THE CAPITAL MARKETS AND SECURITIES ACT (CAP.79)

REGULATIONS

Made under Section 148(1)

THE CAPITAL MARKETS AND SECURITIES (SUBSTANTIAL ACQUISITIONS, TAKEOVERS AND MERGERS) REGULATIONS, 2006

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THE CAPITAL MARKETS AND SECURITIES ACT
(CAP.79)

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PART I
PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Capital Markets and Securities (Substantial Acquisitions, Takeovers and Mergers) Regulations, 2006.

2.—(1) In these Regulations, unless the context requires otherwise—

“Act” means the Capital Markets and Securities Act; “acquisition” means—

(i) direct acquisition of shares or voting rights in a public or listed company to which these regulations apply;

(ii) indirect acquisition of shares or voting rights of a public or listed company by a holding company or acquiring shares or voting rights of its holding company, whether listed or unlisted within or outside Tanzania;

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

“acquisition of voting rights” means the acquisition of a right to exercise
control or direction over the right to vote at a general meeting of shareholders other than by way of a revocable proxy given for no consideration for the purpose of one meeting of shareholders only;

“Authority” means the Capital Markets and Securities Authority as defined in the Act;

“control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreement or voting agreements or in any other manner and for the purpose of these Regulations, acquisition of control include acquisition of all or substantially all assets as opposed to shares;

“director” includes any person occupying the position of a director by whatever name called;

“escrow account” means an account opened at a bank to keep funds or acceptable securities with appropriate margin to be used to acquire the company as a commitment by the acquirer;

“financial institution” has the meaning ascribed to it under the Banking and Financial Institutions Act 2006;

“financially weak company” means a company which has at the end of its previous financial year accumulated loss which has resulted in erosion of more than 50% but less than 100% of its net worth as at the beginning of the previous financial year;

“financial adviser” means a person registered with the Capital Markets Securities Authority who, for compensation and as part of a business, gives advice, makes recommendations, issues reports or furnishes analysis on securities either directly or through publications and includes the following categories of persons:

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

"listed company" means a company or a body corporate whose securities are listed on a stock exchange:

"merger" means a business combination that results in the creation of a new reporting entity formed from the combining parties, in which the shareholders of the combining entities come together in partnership for the mutual sharing of risks and benefits of the combined entity, and in which no party to the combination in substance obtains control over any other, or is otherwise seen to be dominant, whether by virtue of the proportion of its shareholders' rights in the combined entity, the influence of its directors or otherwise:

"offer" means an offer to which these Regulations applies for voting shares and any other securities to which the offer is required to extend under these Regulations including schemes of arrangement which have similar commercial effect to substantial acquisitions, takeovers and mergers, and includes offers by a parent company for shares in its subsidiary and vice versa;

"offer period" means a period between the date of announcement of an offer and the date of closure of an offer;

"partial offers" means an offer for a specified percentage, less than all, of the voting securities which are not held or controlled by an offeror, in the target company and does not include other non voting equity securities:

"offeror" means a person who makes an offer:

"offeree" means a person to whom an offer is made:

"person acting in concert" means persons who, for a common objective or for the purpose of substantial acquisition of shares having voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or proceeding to acquire shares having voting rights in the target company or control over the target company and unless the contrary is proved, includes:

(a) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other:
(b) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(c) a person who exercises control over any company by virtue of its influence over the voting rights;

(d) directors of companies referred to in paragraph (a) and their associates;

(e) an open ended and close ended Collective Investment Scheme (CIS) with investment adviser or trustees or asset management company;

(f) institutional investors and their fund managers;

(g) investment banks with their client(s) as acquirer;

(h) portfolio managers with their client(s) as acquirer;

(i) venture capital funds with sponsors;

(j) financial or other professional advisers including banks, dealers including their holding or subsidiary companies acting on behalf of the acquirer.

(k) a promoter who in the context of acting in concert shall-

(i) in the case of an individual, include:–

(aa) the person or persons who are in control of the company, or

(bb) person or persons named in any offer document as promoters;

(ii) in case of a body corporate:–

(aa) a subsidiary or holding company of that body, or

(bb) any company in which the ‘Promoter’ holds ten percent or more of the equity capital, or
any body corporate in which a group of individuals or bodies corporate or combinations thereof who hold twenty percent or more of the capital in the target company and also hold twenty percent or more of the capital of the promoter.

"public shareholding" means shareholding in the hands of persons other than the acquirer and persons acting in concert with him;

"public company" means a company incorporated as a public company and whose securities are publicly held by more than fifty holders;

"shares" means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights;

"substantial shareholder" means a person who holds at least twenty percent of the voting rights of a company;

"substantial acquisition" means Acquisition of twenty percent or more of the shares or voting rights of any company;

"take over" means a scheme involving a making of an offer for acquisition by or on behalf of a person or persons acting in concert with him—

(a) of all shares or voting rights in the offeree company;

(b) of such shares in any company which results in an offeror acquiring control in an offeree; or

(c) of any shareholding in a subsidiary of a public or listed company that entitles the acquirer to the distribution of earnings of the subsidiary amount to more than 50% of consolidated total earnings of the public or listed company;

"target company" means a company whose shares having voting rights or control is directly or indirectly acquired or intended to be acquired;

"voting rights" means the rights to vote exercisable at a general meeting of a company whether or not attributable to the share capital of the company.

(2) All other expressions unless defined herein shall have the same meaning as ascribed to them in the Capital Markets and Securities Act.
PART II
OBJECTIVES, GENERAL PRINCIPLES, APPLICATION AND ESTABLISHMENT OF
MERGERS AND ACQUISITIONS COMMITTEE

3.–(1) The objectives of these Regulations are to ensure–

(a) fair treatment of shareholders who are affected by acquisitions, takeovers or merger transactions;

(b) transparent and efficient system of substantial acquisition of shares, takeovers and mergers of public and listed companies and matters arising thereof or connected therewith;

(c) timely and adequate disclosure of information to enable shareholders to make an informed decision as to the merit of an offer;

(d) a fair and informed market in the shares of companies affected by substantial acquisitions, takeovers and merger transactions.

(2) All persons engaged in substantial acquisition of shares, takeovers and merger transaction shall observe the general principles set out in the First Schedule.

4.–(1) These regulations shall apply to all offers for substantial acquisitions, takeover or merger, concerning or affecting public and listed companies.

(2) These regulations shall not apply to–

(a) allotment of shares in pursuance of an application made to a public issue provided that if such an allotment is made pursuant to a firm allotment in the public issue, such allotment shall be exempt only if full disclosure is made in the prospectus about the identity of the acquirer who has agreed to acquire the shares, the purpose of acquisition, consequential changes in voting rights, shareholding pattern of the company and in the
board of directors of the company, if any, and whether such allotment would result in change in control over the company;

(b) allotment of shares pursuant to a rights issue to the extent of his entitlement;

(c) allotment of shares to the underwriters pursuant to any underwriting agreement, provided that the total shareholding after the underwriting agreed does not exceed twenty percent;

(d) acquisition of shares in the ordinary course of business by banks and financial institutions as enforcement of security being pledged;

(e) acquisition of shares in the ordinary course of business by-

(i) a licensed broker of a stock exchange on behalf of clients;

(ii) a licensed dealer of a stock exchange in respect of shares for which he is the market maker during the course of market making;

(f) acquisition of shares by way of transmission on succession or inheritance;

(g) such other cases as may be exempted by the Authority.

(3) The provisions of these regulations shall not, in any way, be construed to derogate the provisions of the Fair Competition Act, 2003 and of the Companies Act.

5.—(1) A Committee of the Authority shall consider all applications with respect to substantial acquisitions, mergers and takeovers and advise the Authority accordingly.
(2) The committee shall consist of three members of the Authority and at least two qualified persons who have experience and expertise in legal, financial or business matters.

(3) The composition of the members of the Committee shall depend on the nature of the industry to which the application relates and appointments to the Committee shall be made on a case-by-case basis.

(4) An application shall, in the first instance, be made to the Chief Executive Officer, who shall, upon being satisfied that it is complete in all material respects, submit the application to the committee, within 14 days of receipt of the application.

