise be or claim to be entitled as against the holder.

3. The offer document shall state as at the latest practicable date, the number of and percentage holding of voting rights and convertible securities (if any)—

- (a) which the offeror and the directors of the offeror hold, directly or indirectly, in the offeree;
- (b) which persons acting in concert with the offeror hold directly or indirectly with the offeree together with the names of such persons acting in concert;
- (c) which persons who, prior to the sending of the offer document, have irrevocably committed themselves to accept the takeover hold directly or indirectly in the offeree and if so the names of such persons.

4. If there are no holdings of the nature required to be stated under paragraph 6, then that fact should be stated.

5. The offer document shall state the names and shareholdings of the ultimate shareholders, if any, of the persons acting in concert with the offeror.

6. If any party whose holdings are required to be disclosed has dealt in the voting rights in question during the period commencing six months prior to the

beginning of the offer period and ending with the latest practical date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated. If no such deals have been made, that fact should be so stated.

7. The offer document shall state, whether the emoluments of the offeror's directors will be effected by the acquisition of the offeree, except in the case of an offeror making a cash offer. If there are no holdings of voting rights the nature required to be stated under paragraph 6, then that fact should be stated.

8. The offeror shall state whether the offeree's securities will continue to be listed at the stock exchange after the takeover offer has been successfully concluded only.

9. (1) The offer document shall contain particulars of all service contracts of any directors or proposed directors of the offeror or any of its subsidiaries (unless expiring or determinable by the employing company without payment of consideration within twelve months) and if there are none, that fact should be so stated.

(2) If the contracts referred to in subparagraph (1) have been entered into or have been amended within six months after the date of the documents, the particulars of the contracts amended or replaced should be given and if there have been no new contracts or amendments, this should be so stated.

**PART E - INFORMATION REQUIRED IN THE STATEMENT GIVEN
BY THE OFFEREE TO ITS SHAREHOLDERS IN FORM OF A
CIRCULAR**

regulation 8(5)

The statement shall set out—

- (a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of the offeree company, or in the case of a director where none are so held that fact;
- (b) in respect of each director of the offeree company by whom or on whose behalf shares to which the takeover scheme relates are held—
 - (i) whether or not the present intention of the director is to accept any takeover offer that may be made under the takeover

scheme in respect of those shares; or

- (ii) that the director has not decided whether he or she will accept such a takeover offer;
- (c) whether or not any marketable securities of the offeror company are held by, or on behalf of, any director of the offeree company and if so, the number, description and amount of the marketable securities so held;
- (d) whether or not it is proposed in connection with the takeover scheme that any payment or other benefit shall be made or given to any director of the offeree or of any other company related to the offeree as consideration, or in connection with, its retirement from office and if so, particulars of the proposed payment or benefit.
- (e) whether or not there is any other agreement or arrangement made between the director or the offeree and any other person in connection with or conditional upon the outcome of the takeover scheme and if so particulars of any such agreement or arrangement;
- (f) whether or not any director of the offeree has any direct or indirect interest in any contract entered into by the offeror and if so, particulars of the nature and extent of such interest;
- (g) if the shares to which the scheme relates are not quoted or dealt in on a stock exchange, all the information which the offeree may have as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which notice of the takeover scheme was given to the offeree; and
- (h) whether or not there has been any material change in the financial position of the offeree since the date of the last balance sheet laid before the company in the general meeting, and if so, particulars of the change.

PART F - INFORMATION AND STATEMENTS REQUIRED TO BE INCLUDED IN AN INDEPENDENT ADVISOR'S CIRCULAR

Regulation 12

1. An independent advisor's circular whether recommending acceptance or

rejection of the takeover offer, must contain comments and advice on the following—

- (a) the offeror's stated intentions regarding the continuation of the business of the offeree;
- (b) the offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the offeree, sell its assets or re-deploy the fixed assets of the offeree or make any other major change in the structure of the offeree;
- (c) the offeror's stated long term commercial justification for the proposed takeover offer;
- (d) the offeror's stated intentions with regard to the continued employment of the employees of the offeree and of its subsidiaries; and
- (e) the reasonableness of the takeover offer, including the reasonableness and accuracy of profit forecasts for the offeree, if any, contained in the offer document.

2. The independent advisors circular should also, in as far as is reasonable, comment on the following—

- (a) the outlook, for the next twelve months, of the industry in which the offeree has its core or major business activities; and
- (b) the prospects, for the next twelve months, of the offeree in terms of financial performance as well as positioning in the industry (including competitive advantage and threats and opportunities).

3. The independent advisor's circular shall also state the following—

- (a) whether the offeree holds directly or indirectly, any voting rights or convertible securities in the offeror and if so, the number and percentage holding of such voting rights and convertible securities held;
- (b) whether the directors of the offeree hold, directly or indirectly any voting rights or convertible securities in the offeror or the offeree and if so, the number and percentage holding of the voting rights and convertible securities held; and

- (c) whether the directors of the offeree intend, in respect of their own beneficial holdings to accept or reject the takeover offer.
- 4. If there are no holdings of the nature required to be stated under paragraph 3, then that fact should be stated.
- 5. The independent advisors circular must also contain a statement from the directors of the offeree stating any other interest held by them in the offeror and in the offeree.
 - (a) if any party whose holdings are required to be disclosed under to the Act or these Regulations has dealt in the voting rights in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practical date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated; and
 - (b) if no deals referred to in subparagraph (1) been made, this fact should be so stated.
- 6. (1) The independent advisors circular must contain particulars of all service contracts of any director or proposed director with the offeree or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months from the date of the offer document) and if there are none, the fact should be so stated.
 - (2) If the service contracts referred to in subparagraph (1) have been entered into or have been amended within six months after the date of the document, the particulars of the contracts or amendments shall be given, and if there have been no new service contracts or amendments, this shall be so stated.

SCHEDULE 3

FEES

As may be prescribed by the Authority

GRACE JETHRO KAVUMA,
Chairman, Capital Markets Authority.