

SECURITIES (TAKEOVERS AND MERGERS) RULES

[Section 39]

[Re-denominate the currency as stipulated under S 4 of Re-denomination Act, 8 of 2012, read with Bank of Zambia Act, 43 of 1996.]

Arrangement of Rules

Rule

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[Rules by the Securities and Exchange Commission]

SI 170 of 1993.

1. Title

These Rules may be cited as the Securities (Takeovers and Mergers) Rules, 1993.

2. Interpretation

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

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

“acting in concert” means persons who, pursuant to an agreement or understanding, actively co-operate to obtain or consolidate control of a company through the acquisition of voting rights of the company;

“control” shall be deemed to mean a holding, or aggregate holdings, of thirty-five percent or more of the voting rights of a company, irrespective of whether that holding or holdings gives *de facto* control;

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

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

“offer” includes—

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

(b) partial offers; and

(c) mandatory offers;

“offer period” means the period from the date when an announcement is made of a proposed or possible offer (with or without terms) until the first closing date or (if this later) the date when such offer becomes or is declared unconditional in all respects or is declared to have lapsed;

“person” includes an individual and a company;

“rights over shares” include any rights acquired by a person by virtue of an agreement to purchase shares or an option to acquire shares or an irrevocable commitment to accept an offer to be made by him;

“these Rules” includes the general principles set out in the Second Schedule and the provisions set forth in the Third Schedule;

“securities exchange offer” means an offer in which the consideration includes securities of the offeror or any other corporate body;

“substantial shareholder” means a person who holds ten per cent or more of the voting rights of a company;

“Stock Exchange” means any securities exchange on which the offeror or offeree company is listed; and

“voting rights” means all the voting rights currently exercisable at a general meeting of a company whether or not attributable to the share capital of the company.

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

(a) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies;

(b) a company with any of its directors (together with their close relatives, related

trusts and companies controlled by any of the directors, their close relatives and related trusts);

(c) a company with any of its pension funds, provident funds and employee share schemes;

(d) a fund manager with any collective investment scheme, or other body, whose investments such fund manager manages on a discretionary basis, in respect of the relevant investment accounts;

(e) a financial or other professional adviser, including a dealer, with its client in respect of the shareholdings of the adviser and persons controlling, controlled by or under the same control as the adviser;

(f) directors of a company (together with their close relatives, related trusts and companies controlled by such directors, their close relatives and related trusts) which is subject to an offer or where the directors have reason to believe a *bona fide offer for their company may be imminent*;

(g) partners; and

(h) an individual with his close relatives, related trusts and companies controlled by him, his close relatives or related trusts.

(3) For the purposes of these Rules, a company shall be deemed to be an associated company of another company if one of them owns or controls twenty per cent or more of the voting rights of the other or if both are associated companies of the same company.

3. Objects of Rules

The objects of these Rules are set out in the First Schedule hereto.

4. Application

(1) These Rules shall apply to all takeover and merger transactions affecting public companies.

(2) All persons engaged in takeover or merger transactions shall observe the general principles set out in the Second Schedule hereto and shall comply with the provisions of the Third Schedule hereto.

5. —

Any person who contravenes any of the provisions of the Third Schedule shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten million

kwacha or to imprisonment for a term not exceeding twelve months or to both.

FIRST SCHEDULE

[Rule 3]

OBJECTS OF RULES

1. Spirit of the Rules

(1) The primary purpose of these Rules is to afford fair treatment for shareholders who are affected by takeover and merger transactions.

(2) The Rules seek to achieve fair treatment by requiring equality of treatment of shareholders, requiring the disclosure of timely and adequate information to enable shareholders to make an informed decision as to the merits of an offer and ensuring that there is a fair and informed market in the shares of companies affected by takeover and merger transactions.

(3) The Rules also provide an orderly framework within which takeovers and mergers are to be conducted.