(5) The committee shall, within 7 days of receipt of an application, make recommendation on the application to the Authority and the Authority shall, within 7 days after receipt of the committee’s recommendations, approve or disapprove the application.

(6) Where the application has been disapproved pursuant to sub-regulation 5, the Authority shall give reasons for such disapproval.

(7) The Authority may require a stock exchange or the applicant to furnish it with the information with regard to the disclosures required by these regulations.

PART III

TRANSITIONAL ARRANGEMENTS AND DISCLOSURES OR CERTAIN SHAREHOLDINGS AND VOTING RIGHTS

6.—(1) Any person, who holds more than five percent shares or voting rights in any company shall, within two months of the coming into operation of these regulations, disclose to the company his aggregate shareholding in that company.

(2) Every company whose shares are held by the persons referred to in sub-regulation (1) shall, within three months from the date of coming into operation of these regulations, disclose to the stock exchange on
which the shares are listed, the aggregate number of shares held by each such person.

(3) Every company, whose shares are listed on a stock exchange, shall within three months of the coming into operation of these regulations, disclose to the stock exchange and the Authority, the names and addresses of promoters or persons having control over the company, and number and percentage of shares or voting rights held by each such person.

7.—(1) Any acquirer, who acquires shares or voting rights which, when taken together with shares or voting rights, if any, held by him, would entitle him to more than five percent of shares or voting rights in a company shall, disclose the aggregate of his shareholding or voting rights in that company, to the company, in the manner specified in the Second Schedule.

(2) Any acquirer who has acquired shares or voting rights of a company, under sub-regulation (2) of regulation 9, shall make disclosures of such acquisition as well as the aggregate of his shareholding and voting rights before and after the acquisition, to the company when such acquisition aggregates between five percent and twenty percent of the voting rights.

(3) The disclosures referred to in sub-regulation (1) and (2) of this regulation, shall be made within 3 working days of the acquisition of shares or voting rights.

(4) Any company, whose shares are acquired in a manner referred to in sub-regulation (1) and (2) shall disclose to the Authority and the stock exchange on which the shares of the said company are listed, the aggregate number of shares held by each of such persons referred above, within seven days of receipt of information under sub-regulation (1) and (2).

8.—(1) Any person, including a person mentioned in regulation 6, who holds more than twenty percent shares or voting rights in any company, shall, within 21 days from the end of the financial year, make disclosures to the company, in respect of his holdings as at the end of that financial year.
(2) Any company whose shares are listed on a stock exchange, shall within 30 days from the end of its financial year, as well as at the record date of the company for the purposes of declaration of dividend, make disclosures to the Authority and the stock exchange on which the shares of the company are listed, in respect of holdings of persons referred to under sub regulation (1) as at the end of financial year.

(3) A company whose shares are listed on a stock exchange shall maintain a register in the format prescribed in the Third Schedule to record the information received under regulations 6, 7 and 8.

(4) Where a person directly or indirectly acquires or disposes of any shares carrying voting rights in a company, or rights over such shares, such person shall disclose that acquisition or disposal and his total holding to the company if:-

(i) as a result of the acquisition, together with any shares or rights over shares already held by him, he becomes a holder of shares or rights over shares representing twenty percent or more, but less than seventy five percent of the voting rights in a company; or

(ii) his holding of shares or rights over shares already represents twenty percent or more of the voting rights as a result of the acquisition or disposal is increased or decreased to or beyond any whole percentage figure representing twenty percent or more but not exceeding seventy five percent;

(iii) as a result of a disposal, his holding of shares or rights over shares decreases from one representing twenty percent or more of the voting rights to one representing less than twenty percent.

(5) Where two or more persons act in concert in the acquisition of the shares carrying voting rights or rights over such shares in a company, their holdings and acquisitions shall be aggregated and treated as a holding or acquisition by one person for the purpose of this regulation and each person acting in such manner, shall ensure that the obligations arising under this regulation are fulfilled.
9.—(1) An acquirer shall not acquire shares or voting rights which, when taken together with shares or voting rights, if any, held by him or by persons acting in concert with him, shall entitle such acquirer to exercise twenty percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with these regulations.

(2) An acquirer who has, together with persons acting in concert with him, legally acquired twenty percent or more but less than twenty five percent of the shares or voting rights in a company, shall not acquire, either by himself or through or with persons acting in concert with him, shares or voting rights entitling him to exercise an additional five percent of the voting rights, in any period of 12 months, unless such acquirer makes a public announcement to acquire shares in accordance with these regulations.

(3) An acquirer who has, together with persons acting in concert with him, legally acquired twenty percent or more but less than seventy five percent of the shares or voting rights in a company, shall not acquire either by himself or through persons acting in concert with him, any additional shares or voting rights that would give him seventy five percent or more of shares or voting rights, unless such acquirer makes a public announcement to acquire shares in accordance with these Regulations.

(4) In this regulation, the period of last twelve months means any period of up to twelve months from the end of the last financial year.

(5) An acquirer shall not acquire control over the target company or make a take over of a company, unless such person makes a public announcement to acquire shares in accordance with these regulations and subject to approval of such acquisition by a special resolution passed by the shareholders in a general meeting.

(6) A public announcement referred to in these regulations shall contain a summary of information required for an offer and the contents of such summary shall be as set out in the Fourth Schedule.
(7) An offer under these regulations shall be deemed to have been made on the date on which the public announcement appears in any of the newspapers referred to in these regulations.

PART IV
OFFERS, CONDITIONS OF OFFERS AND PAYMENT OF CONSIDERATION

10.- (1) Any person who intends to make an offer pursuant to these regulations shall first put forward a proposal to the board of the offeree company or to its advisers, before the offer is announced to the public.

(2) An offer referred to in this regulation shall contain such information as set out in the Fifth Schedule.

(3) Where an offer or an approach with a view to make an offer is made by the ultimate offeror or potential offeror, the identity of that offeror or the ultimate controlling shareholder shall be disclosed at the outset to the board of the offeree company.

(4) A board that is approached pursuant to this regulation may require an offeror to furnish the board with information regarding the offeror’s ability to implement the offer in full.

11.- (1) An offer shall not be made subject to conditions which depend on judgments by the offeror or the fulfillment of which is in his control.

(2) Unless the Authority approves otherwise, all offers other than partial offers, whether voluntary or mandatory, shall be conditional upon the offeror having received acceptances in respect of shares which, together with shares acquired or agreed to be acquired before or during the offer, will result in the offeror and persons acting in concert with him holding more than 50% of the voting rights of the offeree company.

(3) A voluntary offer may be made conditional on an acceptance level of shares carrying a higher percentage of the voting rights.

(4) A mandatory offer made under regulation 33 shall be subject to no other conditions, relating to minimum or maximum levels of acceptances.
required to be received or otherwise and shall be unconditional as to
to acceptances where the offeror and persons acting in concert with him,
hold more than 90% of the voting rights before such offer is made.

12.—(1) A Board which receives an offer, or is approached with a
view to an offer being made, shall, in the interests of shareholders, retain
a financial adviser to advise the Board as to the merit of the offer and
whether the offer is, or is not, fair and reasonable.

(2) Any advice, provided pursuant to sub regulation (1), including the
reasons thereof, shall be in writing and be made known to the shareholders
by attaching it in the offeror’s offer document along with the
recommendation of the offeree’s Board regarding acceptance of the
offer.

(3) Where the directors of the offeror or offeree company find
themselves in a conflict of interest situation with regard to the offer, the
Board shall establish an independent committee to assess the proposed
offer on behalf of the Board and if the conflict is a material one, the
Board shall consult the Authority.

(4) Where there are shareholders who are not independent because
they have an interest in the proposed transaction other than their interest
as a shareholder of the offeror or offeree company, as the case may be,
the financial adviser shall endeavor to represent the best interests of the
offeror or the offeree company, by concerning itself only with the
interests of the independent shareholders.

(5) A financial adviser shall be considered not to be independent if he
has a relationship with the offeror, the offeree company, or the controlling
shareholders of either of them, which is reasonably likely to affect the
objectivity of his advice.

