

**DIRECTIVE 2014/16/EAC OF
THE COUNCIL OF MINISTERS**

Of

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON
TAKEOVERS AND MERGERS**

Preamble

The Council of Ministers of the East African Community

Having regard to the Treaty establishing the East African Community and in particular **Articles 85 (d), 14 and 16;**

Having regard to the recommendations of the Sectoral Council on Finance and Economic Affairs;

WHEREAS Article 31 of the Common Market Protocol provides that for proper functioning of the Common Market the Partner States undertake to co-ordinate and harmonize their financial sector policies and regulatory framework to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonize their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article;

HAS ADOPTED THIS DIRECTIVE

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ARTICLE 1 INTERPRETATION

“Community” means East African Community established by Article 2 of the Treaty;

“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;

“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“Offeror” shall mean any natural or legal person governed by public or private law making a bid.

“Persons acting in concert” shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid and persons controlled by another person shall be deemed to be persons acting in concert with that other person and with each other.

“Partner States” means the Republic of Burundi , the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, , and any other country granted membership to the Community under Article 3 of the Treaty;

“Securities” shall mean transferable securities carrying voting rights in a company.

“takeover bid” or **“bid”** shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law.

“Treaty” means the Treaty for the Establishment of the East African Community and any Annexes and Protocols thereto.

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ARTICLE 2 PRINCIPLES

1. For the purpose of implementing this Directive, Partner States shall ensure that the following principles are complied with:
 - (a) all holders of the securities of an offeree company of the same class must be afforded equal treatment;
 - (b) if a person acquires control of a company, the other holders of securities must be protected;
 - (c) protection of minority shareholder interests;
 - (d) the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
 - (e) the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
 - (f) false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
 - (g) an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and
 - (h) an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities;
2. With a view to ensuring compliance with the principles laid down in paragraph 1, Partner States:
 - (a) shall ensure that the minimum requirements set out in this Directive are observed; and
 - (b) may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

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ARTICLE 3 OBJECTIVES

The objective of this Directive is to :

- (a) establish minimum guidelines for the conduct of takeover bids and mergers; and
- (b) ensure an adequate level of protection for holders of securities throughout the Community.

ARTICLE 4 SCOPE

This Directive applies to takeover bids and mergers relating to the securities of companies admitted to trading on a regulated market in one or more Partner States (hereinafter referred to as a 'regulated market').

ARTICLE 5 COMPETENT AUTHORITY AND APPLICABLE LAW

1. In supervising bids for the purposes of the rules which they make or introduce pursuant to this Directive, Competent Authorities shall exercise their functions impartially and independently of all parties to a bid.
2.
 - (a) The Competent Authority to supervise a bid shall be that of the Partner State in which the offeree company has its registered office if that company's securities are admitted to trading on a regulated market in that Partner State.
 - (b) If the offeree company's securities are not admitted to trading on a regulated market in the Partner State in which the company has its registered office, the Competent Authority to supervise the bid shall be that of the Partner State on the regulated market of which the company's securities are admitted to trading.
 - (c) If the offeree company's securities are admitted to trading on regulated markets in more than one Partner State, the Competent Authority to supervise the bid shall be that of the Partner State on the regulated market of which the securities were first admitted to trading.
 - (d) If the offeree company's securities were first admitted to trading on regulated markets in more than one Partner State simultaneously, the offeree company shall determine which of the Competent Authorities of those Partner States shall be the authority competent to supervise the bid by notifying those regulated markets and their Competent Authorities on the first day of trading.