2. Sanctions on conduct

(1) Those who wish to take advantage of the securities markets in Zambia shall conduct themselves in matters relating to takeovers and mergers and in accordance with the Rules.

(2) If they do not do so they may find, by way of sanction, that the facilities of such markets are withheld.

(3) The Rules Governing the Listing of Securities on the Lusaka Stock Exchange Limited require compliance with the Rules.

(4) Where a breach of these Rules amounts to a contravention of any of the provisions of the Securities Act, 1993, or of subsidiary legislation made under that Act, sanctions under such provisions will apply and be enforced.

3. Scope of Rules

The responsibilities provided for in the Rules apply to—

- (a) directors of public companies;
- (b) persons or groups who seek to gain or consolidate control of public companies;
- (c) their professional advisers; and
- (d) those who are actively engaged in the securities market in all its aspects.

4. Promoters

In addition, any other persons who issue circulars or advertisements to shareholders in connection with takeovers and mergers must observe the highest standards of care and consult with the Commission prior to the release thereof.

5. Advisers

The role and responsibility of financial and other professional advisers is of particular importance, and it is part of their responsibility to use all reasonable efforts, subject to any relevant requirements of professional conduct, to ensure that their clients understand, and abide by, the requirements of these Rules and to cooperate to that end by responding to enquiries from the commission.

6. Commercial Considerations

These Rules are not concerned with the financial or commercial advantages or disadvantages of a takeover or merger, as the case may be, which are matters for the company and its shareholders.

7. Other Rules

(1) The provisions of these Rules are additional to the provisions of the Securities Act, 1993, and to other subsidiary legislation made under that Act.

(2) In particular all persons involved in takeover activities must have full regard at all times to the relevant provisions of the Securities (Advertisements) Rules, 1993, the Securities (Conduct of Business) Rules, 1993, and the Securities (Registration of Securities) Rules, 1993.

8. Structure of Rules

(1) The provisions of these Rules fall into two categories.

(2) First, there are general principles of conduct contained in the Second Schedule which are to be observed in takeover and merger transactions.

(3) Secondly, the Rules lay down in the Third Schedule a series of specific provisions.

(4) Some of the provisions of the Third Schedule are no more than examples of the application of the general principles and the Commission will interpret them in accordance with those principles.

(5) The Rules through the general principles, may apply to a situation not specifically covered by a provision of the Third Schedule.

(6) The Commission may modify or relax the application of a provision of the Third Schedule in exceptional circumstances, for example, when it considers that its strict application would operate harshly.

9. Companies to which these Rules apply

(1) These Rules apply to takeovers and mergers affecting public companies in Zambia.

(2) As a result, although it is generally the nature of the offeree company, the potential offeree company, or the company in which control may change or be consolidated that is relevant, there are also circumstances in which it is necessary to consider the treatment of the offeror's shareholders in order to carry out the objectives of these Rules.

10. The Commission

(1) These Rules are administered by the Commission.

(2) The Commission undertakes the investigation of takeover and merger transactions and the monitoring of related dealings in connection with these Rules.

(3) It is available for consultation and to give rulings on all matters before or during takeovers and mergers, as the case may be.

11. Consulting the Commission

(1) When there is any doubt as to whether a proposed course of conduct is in accordance with the general principles contained in the Second Schedule or the provisions of the Third Schedule, parties or their advisers should always consult the Commission in advance.

(2) In this way, the parties can obtain clarification of the basis on which they can properly proceed and thus minimise the risk of taking action which might, in the event, be a breach of these Rules.

(3) However, while the Commission will respond to questions respecting an interpretation of these Rules, it should not be expected to answer purely hypothetical questions, or to give provisional rulings when the parties with an interest in such rulings cannot be identified.

12. Requests for rulings

(1) Any request for a ruling under these Rules shall take the form of a written submission addressed to the Commission.

(2) The submission shall be made by or on behalf of the party or parties required to make representations in support of the submission.

(3) The submission shall be comprehensive and contain all relevant information which the Commission will require to reach a fully informed decision.