(6) Members of an independent committee of a company’s Board of
directors shall consist of directors of the company who have no direct or
indirect interest in the offer for consideration by the independent
committee other than as a shareholder of the offeree.
(7) For avoidance of doubt, employees of an offeree company that is an associated company of the offeror, as well as employees, directors, agents, partners, close relatives and affiliates of any person who exercises control or direction over the business and operations of the offeree company, if such persons have a direct or indirect interest in the offer are not independent.

(8) If it is not possible to form an independent committee, responsibility for representing the interests of any independent shareholders shall reside primarily with the financial adviser.

13.–(1) Where a bona-fide offer has been communicated to the Board of an offeree company or the Board of an offeree company has reason to believe that a bona-fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the Board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in a general meeting, and the Board shall not, without such approval—

(a) issue any shares;
(b) issue or grant options in respect of any unissued shares;
(c) create or issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for, shares of the company;
(d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of material amount;
(e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or
(f) cause the company or any subsidiary or associated company to purchase or redeem any shares in the company or provide financial assistance for any such purchase.
(2) Where the company is under a prior contractual obligation to take any action referred to in sub-regulation (1), or where there are other special circumstances, the board shall apply for a waiver from the general requirement to obtain shareholders’ approval from the Authority.

14.—(1) Two copies of all documents sent to shareholders of the offeree company, shall be submitted to the Authority for approval prior to release or publication and shall not be released or published until the Authority has confirmed that it has no comments thereon and the final copy of the document shall be filed with the Authority and where a company is listed on the stock exchange to the Stock Exchange which the securities of the company are listed.

(2) All announcements shall be published in at least one English and one Kiswahili newspaper, which is widely circulated in the country.

15.—(1) Where—

(a) a firm intention to make an offer is notified to the board of the offeree company from a serious source, irrespective of the attitude of the board to the offeree;

(b) immediately upon an acquisition of shares which gives rise to an obligation to make an offer under regulation 31;

(c) following an approach to the offeree company, the offeree company is the subject of rumour and speculation or there is undue movement in its share price, or a significant increase in the volume of share turnover, whether or not there is a firm intention to make an offer;

(d) the offeree company is the subject of rumour and speculation or there is undue movement in its share price before an approach has been made, and there are reasonable grounds for concluding that it is the potential offeror’s actions which have led to the situation; or

(e) negotiations or discussions are about to be extended to include more than a very restricted number of people, outside those...
who need to know in the companies concerned and their immediate advisers, the offeror shall make a public announcement in accordance with sub regulation (3) of this regulation and if the approach has been made, the responsibility to announce lies with the offeree.

(2) Before making any public announcement of an offer referred to in sub- regulation (1), the acquirer shall appoint an adviser to act as financial adviser to the acquirer on the offer.

(3) Where an announcement is required, the offeror or offeree, as the case may be, shall notify the Authority and the Stock Exchange immediately that an announcement is imminent and if there is any possibility that an uniformed market for shares of the offeror or offeree could develop prior to publication of the announcement, consideration shall be given to suspend trading in such shares pending publication of the announcement.

(4) An announcement required under this regulation shall be published in at least one English and one Kiswahili newspaper that is widely circulated in the country.

(5) Where a firm intention to make an offer is announced, the announcement shall contain the details set out in the Fourth Schedule.

(6) The announcement of an offer shall include confirmation by the financial adviser or by any other third party approved by the Authority that resources available to the offeror are sufficient to satisfy full acceptance of the offer.

(7) Where an acquisition of voting rights of an offeree company by an offeror or by any person acting in concert with the offeror gives rise to an obligation pursuant to Regulations 18 and 31, an announcement shall be made stating the number of voting rights acquired and the price paid, together with the information required by sub regulation (3), to the extent that it has not been previously announced.
16.–(1) To the greatest extent as possible, all information about the companies involved in an offer shall be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

(2) An offer document, shall not be dated more than one working day prior to dispatch, and shall be posted by or on behalf of the offeror company—
within 21 days of the announcement of the terms of the offeror; in the case of a securities exchange offer within 35 days, unless the Authority approves otherwise;
with the approval of the Authority if it cannot be posted within the specified period referred in paragraph (a) and (b).

(3) The offer document submitted by the offeror to the offeree shareholders shall contain the information set out in the Fifth Schedule together with any other relevant information to enable offeree shareholders to reach an informed decision.

(4) The offeree company shall, within 14 days of receipt of the offer document, send to its shareholders a circular containing the information set out in the Sixth Schedule together with any other information it considers relevant to enable its shareholders to reach an informed decision on the offer.

(5) The directors of the offeree company shall ensure that the circular referred to in sub regulation (4) is sent to the shareholders so as to reach them within 21 days from the date of posting of such circular.

(6) Subject to regulation 12(2), the circular shall include the views of its Board on the offer and the written advice of its financial adviser as to whether the offer is, or is not, fair and reasonable and the reasons thereof.

(7) Where the offeree company’s financial adviser is unable to advise whether the offer is, or is not, fair and reasonable the Board shall seek guidance from the Authority.
(8) All documents subsequently sent to shareholders of the offeree company by either party must contain details of any material changes in information previously published by or on behalf of the relevant party during the offer period.

17.—(1) An offer shall be open for at least 21 days following the date of posting of the offer.

(2) Where the offer is conditional, it shall specify the latest day when the offeror can declare the offer unconditional.

(3) Where a conditional offer becomes or is declared unconditional, it shall remain open for acceptance for not less than 14 days and where there is an announcement of an extension of an offer, either the next closing date shall be stated or, if the offer is then unconditional, a statement may be made that the offer will remain open until further notice.

(4) Where the offer remains open until further notice, at least 14 days notice in writing must be given before the offer is closed.

18.—(1) The offer to acquire the shares under Regulation 10 shall be made at a minimum offer price which shall be payable—

in cash;
by exchange of shares of acquiring company, if the person seeking to acquire the shares is a listed company; or a combination of clauses (a) and (b);

(2) Where payment has been made in cash to any of shareholders for acquiring their shares under any agreement or pursuant to any acquisition in the open market or in any other manner during the preceding 12 months from the date of public announcement, the offer document shall provide that the shareholders have the option to accept payment either in cash or by exchange of shares or other secured instruments referred to in this Regulation.

(3) For the purposes of sub-regulation (1), the minimum offer price shall be the highest of—
(a) the negotiated price under the agreement for acquisition of shares or voting rights;

(b) the highest price paid by the acquirer or persons acting in concert with him for any acquisitions, including by way of allotment in a public or rights issue, if any, during the six months period prior to the date of public announcement;

(c) the price paid by the acquirer under a preferential allotment made to him or to persons acting in concert with him, at any time during the twelve months period up to the date of closure of the offer; or

(d) the average of the weekly high and low of the closing prices of the shares of the target company as listed on the stock exchange where the shares of the company are most frequently traded during the six months preceding the date of public announcement.

(4) Where the shares of the target company are infrequently traded or not listed on a stock exchange, the offer price shall be determined by the issuer and the financial adviser taking into account the factors set out in sub-regulation (3) of this regulation.

(5) Notwithstanding the provisions of sub-regulation (1), (3) and (4), where the acquirer has acquired shares in the open market or through negotiation or otherwise, after the date of public announcement at a price higher than the minimum offer price stated in the letter of offer, then the highest price paid for such acquisition shall be payable for all acceptances received under the offer provided that no such acquisition shall be made by the acquirer during the last seven working days prior to the closure of the offer.

(6) The letter of offer shall contain justification on the basis of which the price has been determined.

19.—(1) Where—

(a) shares of any class under offer in the offeree company have been purchased for cash by an offeror or any person acting in concert with the offeror during the offer period or within 6
months prior to its commencement and such shares carry twenty percent or more of the voting rights of the offeree company;

(b) an offeror making a non-cash offer for which there is no cash alternative acquires shares of the offeree for cash during the offer period and thereby becomes obligated to increase its offer pursuant to sub regulation (3); or

in the view of the Authority there are circumstances which render such a course necessary in order to give effect to equality of treatment of shareholders, the offer or revised offer, as the case may be, shall be in cash or accompanied by a cash alternative.