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- (e) Partner States shall ensure that the decisions referred to in (c) and (d) are made public.
 - (f) In the cases referred to in (b), (c) and (d), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Partner State of the Competent Authority. In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular the percentage of voting rights which confers control and any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the Competent Authority shall be those of the Partner State in which the offeree company has its registered office.
3. Partner States shall ensure that all persons employed or formerly employed by their Competent Authorities are bound by professional secrecy. No information covered by professional secrecy may be divulged to any person or authority except under provisions laid down by law.
 3. The Competent Authorities of the Partner States for the purposes of this Directive and other authorities supervising capital markets shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the Competent Authorities receiving the information are subject. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the competent authorities in connection with bids, as well as such other assistance as may reasonably be requested by the Competent authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.
 5. The Competent authorities shall be vested with all the powers necessary for the purpose of carrying out their duties, including that of ensuring that the parties to a bid comply with the rules made or introduced pursuant to this Directive.

Partner States may provide in the rules that they make or introduce pursuant to this Directive for derogations from those rules:

- (i) by including such derogations in their national rules, in order to take account of circumstances determined at national level; and/or

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- (ii) by granting their Competent authorities, where they are competent, powers to waive such national rules, to take account of the circumstances referred to in (i) or in other specific circumstances, in which case a reasoned decision must be required.
6. This Directive shall not affect the power of the Partner States to designate judicial or other authorities responsible for dealing with disputes and for deciding on irregularities committed in the course of bids or the power of Partner States to regulate whether and under which circumstances parties to a bid are entitled to bring administrative or judicial proceedings. In particular, this Directive shall not affect the power which courts may have in a Partner State to decline to hear legal proceedings and to decide whether or not such proceedings affect the outcome of a bid. This Directive shall not affect the power of the Partner States to determine the legal position concerning the liability of Competent Authorities or concerning litigation between the parties to a bid.

ARTICLE 6 PROTECTION OF MINORITY SHAREHOLDERS, THE MANDATORY BID AND THE EQUITABLE PRICE

1. Where a natural or legal person, as a result of his or her own acquisition or the acquisition by persons acting in concert with him or her, holds securities of a company which, added to any existing holdings of those securities of his or hers and the holdings of those securities of persons acting in concert with him or her, directly or indirectly give him or her a specified percentage of voting rights in that company, giving him or her control of that company, Partner States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price.
2. Where control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation to launch a bid shall no longer apply.
3. The percentage of voting rights which confers control for the purposes of paragraph (1) and the method of its calculation shall be determined by the rules of the Partner State in which the company has its registered office.
4. (a) The highest price paid for the same securities by the offeror, or by persons acting in concert with him or her, over a period to be determined by Partner States, of not less than six (6) months and not more than twelve (12) months before the bid referred to in paragraph (1) shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him or her, purchases securities at a price

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higher than the offer price, the offeror shall increase his or her offer so that it is not less than the highest price paid for the securities so acquired.

- (b) Partner States may authorise their Competent Authorities to adjust the price referred to in the first subparagraph in circumstances and in accordance with criteria that are clearly determined. To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis.

Any decision by a Competent Authority to adjust the equitable price shall be substantiated and made public.

5. By way of consideration the offeror may offer securities, cash or a combination of both.

Partner States shall provide that a cash consideration must be offered, at least as an alternative, in all cases.

6. In addition to the protection provided for in paragraph (1), Partner States may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

ARTICLE 7 INFORMATION CONCERNING BIDS

1. Partner States shall ensure that a decision to make a bid is made public without delay and that the Competent Authority is informed of the bid. They may require that the Competent Authority must be informed before such a decision is made public.
2. Partner States shall ensure that an offeror is required to draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid. Before the offer document is made public, the offeror shall communicate it to the Competent Authority.
3. Where the offer document referred to in the (1) is subject to the prior approval of the Competent Authority and has been approved, it shall be recognised in any other Partner State on the market of which the offeree company's securities are admitted to trading,

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without its being necessary to obtain the approval of the Competent authorities of that Partner State. Those authorities may require the inclusion of additional information in the offer document only if such information is specific to the market of a Partner State or Partner States on which the offeree company's securities are admitted to trading and relates to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.