13. Publication of rulings

(1) Subject to confidentiality considerations, it will be the policy of the Commission to publish their important rulings, and the reasons for them, so that their activities may be understood by the public.

(2) All rulings will normally be announced to the parties as soon as possible.

(3) Important rulings suitable for publication will then be constituted as a written statement and will be issued as promptly as possible.

14. Co-operation with other authorities

(1) Information given to the Commission will be treated in the strictest confidence.

(2) Because of the overriding importance of maintaining a fair market and suppressing improper activities, this information is available to the Commission to be held subject to its own obligations of confidentiality.

(3) Subject to those obligations, the Commission may from time to time give information received by it to other regulatory authorities, so they can discharge their own duties.

(4) Conversely, the Commission may from time to time receive information from other regulatory bodies which is relevant to a matter then current.

(5) Co-operation with other regulatory authorities is regarded as an important part of the Commission's functions.

SECOND SCHEDULE

[Rule 4]

GENERAL PRINCIPLES FOR CONDUCT OF TAKEOVERS AND MERGERS

1. Spirit of the Rules

(1) It is impracticable to devise rules in sufficient detail to cover all circumstances which can arise in offers.

(2) Accordingly, persons engaged in offers should be aware that the spirit as well as the precise wording of the general principles and Rules must be observed.

(3) Moreover, the General Principles and the spirit of the Rules will apply in areas or circumstances not explicitly covered by any of the provisions of the Third Schedule.

2. Competent independent advice

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

3. Limitations on director's actions

(1) While 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 must accept that there are limitations in connection with takeover

and merger transactions on the manner in which the pursuit of those interests can be carried out.

(2) Inevitably, therefore, the general principles contained in the Second Schedule and the provisions of the Third Schedule will impinge on the freedom of action of boards and persons involved in such transactions.

4. Equality of treatment

All shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly.

5. Control

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

6. No less favourable terms

If, after a takeover or merger transaction is reasonably in contemplation, 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.

7. Information to shareholders

(1) During the course of an offer, or when an offer is in contemplation, neither an offeror, nor the offeree company, nor any of their respective advisers may furnish information to some shareholders which is not made available to all shareholders.

(2) This principle does not apply to the furnishing of information in confidence by the offeree company to a *bona fide potential offeror or vice versa*<FC:255,0,0>.

8. Announcements

(1) An offeror shall announce an offer only after careful and responsible consideration.

(2) The same applies to making acquisitions which may lead to an obligation to make a general offer.

(3) In either case the offeror and its financial advisers shall be satisfied that it can and will continue to be able to implement the offer in full.

9. Sufficient information and time

(1) Shareholders shall be given sufficient information, advice and time to reach an informed decision on an offer.

(2) No relevant information shall be withheld.

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

10. Full and prompt disclosure

(1) All persons concerned with 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 may mislead shareholders or the market.

11. Oppression of minority

Rights of control shall be exercised in good faith and the oppression of minority or non- controlling shareholders is always unacceptable.

12. Duties of directors

Directors shall 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.

13. No frustration of offer by offeree board

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 in general meeting, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits.

14. Full co-operation

All parties concerned with takeovers and mergers are required to co-operate to the fullest extent with the Commission, and to provide all relevant information.

THIRD SCHEDULE

[Rule 4]

SPECIFIC REQUIREMENTS FOR CONDUCT OF TAKEOVERS AND MERGERS

SECTION I - OFFERS

1. Offer

An offer shall be put forward in the first instance to the board of the offeree company or to its advisers, and before the offer is announced to the public.

2. Identity of offeror

If an offer or an approach with a view to an offer being made is not made by the ultimate offeror or potential offeror, the identity of that person or the ultimate controlling shareholder must be disclosed at the outset to the board of the offeree company.

3. Implementation of offer

A board which is approached is entitled to be satisfied by the offeror that the offeror will be in a position to implement the offer in full.