Provided that in the case of paragraphs (a) and (c), the offer price shall not be less than the highest price paid by the offeror or any person acting in concert with him for shares of that class during the offer period or within 6 months prior to its commencement.

(2) The offeror shall seek the approval of the Authority where he wishes to make its offer for a price other than the highest price paid by it, or any person acting in concert with him for shares of the class that is the subject of the offer during the offer period and within 6 months prior to its commencement.

(3) Where an offeror or any person acting in concert with him purchases securities in the offeree company in the market or otherwise during the offer period at above the offer price, then the offeror shall increase the offer to not less than the highest price paid for any securities so acquired.

(4) If the offer involves a further issue of securities of a class already traded on a Stock Exchange, the current value of the offer on a given day shall be established by reference to the average traded price of such securities traded immediately on preceding trading period.

(5) If the offer involves a combination of cash and securities and further, purchases of the offeree company's shares oblige the offeror to increase the value of the offer, the offeror shall endeavours, to effect
such increase while maintaining the same ratio of cash to securities as is represented by the offer.

(6) The shareholders of the offeree company shall be notified in writing of the increased price at least 14 days before the offer closes, and an announcement shall be made stating the number and class of securities purchased and the price paid.

(7) Except with the approval of the Authority, neither the offeror nor any person acting in concert with him may enter into arrangements to purchase or sell securities of the offeree company, or to accept an offer, either during an offer or when one is reasonably in contemplation, if such arrangements have special conditions which are not extended to all shareholders.

20.—(1) An offeror who has made a public announcement of offer, may make variation of his offer in respect to the price and the number of shares to be acquired, at any time up to five working days prior to the date of the closure of the offer provided that any such variation of offer, shall be made only upon the acquirer—

(a) making a public announcement in respect of such changes or amendments in all the newspapers in which the original public announcement was made;

(b) simultaneously with the issue of such public announcement, informing in writing the Authority and stock exchange on which the shares of the company are listed, and the target company at its registered office; and

(c) increasing the value of the escrow account as provided under sub- regulation (9) of regulation 26.

(2) Where an offer is varied, in its terms, all offeree shareholders whether or not they have already accepted the offer, shall be entitled to the revised terms and the revised offer shall be kept open for at least 14 days from the date of the posting of a written notification of the variation to shareholders.
(3) The announcement referred to in sub-regulation (1) shall also state-
(a) the number of shares which the offeror or any person acting in concert
with him has or controls the number of shares for which acceptances of
the offer have been received, and the number of shares otherwise acquired
by the offeror and any person acting in concert with him during the offer
period; and

(b) the shareholding and voting structure of the offeree to date.

(4) Where an offeror is unable to comply with any of the conditions
required in this regulation, the Authority shall require the acceptors to
withdraw their acceptances on such terms as the Authority may
prescribe.

21.—(1) Any person, other than the offeror who has made the first
public announcement, who is desirous of making any offer shall, within
21 days of the public announcement of the first offer, make a public
announcement of his offer for acquisition of the shares of the same
target company and an offer made under this sub-regulation shall be
deemed to be a competitive offer.

(2) No public announcement for an offer or competitive bid shall be
made after 21 days from the date of announcement of the first offer.

(3) Subject to sub regulation (1), all relevant information relating to
the offeree, including particulars of shareholders, given by the offeree
shall, on request, be furnished equally and promptly to any other bona-
fide potential offeror, who shall specify the questions to which it requires
answers and an offeror shall not be entitled, by asking in general terms,
to receive all the information supplied to its competitor.

(4) Any competitive offer by an acquirer shall be for such number of
shares which, when taken together with shares held by him along with
persons acting in concert with him shall be at least equal to the number
of shares for which the first public announcement has been made.

(5) Upon the public announcement of a competitive bid, the acquirer
who had made the public announcement of the earlier offer, shall have
the option to make an announcement—
varying the offer; or withdrawing the offer, with the prior approval of its board. (6) If no announcement is made within fourteen days of the announcement of the competitive bid, the earlier offer on the original terms shall continue to be valid and binding on the acquirer who made the offer except that the date of closure of the offer shall stand extended to the date of closure of the public offer under the last subsisting competitive bid.

(7) The acquirer who has made the public announcement of offer including the public announcement of a competitive bid but has not withdrawn the offer in terms of sub regulation (5), shall have the option to make an upward revision of his offer, with respect to the price and the number of shares to be acquired at any time up to seven working days prior to the date of closure of the offer.

(8) Where there is a competitive bid, the date of closure of the original bid as well as the date of closure of all the subsequent competitive bids shall be the date of closure of public offer under the last subsisting competitive bid and the public offers under all the subsisting bids shall close on the same date.

22.-(1) An offer shall not be withdrawn except under the following circumstances—

(a) the withdrawal is consequent upon any competitive bid;
(b) the statutory approvals required have been refused;
(c) the sole offeror, being a natural person, has died;
(d) such circumstances as in the opinion of the Authority merit withdrawal.

(2) In the event of withdrawal of an offer under any of the circumstances specified under sub-regulation (1), the acquirer or the investment adviser shall:

(a) make a public announcement in the Same newspapers in which the public announcement of offer was published, indicating reasons for withdrawal of the offer; or
(b) simultaneously with the issue of such public announcement, notify, by written notice, the Authority, the stock exchange on which the shares of the company are listed and the target company at its registered office.

(3) Where an offer has been withdrawn, the provisions of regulation 28 shall apply.

(4) The offeror and all persons acting in concert or associated with or related to the offeror shall furnish the Authority with details of any acquisition by the offeror of any share of the offeree including any option to acquire any share in the offeree each month for a period of 12 months from the date on which the offer was withdrawn.

23. An offer shall not be kept open after the expiry of 60 days from the date of the posting of the initial offer document by the offeror unless it has previously become unconditional or the Authority allows an extension.

24. The offeror shall inform the Authority and the Stock Exchange within 10 days of the closure of the offer and announce by way of public announcement the total number of voting shares to which the offer relates and-

(a) for which acceptances of the take-over offer have been received after having been served with the take-over offer document by the offeror to offeree shareholders in accordance with these regulations;

(b) for which the offeror and all persons acting in concert with him was holding at the time of serving the offer document to the offeree shareholders in accordance with these Regulations;

(c) acquired or agreed to be acquired during the offer period;

(d) the shareholding and voting structure of the offeree subsequent to the offer; and

(e) percentage of the relevant classes of share capital and percentages of voting rights represented by these numbers.
25. An acceptor shall be entitled to withdraw his acceptance after 21 days from the first closing date of the offer, if the offer has not by then become unconditional and such entitlement to withdraw shall be exercisable until the offer becomes unconditional.

26.—(1) An acquirer shall, before public announcement, by way of security for performance of his obligations under these Regulations, deposit in an escrow account such sum as specified in sub-regulation (2).

(2) The escrow amount shall be ten of the consideration payable.

(3) The total consideration payable shall be calculated assuming full acceptances and the highest price if the offer is subject to differential pricing, irrespective of whether the consideration for the offer is payable in cash or otherwise.

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

 cash deposited with commercial bank; or

(b) bank guarantee in favour of the offeree; or

(c) deposit of acceptable securities with appropriate margin, with the commercial banker.

(5) Where the escrow account consists of deposit with a commercial bank, the acquirer shall, while opening the account, empower the Financial Adviser 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.

(6) Where the escrow account consists of bank guarantee, such bank guarantee shall be in favour of the offeree company and shall be valid for at least a period commencing from the date of public announcement until 30 days after the closure of the offer.
(7) The acquirer shall, in case the escrow account consists of securities, empower the commercial bank to realise the value of such escrow account by sale or otherwise provided that, if there is any deficit on realisation of the value of the securities, the commercial bank shall be liable to make good any such deficit.

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

(9) 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 ten percent of the consideration payable upon such variation.

(10) Where the escrow account consists of a bank guarantee or deposit of approved securities, the acquirer shall also deposit with the bank an additional sum of at least one percent of the total consideration payable, as and by way of security for fulfillment of the obligations under these regulations by the acquirer.