4. The offer document referred to in paragraph (2) shall state at least:
 - (a) the terms of the bid;
 - (b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;
 - (c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
 - (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
 - (e) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
 - (f) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company;
 - (g) all the conditions to which the bid is subject;
 - (h) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions on employment and the locations of the companies' places of business;
 - (i) the time allowed for acceptance of the bid;
 - (j) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
 - (k) information concerning the financing for the bid;
 - (l) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;

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(m) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts; and

(n) 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 completed.

5. Partner States shall ensure that the parties to a bid are required to provide the Competent Authorities of their Partner State at any time upon request with all the information in their possession concerning the bid that is necessary for the Competent Authority to discharge its functions.

ARTICLE 8 TIME ALLOWED FOR ACCEPTANCE

1. Partner States shall provide that the time allowed for the acceptance of a bid may not be less than thirty (30) days nor more than sixty (60) days from the date of publication of the offer document. Partner States may provide that the period of sixty (60) days may be extended on condition that the offeror gives at least two (2) weeks' notice of his or her intention of closing the bid.
2. Partner States may provide for rules changing the period referred to in paragraph 1 in specific cases. A Partner State may authorise a Competent Authority to grant derogation from the period referred to in paragraph 1 in order to allow the offeree company to call a general meeting of shareholders to consider the bid.

ARTICLE 9 DISCLOSURE

1. Partner States shall ensure that a bid is made public in such a way as to ensure market transparency and integrity for the securities of the offeree company, of the offeror or of any other company affected by the bid, in particular in order to prevent the publication or dissemination of false or misleading information.
2. Partner States shall provide for the disclosure of all information and documents required by Article 7 in such a manner as to ensure that they are both readily and promptly available to the holders of securities at least in those Partner States on the regulated markets of which the offeree company's securities are admitted to trading.

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ARTICLE 10 OBLIGATIONS OF THE BOARD OF THE OFFEREE COMPANY

1. The board of the offeree company shall issue a circular to the holders of voting shares in the offeree to which the take-over offer relates, indicating whether or not the board of directors of the offeree recommend to holders of the voting shares the acceptance of the take-over offer(s) made by the offeror under the take-over scheme within fourteen (14) days from the date of receipt of the takeover document from the offeror.
2. The board of directors of the offeree shall disclose in the circular referred to in paragraph (1) to every holder of the voting rights to which the take-over offer relates all such information as the holders of such voting shares and their professional advisers would reasonably require or expect to find in such a circular or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action.
3. The board of directors of the offeree shall appoint an independent adviser, on receipt of the offeror's notice of intention to takeover. The substance of the independent adviser's advice must be made known to the holders of the class of the voting shares to which the take-over offer relates, in a circular by the offeree to its shareholders.

ARTICLE 11 OTHER RULES APPLICABLE TO THE CONDUCT OF BIDS

Partner States shall also lay down rules which govern the conduct of bids, at least as regards the following:

- (a) the lapsing of bids;
- (b) the revision of bids;
- (c) competing bids;
- (d) the disclosure of the results of bids; and
- (e) the irrevocability of bids and the conditions permitted.

ARTICLE 12 SANCTIONS

Partner States shall determine the sanctions to be imposed for infringement of the national measures adopted pursuant to this Directive and shall take all necessary steps to ensure that they are put into effect. The sanctions thus provided for shall be effective, proportionate and dissuasive.

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ARTICLE 13 RIGHT OF APPEAL

Partner States shall ensure that decisions taken pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right of appeal to the relevant court.

ARTICLE 14 AMENDMENTS

1. This Directive may be amended by the Council of Ministers.
2. Any proposals for amendment may be submitted in writing by the Partner States to the Secretary General of the East African Community.

ARTICLE 15 TRANSPOSITION

1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' approval. They shall forthwith inform the Council of Ministers thereof.
2. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Partner States.

ARTICLE 16 ENTRY INTO FORCE

This Directive shall enter into force upon approval by the Council of Ministers.

ARTICLE 17 ADDRESSEES

This Directive is addressed to the Partner States.

Done in Arusha, Tanzania