4. Confidentiality

(1) Absolute secrecy before an announcement of an offer or proposed offer is of vital importance.

(2) All persons who have confidential information, particularly if it is price sensitive, are required to take the greatest care to prevent a leak.

(3) This requirement is additional to the law against insider dealing.

SECTION II INDEPENDENT ADVICE, INDEPENDENT COMMITTEES AND SHAREHOLDER APPROVAL

5. Board of offeree company

(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 an independent financial adviser to advise the board as to whether the offer is, or is not, fair and reasonable.

(2) Such advice, including reasons, shall be obtained in writing and such written advice shall be made known to shareholders by including it in the offeree's circular along with the recommendation of the offeree's board regarding acceptance of the offer.

(3) If any of the directors of an offeree company is faced with a conflict of interest, the offeree board shall, if possible, establish an independent committee of the board to discharge the board's responsibilities in relation to the offer.

6. Board of offeror company

(1) If any director of an offeror which is a public company in Zambia is faced with a conflict of interest as a result of a proposed offer, the offeror's board shall, if possible, establish an independent committee to assess the proposed offer.

(2) If the conflict is a material one the Commission shall be consulted to establish, having regard to, among other things, the materiality of the offer to the offeror, whether the offeror's board shall retain an independent financial adviser to advise the shareholders or independent shareholders, of the offeror, as the case may be, and whether the offer should be made conditional upon approval of the offer by a majority of the votes cast by such shareholders in attendance either in person or by proxy at a

duly convened general meeting of the offeror's shareholders.

7. Persons not suited to give independent advice

A person who has, or had, a connection, financial or otherwise, with the offeror or offeree company of a kind likely to create a conflict of interest will not be regarded as a suitable person to give independent advice.

8. Independent financial advisers and independent shareholders

(1) A financial adviser will not normally be considered to be independent if he is considered to have a relationship with the offeror, the offeree company, or the controlling shareholder(s) of either of them, which is reasonably likely to affect the objectivity of his advice.

(2) If 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 independent adviser shall endeavour to represent the best interests of the offeror or the offeree company, respectively, by concerning itself only with the interests of the independent shareholders, i.e. those shareholders of the company who have no interest in the proposed transaction other than their interest as a shareholder of the company.

9. Independent committees

(1) 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.

(2) For this purpose, it is presumed that employees of an offeree company that is an associated company of the offeror have an indirect interest in the offer and are therefore not independent.

(3) The same presumption is applicable to employees, directors, agents, partners, close relatives and affiliates of any person that exercises control or direction over the business and operations of the offeree company if such person has a direct interest in the offer.

(4) For such purpose an affiliate is a person which controls, is controlled by, or is under common control with, the person in question.

(5) In case of doubt the Commission should be consulted.

(6) If a committee of a board of directors is not truly independent it shall not be characterised as such.

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

SECTION III ANNOUNCEMENTS

10. Offers or possible offers

An announcement is required—

(a) when 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 offer;

(b) immediately upon an acquisition of shares which gives rise to an obligation to make an offer under clause 57 (for which purpose, the announcement that an obligation has been incurred shall not be delayed while full information is being obtained—additional information can be the subject of a later supplementary announcement);

(c) when, 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) when, before an approach has been made, the offeree company is the subject of rumour and speculation or there is undue movement in its share price, and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security, purchasing of offeree company shares or otherwise) which have led to the situation; or

(e) when 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).

11. Responsibilities of offeror and offeree for announcements

(1) Before the board of the offeree company is approached, the responsibility for making an announcement can lie only with the offeror.

(2) The offeror shall, therefore, keep a close watch on the offeree company's share price and volume for any signs of undue movement.

(3) The offeror is also responsible for making an announcement once an obligation has been incurred to make a mandatory offer under clause 56.

(4) Following an approach to the board of the offeree company which may or may not lead to an offer, the primary responsibility for making an announcement will normally rest with the board of the offeree company which must, therefore, keep a close watch on its share price and volume.