(11) The Authority shall in case of non-fulfillment of obligations under these regulations by the acquirer forfeit the escrow account either in full or in part after considering the circumstances of non-fulfillment.

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

(a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 22 upon certification by the financial adviser;

(b) for transfer to the special account opened in terms of sub-regulation (1) of regulation 27, provided the amount so transferred shall not exceed ninety percent of the cash deposit made under sub-regulation (2) of this regulation;

(c) to the acquirer, the balance of ten percent of the cash deposit made under sub-regulation (2) of this regulation or the cash
deposit made under sub-regulation (8) of this regulation, on completion of all obligations under these regulations, and upon certification by the financial adviser where the offer is for exchange of shares or other secured instruments; and

(d) 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 among 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

(i) one third of the amount to the target company;

(ii) one third of the amount to the stock exchange for credit of the Fidelity Fund or any other similar fund for investor education; or

(iii) research, grievance redressal and similar such purposes as may be specified by the Authority from time to time;

(i) in case of a company which is not listed at a stock exchange the funds referred to in paragraph (ii) shall be credited to the investor protection fund or any other fund of the Authority for the purposes specified in paragraph (ii):

(ii) residual one third to be distributed pro-rata among the shareholders who have accepted the offer.

(13) In the event of non-fulfillment of obligations by the acquirer, the commercial bank shall ensure realization of escrow amount by way of foreclosure of deposit, invocation of bank guarantee or sale of securities.

27.-(1) Where the amount of consideration payable is in cash, the acquirer shall, within a period of 21 days from the date of closure of the offer, open a special account with a commercial bank and deposit therein, such sum as would, together with ninety percent of the amount lying in the escrow account, make up the entire sum due and payable to the shareholders as consideration for acceptances received and accepted in terms of these Regulations and for this purpose, transfer the funds from the escrow account.
(2) The unclaimed balance lying to the credit of the account referred to in sub-regulation (1) at the end of 3 years from the date of deposit thereof shall be transferred to the Fidelity Fund of the Stock Exchange or such other fund of the Authority as the case may be.

(3) Where the consideration payable is by way of exchange of securities, the acquirer shall, within 30 days from the date of closure of the offer, ensure that the securities are actually issued and dispatched to the shareholders.

(4) The acquirer 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.

(5) Where the acquirer is unable to make the payment to the shareholders within a specified period of 21 days due to non receipt of requisite statutory approvals, the Authority may, if satisfied that such non receipt of approvals was not due to willful default of the acquirer or failure of the acquirer to diligently pursue the application for such approval, grant extension of time for that purpose.

(6) Where the delay of payments pursuant to sub regulation (5) is occasioned due to the willful default or negligence of the acquirer, the Authority may grant extension of time, subject to the acquirer agreeing to pay to the shareholders such interest agreed upon between the acquirer and offeree, for delay beyond 21 days or the acquirer shall fulfill any conditions as may be specified by the Authority.

PART V
RESTRICTIONS OF DEALINGS BEFORE, DURING AND AFTER THE OFFER

28.—(1) Except where the Authority approves otherwise, where an offer has been announced or posted but has not become unconditional in all respects, and has been withdrawn or has lapsed, neither the offeror nor any person who acted in concert with him in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within 12 months from the date on which such offer is withdrawn or lapses either—
(a) make an offer to the offeree company, or

(b) acquire any voting rights of the offeree company if the offeror or persons acting in concert with him would thereby become obliged under Regulation 34 to make an offer.

(2) The restriction in this regulation may also apply where a person, having made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that an offer might be made, does not announce a firm intention either to make or not to make an offer within a reasonable time thereafter.

(3) Unless the Authority approves otherwise, where a person, together with any person acting in concert with him holds more than fifty percent of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous offer made by him to the shareholders of that company which became or was declared wholly unconditional, make a second offer to shareholders, or purchase any shares of that company at a higher price than that made available under the previous offer and for this purpose, the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.

29.—(1) No dealings of any kind in the securities of the offeree company shall be transacted by any person who has a confidential price sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to believe that an approach or an offer or revised offer announcement of the approach, the offer, the revised offer, or of the termination of the discussions is imminent.

(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
(a) make an offer to the offeree company, or

(b) acquire any voting rights of the offeree company if the offeror or persons acting in concert with him would thereby become obliged under Regulation 34 to make an offer.

(2) The restriction in this regulation may also apply where a person, having made an announcement which, although not amounting to the announcement of an offer, raises or confirms the possibility that an offer might be made, does not announce a firm intention either to make or not to make an offer within a reasonable time thereafter.

(3) Unless the Authority approves otherwise, where a person, together with any person acting in concert with him holds more than fifty percent of the voting rights of a company, neither that person nor any person acting in concert with him may, within 6 months of the closure of any previous offer made by him to the shareholders of that company which became or was declared wholly unconditional, make a second offer to shareholders, or purchase any shares of that company at a higher price than that made available under the previous offer and for this purpose, the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.

29.—(1) No dealings of any kind in the securities of the offeree company shall be transacted by any person who has a confidential price sensitive information concerning an actual or contemplated offer or revised offer between the time when there is reason to believe that an approach or an offer or revised offer announcement of the approach, the offer, the revised offer, or of the termination of the discussions is imminent.

(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.

30.—(1) During an offer period all parties to an acquisition or takeover or merger transaction and their advisers and any persons acting in concert with any of them are free to deal on their own account, discretionary accounts or material trading arrangement, provided that such dealings are disclosed in writing to the Authority.

(2) The disclosure of dealings referred to in sub regulation (1) shall include the following information—

(a) the total of the relevant securities in question purchased or sold, or redeemed or purchased by the company itself;

(b) the prices paid or received;

(c) the identity of the persons dealing;

(d) if the dealing is by a person acting in concert with the offeror or the offeree company, an explanation of how that status arises;

(e) status of person making the disclosure; and

(f) the resultant total amount of relevant securities owned or controlled by the person(s) in question, including those of any person with whom there is an agreement or understanding and the percentage which it represents.

(3) For the purpose of this regulation; a person who manages investment accounts on a discretionary basis, shall be treated, as the person controlling the said securities.
31. The directors of an offeree company shall not resign until the first closing date of the offer, or the date when the offer becomes or is declared unconditional, whichever is the later, unless the Authority approves otherwise.

32. Where directors and their close relatives, related trusts and companies controlled by them, their close relatives or related trusts sell shares to a purchaser as a result of which the purchaser is required to make an offer under Regulation 34, such directors shall ensure that, as a condition of the sale, the purchaser undertakes to fulfill his obligations under that regulation.

PART VI

SPECIFIC REQUIREMENTS RELATING TO PARTIAL OFFERS, ACQUISITIONS LEADING TO DELISTING LISTED COMPANIES AND PROVISION RELATING TO CONFIDENTIALITY

33.—(1) An offer may be made under these Regulations for less than all the voting securities of a target company.

(2) A partial offer shall be extended to all holders of voting securities of the target company other than the offeror.

(3) Where there is only one class of voting securities of the target company, a partial offer shall be made for a specified percentage of the voting securities of the target company not already held or controlled by the offeror.

(4) Where there is more than one class of voting securities of the target company, a partial offer shall be made for a specified percentage of the voting securities of each class not already held or controlled by the offeror, and such specified percentage shall be the same percentage in respect of each class.

(5) The consideration and terms offered for each class of voting securities of the target company shall be fair and reasonable as between the classes of voting securities.

(6) The Authority’s consent shall be obtained for any partial offer and in the case of an offer which could not result in the offeror holding
twenty percent or more of the voting rights of the company or in case the offeror and persons acting in concert with holds more than twenty percent and the offer is for such number of shares as would take the holding of voting rights to not more than ninety percent of voting rights of the company or such other percent as the listing rules may permit.

(7) Where an offer which results in the offeror and persons acting in concert with him holding twenty percent or more, but which results in their holding being less than hundred percent, of the voting rights of a company, the Authority shall not grant its approval if it is proved that the offeror or persons acting in concert with have acquired, selectively or in significant numbers, voting rights in the offeree company during six months preceding the application for approval or if voting rights have been acquired at any time after the partial offer was reasonably in contemplation.

(8) In the case of a successful partial offer, neither the offeror, nor any person acting in concert with the offeror in the course of the partial offer, nor any person who is subsequently acting in concert with any of them, may, except with the consent of the Authority, acquire voting rights of the offeree company during the 12 month period immediately following the end of the offer period.

(9) The Authority shall grant approval in the case of a partial offer, which results in the offeror exercising the control of a company.

(10) Any offer which could result in the offeror holding twenty percent or more of the voting rights of the offeree company shall be conditional, not only on the specified number of acceptances being received, but also on approval of the offer being given by shareholders holding over fifty percent of the voting rights not held by the offeror and persons acting in concert with him but this requirement may be waived if over fifty percent of voting rights are held by one shareholder.

(11) A partial offer shall be made for a precise number of shares, such number shall be stated, and the offer may not be declared unconditional as to acceptances unless acceptances are received for not less than that number.
(12) Where an offeror receives acceptance by the offeree shareholders in excess of the total number of shares to which the offer relates, the offeror shall undertake pro rata acceptance.

(13) For the purpose 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.

34.—(1) Unless the Authority has otherwise granted a waiver, where—

(a) any person acquires, whether by a series of transactions over a period of time or not, ninety percent or more of the voting rights of a company; and

(b) two or more persons are acting in concert, and they collectively hold less than ninety percent of the voting rights of a company, and anyone or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to ninety percent or more of the voting rights of the company,

that person, or the principal members of the concert group, as the case may be, shall within a period of three months from the date of closure of the offer, extend offers, subject to provisions of the Companies Act, and on the basis set out in this Regulation, to the holders of each class of equity share capital of the company, whether the class carries voting rights or not, and also to the holders of any class of voting non-equity share capital in which such person, or persons acting in concert with him, hold shares and offers for different classes of equity share capital shall be comparable.

(2) Without prejudice to sub-regulation (1), an acquirer may, where he acquires ninety percent of the voting rights of a company, undertake to disinvest through an offer for sale or by a fresh issue of capital to the public, which will open within a period of three months from the date of closure of the public offer, such number of shares as to satisfy the listing requirement.
(3) Any person who, directly or indirectly control the exercise of ninety percent or more of the share or voting rights of a company listed at the stock exchange shall, upon passing of a resolution in the manner prescribed in sub regulation (4) to remove such shares to the official list of the stock exchange at which the shares are listed, be deemed to take over such company and shall forthwith apply the procedure prescribed for takeovers as a pre condition for de-listing.

(4) No security of a listed company shall be de-listed unless the shareholders of such company through a special resolution (at which a minimum of seventy percent of such shareholders are represented) without objection to the proposed withdrawal from at least ten percent of the shareholders and with the approval of the Authority.

(5) Where the proposed de-listing is objected by at least 10% as referred to in sub regulation (4), the acquirer shall comply with the provisions of sub regulation (2).

(6) Subject to sub regulation (1), the Authority shall be consulted in advance in such cases.

(7) Except where the Authority has otherwise granted a waiver,

(a) offers made under this Regulation shall be conditional upon the offeror having received acceptances in respect of voting rights which, together with voting rights acquired or agreed to be acquired before or during the offer, will result in the offeror and any person acting in concert with him holding more than ninety percent of the voting rights; and

(b) no acquisition of voting rights which would give rise to a requirement for an offer under these regulations may be made if the making or implementation of such offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the offeror or upon any other conditions, consents or arrangements.

(8) Offers made under sub Regulation (1) shall, in respect of each class of equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or
any person acting in concert with him for voting rights of the offeree within the preceding 6 months.

(9) The cash offer or the cash alternative shall remain open after the offer has become or is declared unconditional for not less than 14 days thereafter.

(10) The Authority shall be consulted where there is more than one class of voting capital involved or where there are no relevant purchases within the preceding 6 months.

(11) If the offeror considers that the highest price should not apply in a particular case, he shall seek the Authority's approval.

(12) Except with the consent of the Authority, no nominee of an offeror or persons acting in concert with him may be appointed to the Board of the offeree company, nor may an offeror and persons acting in concert with him exercise offeree company voting rights, until the offer document has been posted.

(13) The Board, officials and registrars of an offeree company shall use their best endeavours to ensure the prompt registration of transfers during an offer period so that shareholders can freely exercise their voting and other rights.

35. In addition to the provisions of the Act in relation to insider dealing, absolute secrecy before an announcement of an offer or proposed offer shall be maintained and all persons who have confidential information, particularly price sensitive information, shall take reasonable care to prevent any leak.

PART VII

SPECIFIC REQUIREMENTS RELATING TO BAIL OUT TAKEOVERS

36.—(1) This provision shall apply to a substantial acquisition of shares in a financially weak company.
(2) A board which receives an offer for a bailout takeover, or is approached with a view to an offer for a bailout takeover being made, shall, in the interests of shareholders, retain a Financial Adviser to advise the board as to the merit of the offer and whether the offer is, or is not, fair and reasonable.

(3) The Financial Adviser shall be responsible for ensuring compliance with this Part.

(4) The Financial Adviser shall appraise the financially weak company taking into account the financial viability, and assess the requirement of funds for revival and draw up the rehabilitation package on the principle of protection of interests of minority shareholders, good management, effective revival and transparency.

(5) The rehabilitation scheme, in this Regulation referred to as “the scheme” shall also specifically provide for the details of any change in management.

(6) The scheme may provide for acquisition of shares in the financially weak company in any of the following manner—

(a) outright purchase of shares;
(b) exchange of shares; or
(c) a combination of both.

(7) The Financial Adviser shall ensure that under the scheme, and after the proposed acquisition, the promoters do not own any shares incase such acquisition is made by the new promoters.

(8) Before giving effect to any scheme, the Financial Adviser shall invite offers for acquisition of shares from at least three parties which shall differ with an offer required under these regulations in that it shall not indicate the minimum price and the minimum amount for public offer.

(9) After receipt of the offers under sub-regulation (8) the Financial Adviser shall select one of the parties having regard to the managerial competence, adequacy of financial resources and technical capability of the person acquiring shares to rehabilitate the financially weak company.
(10) The Financial Adviser shall provide necessary information to any person intending to make an offer to acquire shares about the financially weak company and particularly in relation to its present management, technology, range of products and services, shareholding pattern, financial holding and performance and assets and liabilities of such company for a period covering five years from the date of the offer as also the minimum financial and other commitments expected of from the person acquiring shares for such rehabilitation.

(11) The Financial Adviser shall evaluate the bids received with respect to the purchase price or exchange of shares, track record, and financial resources, reputation of the management of the person acquiring shares and ensure fairness and transparency in the process

(12) After making evaluation as provided in sub-regulation (8) the offers received shall be listed in order of preference and after consultation with the persons in the affairs of the management of the financially weak company accept one of the bids.

(13) The person acquiring shares, shall on receipt of a communication in this behalf from the Financial Adviser make a formal offer to acquire shares from the promoters or persons in charge of the affairs of the management of the financially weak company, financial institutions and also other shareholders of the company at a price determined by mutual negotiation between the person acquiring the shares and the Financial Adviser.

(14) Nothing in these Regulations shall prohibit the Financial Adviser offering the shareholdings held by it in the financially weak company as part of the scheme of rehabilitation.

(15) The person acquiring shares from the promoters or the persons in charge of the management of the affairs of the financially weak company or the financial institution shall make a public announcement of his intention for acquisition of shares from the other shareholders of the company.

(16) The public announcement referred to sub regulation (15) shall contain relevant details about the offer including the information about
the identity and background of the person acquiring shares, number and percentage of shares proposed to be acquired, offer price, the specified date, the date of opening of the offer and the period for which the offer shall be kept open and such other particulars as may be required by the Authority.

(17) The letter of offer shall be forwarded to each of the shareholders.

(18) If the offer referred to in sub-regulation (13) results in the public shareholding being reduced to 10% or less of the voting capital of the company, the acquirer shall either—

(a) within a period of three months from the date of closure of the public offer, make an offer to buy out the outstanding shares remaining with the shareholders at the same offer price, which may have the effect of delisting the target company; or

(b) undertake to disinvest through an offer for sale or by a fresh issue of capital to the public, which shall open within a period of 6 months from the date of closure of public offer, such number of shares so as to satisfy the listing requirements.

(19) The letter of offer shall state clearly the option available to the acquirer under sub-regulation (18).

(20) For the purpose of computing the percentage referred to in the sub-regulation (18), the voting rights as at the expiration of thirty days after the closure of the public offer shall be reckoned.

(21) While accepting the offer from the shareholders other than the promoters or persons in charge of the financially weak company or the financial institution, the person acquiring shares shall offer to acquire from the individual shareholders their entire holdings if such holding.

(22) A person shall not make a competitive bid for acquisition of shares of the financially weak company once the Financial Adviser has evaluated the bid and accepted the bid of the acquirer who has made the public announcement of offer for acquisition of shares from the shareholders other than the promoters or the persons in charge of the management of the financially weak company.
(23) Every offer, which has been made in pursuance of this Regulation, shall be accompanied with an application to the Authority for exempting such acquisitions from provisions of these Regulations.

(24) When considering such request the Authority may call for any information from the company as well as from the Financial Adviser, in relation to the manner of vetting the offers, evaluation of such offers and similar other matters.

(25) Notwithstanding grant of exemption by the Authority, the Financial Adviser or the acquirer as far as may be possible, shall adhere to the time limits specified for various activities for public offer specified in these regulations.

PART VIII
OFFENCES AND PENALTIES

37.—(1) Where any person—

(a) refuses or fails to furnish any document, paper or information which he is required to furnish by or under these Regulations; or

(b) refuses or fails to comply with any order or direction of the Authority made or issued under these regulations; or

the Authority shall impose such penalty or a sum of money of not less than one million shillings.

(2) Where the offence is a continuing default, a further sum calculated at a rate of one hundred thousand shillings for every day during which the failure or contravention continues shall be charged by the Authority.

(3) Where a person willfully contravenes or fail to comply with the provision imposing certain disclosures of shareholding under these regulations—

(a) the principal officer who manages the affairs of a listed or public company, shall be—

(i) disqualified from managing the company; and

(ii) prohibited to operate in the securities market;
(b) if a considerable material gain has been realized or a considerable damage has occurred to a third party, the party in contravention shall make good the damage as Authority may direct;

(c) the acquirer shall not exercise voting rights attached to the securities acquired above the threshold which he had previously reported and no membership rights shall be exercised towards the company until the notification obligation has been fulfilled; and

(d) the transaction shall be cancelled and the Authority shall instruct the relevant person or body settling securities for the stock exchange to refuse the execution of a transaction that will result in increasing the shareholding of a person who is in contravention.

FIRST SCHEDULE

(Under Regulation 3(2))

GENERAL PRINCIPLES FOR CONDUCT OF SUBSTANTIAL ACQUISITIONS, TAKEOVERS AND Mergers

The fundamental principles of Mergers, Acquisition 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. All shareholders shall be treated equally and shareholders of the same class are to be treated similarly.

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

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

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

8. 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. 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 company’s shareholders.

10.—(1) 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.

(2) The General Principles shall impinge on the freedom of action of boards and persons involved in such transactions.

11. At no time after a bona fide 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 bona fide 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. 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.-(1) Any document 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) Those who issue any such document 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. 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.

SECOND SCHEDULE

(under Regulation 7 (1))

INFORMATION DISCLOSURE BY AN ACQUIRER OF FIVE PERCENT OR MORE OF SHARES OR VOTING RIGHTS

<table>
<thead>
<tr>
<th>Name of the Target company (T.C)</th>
<th>Name of the acquirer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share holding/holding of Voting rights (VR before acquisition under consideration)</td>
<td>Number of shares</td>
</tr>
<tr>
<td>Shares/voting rights acquired</td>
<td>% of shares/voting rights to total paid up capital of Target Company</td>
</tr>
<tr>
<td>Share holding/holding of VR after acquisition</td>
<td></td>
</tr>
<tr>
<td>Mode of acquisition (market purchase/public issue/rights issue/pref allotment etc) Please specify</td>
<td></td>
</tr>
<tr>
<td>Date of acquisition of shares/VR or date of receipt of intimation of allotment of shares, whichever is applicable</td>
<td></td>
</tr>
</tbody>
</table>
THIRD SCHEDULE

(Under Regulation 8(3))

INFORMATION DISCLOSURE BY LISTED COMPANY
MAINTANANCE OF A REGISTER

<table>
<thead>
<tr>
<th>Name of a Company</th>
<th>Names of Shareholders who hold more than five percent of company's share or right</th>
<th>Number of shares for each share holder</th>
<th>Percentage of shares to total paid up capital</th>
<th>Mode of acquisition (market purchase/public issue/rights issue/pref allotment etc). Please specify</th>
</tr>
</thead>
</table>

FOURTH SCHEDULE

(Under Regulation 9(6))

THE CONTENT OF THE PUBLIC ANNOUNCEMENT OF AN OFFER

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 or companies, including 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 pursuant to these Regulations;

(c) the minimum offer price for each fully paid up or partly paid up share;

(d) the mode of payment of the consideration;

(e) the paid up share capital of the target company, the number of fully paid up and partly paid up share;
(t) the existing holdings of the acquirer in the shares of the target company, including holdings of persons acting in concert with him (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 target company, as the case may be;

(h) the highest and the average price paid by the acquirer or persons acting in concert with him for acquisition, if any, of shares of the target company made by him during the twelve month period prior to the date of public announcement;

(i) object and purpose of the acquisition of the shares and future plans, if any, of the acquirer for the target company, including disclosure whether the acquirer proposes to dispose of or otherwise encumber any assets of the target company in the succeeding two years, except in the ordinary course of business of the target company.

Provided that where the future plans are set out, the public announcement shall also set out how the acquirer proposes to implement such future plans.

(j) The date of determining names of shareholders 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 i.e. from banks, financial institutions, or otherwise or foreign. The name of the bank where the escrow account required under regulation 28 is maintained;

(o) Provisions for acceptance of the offer by persons who own the shares but are not the registered holders of shares.
(p) Statutory approvals, if any, required to be obtained for the purpose of acquiring the shares under the Companies Act, the Act, and the Fair Competition Act, or any other applicable laws;

(q) any other relevant information as is essential for the shareholder to make an informed decision with regard to the offer.

FIFTH SCHEDULE

(Under Regulation 16(3))

REQUIRED CONTENT OF OFFER DOCUMENT BY OFFEROR COMPANY

1. The offer document shall contain the following information
   (a) declaration of directors which state that—

   (i) the Directors whose names appear in the offer document, have considered all statements of fact and opinion, and individually and collectively accept full responsibility for the accuracy of the information given in the prospectus;

   (ii) the Directors to the best of their knowledge and belief, there are no other facts, the omission of which would make any statements in the offer document misleading;

   (b) the name and address of the offeror or any financial advisor or other person acting for the offeror or any person acting in concert with them;

   (c) if either the offeror or a person acting in concert with it is a company, the names of its directors and controlling Shareholders;

   (d) statement as to whether or not any securities acquired in pursuance of the offer, shall be transferred to any other persons together with the names of the Parties to such agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons.

   (e) if either the offeror or any person acting in concert with it is a company, the names of its directors and controlling shareholders.

2. The document shall also include the following statement—

   (a) If you are in doubt as to any aspect of this offer, you should consult a licensed brokerage company, a bank manager, lawyer, accountant, licensed investment advisers or other professional adviser.
(b) If you have sold all your shares in the name of the company you should immediately hand this document and the accompanying form to the purchaser or to the bank or broker or other agent through whom the sale was effected for transmission to the purchaser.

(c) a copy of the written advice to the purchaser, offeree’s financial advisers must be given.

3. CAUTION STATEMENT

(a) a copy of this offer document has been delivered to the Capital Markets and securities authority for approval and the Registrar of Companies for Registration;

(b) the securities offered have not been approved or disapproved by the Capital Markets and Securities Authority;

(c) approval of this offer is not to be taken as an indication of the merits of this offer or recommendation by the Authority to the offeree’s shareholders”

4. Intentions regarding the offeree company and its shareholders -

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

(b) the offeror’s intentions regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company;

(c) the long-term commercial justification for the proposed offer, and

(d) the offeror’s intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries.

5. Profit forecast shall be in accordance with the International Financial Reporting Standards and the following guidelines:

**Standard of care.**

A profit forecast shall be compiled with due care, the Reporting Accountant shall report whether or not that he satisfy himself that the forecast has been so compiled and such report shall be set out in the relevant document.

**Assumptions**

(a) when a profit forecast appears in any document, the assumptions, including the commercial assumptions, upon which the forecast is based, must be stated in the document and such assumption shall be specific;

(b) all-embracing assumptions and those relating to the general estimates made in the profit forecast shall be avoided;
(c) it shall not be acceptable for assumptions to relate to matters, which the directors, by virtue of their particular knowledge and experience in the business, are best able to take a view on, or over which they are able to exercise control.

Continuing validity of forecast

(a) When a company includes a forecast in a document subsequently sent out by that company in connection with the offer shall, except with the consent of the Authority, contain a statement by the directors that the forecast remain valid for the purpose of the offer and that the financial advisers and accountants who reported on the forecast have indicated that they have no objection to their reports continuing to apply.

Statements which will be treated as profit forecast

(a) when no particular figure is mentioned or the word “profit” is not used, certain forms of words may constitute a profit forecast, particularly when considered in context. Examples are “profits will be somewhat higher than last year” and “performance in second half-year” (when interim figures have already been published) whenever a form of words puts a floor under, or contains the data necessary to calculate an appropriate figure for future profits, it will be treated by the Authority as a profit forecast which must be reported on. In cases of doubt, professional advisers may consult the Authority in advance.

(b) an estimate of profit for a period, which has already expired, shall be treated as a profit forecast.

(c) a profit forecast for a limited period is subject to this Regulation.

(d) a dividend forecast is not normally considered to be a profit forecast unless, it is accompanied by an estimate as to dividend cover.

6. Asset re-valuation (where applicable) and shall be in accordance with the following guidelines:

Disclosure of revaluations

When revaluations of assets of either the offeror or offeree company are made in connection with an offer, details of the revaluations or an appropriate summary thereof shall be included in the offer document or other document circulated to the shareholders of the offeree company by its Board

Preparing revaluations

The revaluations must be carried out or confirmed by an independent, professionally qualified valuer or other expert and the basis of valuation clearly stated. The document
Shareholding and dealings

(a) the shareholdings of the offeror in the offeree company;

(b) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;

(c) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert);

(d) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accept or reject the offer, together with the names of such persons; and

(e) the shareholdings in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any persons acting in concert with the offeror has any arrangement of an indemnity or option nature, or any other agreement or understanding, formal or informal, of whatever nature, which might be an inducement to deal or refrain from dealing if in any of the above categories (a) - (e) there are no shareholdings, this fact should be stated. If any party whose shareholdings are required by this paragraph to be disclosed has dealt for value in the shares in question during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated. If no such dealings have taken place, this fact should be stated.

8. Partial offer

If applicable, an explanation as to why the number of offeree shares it is proposed to acquire, together with any such shares beneficially owned by the persons specified in paragraph 4 and 6, is less than the total number of shares in issue.

9. Shares offered for and dividends

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

10. The price or other consideration to be paid for the securities.

11. All conditions attached to acceptances and in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional.
12. A statement whether or not the offeror intends to avail itself of any powers of compulsory acquisition.

13. Market prices of offeree and offeror's shares

The closing price on the Stock Exchange of the securities of the offeree company, which are the subject of the offer—

(a) on the latest practicable date prior to the publication of the document;
(b) on the latest business day immediately preceding the date of the initial announcement of the offer.

14. Cash resources for offer

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

15. Financial information

(a) In the case of a securities exchange offer the following information about the offeror:

(i) for the last 3 financial years for which the information has been published, income statement, balance sheet, cash flow statement, basic and diluted earnings per share and dividends per share;

(ii) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;

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

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

(v) where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

(b) In a highly leveraged offer, the Authority shall require that the offer document contain a description of the financing arrangements. An offer may be considered to be highly-leveraged if, as a result of the offer, the offeror will incur a high
level of debt and the payment of interest, repayments of security for the debt will substantially depend on the business of the offeree company.

16. **Arrangements in connection with offer**

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

17. Details of any agreement or arrangement between the offeror and any of the directors of the offeree company or any person which is conditional on the outcome of the offer or otherwise connected with the offer.

18. **Regulatory obligations**

A statement of the obligations of the offeror and the rights of the offeree shareholders under Regulations 14 and 15.

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

(a) the nature and particulars of its business;
(b) the date and country of its incorporation;
(c) the address of its principal office in Tanzania;
(d) the authorised and issued share capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting;
(e) whether or not the shares being offered will rank pari passu with the existing issued shares of the company, and if not, a precise description of how the shares will rank for dividends and capital the number of shares issued since the end of the last financial year of the company;
(f) details of options, warrants and conversion rights affecting shares in the offer or company;
(g) details of any re-organization of capital during the two financial years preceding the date of the offer;
(h) details of any bank overdrafts or loans, or other similar indebtedness, mortgages, charges, or guarantees or other material contingent liabilities of the offeror and any of its subsidiaries, or, if there are no such liabilities, a statement to that effect;
(i) details of any material litigation to which the company is, or may become, a party;
(j) details of every material contract entered into not more than two years before the date of the offer, not being a contract entered into in the ordinary course of the business carried on or intend to be carried on by the company;
(k) how and when the documents of title to the securities will be issued.
(l) any other information as may be required by the Authority.
The offeree company’s circular shall contain the following information:

**Views of offeree board**

1. If the directors of the offeree company recommend that the shareholders shall accept or reject the offer, or a statement that the directors do not wish to make a recommendation, reasons for such recommendation or for making no recommendation must be given.

2. A copy of the written advice of the offeree’s financial advisers must also be given.

3. Whether the directors and any person dealing directly on their behalf intends to accept the offer.

**Directors’ shareholdings in offeree company**

4.—(1) The aggregate shareholdings in the offeror company and in the offeree company in which the directors of the offeree company are interested shall be stated.

(2) If any securities in the offeree company have been purchased or sold by such persons within 6 months before the announcement of the offer, details of the number, prices and dates shall be given.

**Shareholdings in the offeror**

5.—(1) The shareholdings in the offeror company in which the following persons are interested:

(a) the offeree company, the offeree’s holding company and any subsidiary or fellow subsidiary;

(b) each director of the offeree company;

(c) the offeree’s financial advisor, the advisor’s holding company or any subsidiary or fellow subsidiary

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

6.—(1) The authorised and issued share capital and any options outstanding in respect thereof, and the rights of the shareholders in respect of capital, dividends and voting

(2) The number of shares issued since the end of the last financial year of the company.

(3) Details of options, warrants and conversion rights affecting shares in the offeree company.

Financial information

7. The financial information relating to the offeree company

for the last 3 financial years for which the information has been published, income statement, balance sheet, Cash flow statement, basic and diluted earning per share and dividends per share;

all material changes in the financial or trading position or prospects of the company subsequent to the last published audited accounts or a statement that there are no known material changes;

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

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

where, a change in accounting policy figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.

8. Material contracts

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

9. Arrangements affecting directors

(a) details of any benefit to be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer;

(b) details of any agreement between any director of the offeree company and any other person, which is conditional on the outcome of the offer or otherwise, connected with the offer;

(c) details of any material contract entered into by the offeror in which any director of the offeree company has a material personal interest.

(d) directors’ service agreement;
(e) details of any service contracts with the offeree company or any of its subsidiaries or associated companies in force for directors of the offeree company which have more than 12 months to run, or which have been entered into or amended within 6 months before the announcement of the offer.

(f) any other information as may be required by the Authority.

Dar es Salaam
9th November, 2006

ZAKIA HAMDANI MEHJI,
Minister for Finance