12. Suspension of trading

(1) When an announcement is required the offeror or offeree, as the case may be, shall notify the Commission and the Stock Exchange immediately that an

announcement is imminent and if there is any possibility that an uninformed market for shares of the offeror or offeree could develop prior to publication of the announcement serious consideration shall be given to requesting a suspension of trading in such shares pending publication of the announcement.

(2) A potential offeror must not attempt to prevent the board of an offeree company from making an announcement or requesting the Stock Exchange to grant a temporary suspension of listing at any time the board thinks appropriate.

13. Announcement of firm intention to make an offer

(1) When a firm intention to make an offer is announced, the announcement must contain—

- (a) the terms of the offer;
- (b) the identity of the ultimate offeror or the ultimate controlling shareholder;
- (c) details of any existing holding of voting rights in the offeree company-
 - (i) which the offeror owns or over which it has control or direction;
 - (ii) which is owned or controlled or directed by any person acting in concert with the offeror;
 - (iii) in respect of which the offeror or any person acting in concert with him has received an irrevocable commitment to accept the offer; and
 - (iv) in respect of which the offeror or any person acting in concert with him holds an option to purchase or warrants or other convertible securities;
- (d) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer or the posting of it is subject; and
- (e) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree and which might be material to the offer.

(2) The announcement of an offer shall include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

14. Announcement of certain purchases

(1) Acquisitions of voting rights of an offeree company by an offeror or by any person acting in concert with the offeror may give rise to an obligation to make a cash offer (clause 51), to increase an offer (clause 52) or to make a mandatory offer (clause 56).

(2) Immediately after any acquisition giving rise to any such obligation, an announcement must be made, stating the number of voting rights acquired and the

price paid, together with the information required by clause thirteen (to the extent that it has not previously been announced).

15. No frustrating action

(1) Once 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 bonafide 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 general meeting.

(2) In particular the board must 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.

(3) Where the company is under a prior contractual obligation to take any such action, or where there are other special circumstances, the Commission must be consulted at the earliest opportunity.

(4) In appropriate circumstances the Commission may grant a waiver from the general requirement to obtain shareholders' approval.

16. No withdrawal of an offer

When there has been announcement of a firm intention to make an offer, except with the consent of the Commission, the offeror must proceed with the offer unless the posting of the offer is subject to the prior fulfilment of a specific condition and that condition has not been met.

17. Information to offerors

(1) 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 bonafide potential offeror, who shall specify the questions to which it requires answers.

(2) An offeror is not entitled, by asking in general terms, to receive all the information supplied to its competitor.

SECTION IV OBLIGATIONS OF DIRECTORS

18. Resignation of directors of offeree company

Except with the consent of the Commission 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.

19. Sale of shares by directors

When 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 clause 56, such directors must ensure that as a condition of the sale the purchaser undertakes to fulfil his obligations under that Rule.

SECTION V TIMING AND CONTENT OF DOCUMENTS

20. Availability of information

Information about companies involved in an offer must be made equally available to all shareholders as nearly as possible at the same time and in the same manner.

21. Offer document time limit

(1) The offer document, which must not be dated more than three days prior to despatch, should normally be posted by or on behalf of the offeror company within twenty-one days (or, in the case of a securities exchange offer, thirty-five days) of the announcement of the terms of the offer.

(2) The consent of the Commission is required if the offer document may not be posted within this period.

22. Contents of offer document

The offer document submitted by the offeror to the offeree shareholders shall contain all such information as is necessary to enable offeree shareholders to reach a properly informed decision.

23. Offeree circular

The offeree company shall send to its shareholders within fourteen days of the posting of the offer document a document containing all such information as it considers to be necessary to enable its shareholders to reach a properly informed decision on the offer.

24. Views of offeree's board and financial adviser

(1) The offeree company's document must 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 therefor.

(2) Reference is made in this regard to clause 5.

(3) If the offeree company's financial adviser is unable to advise whether the offer is, or is not, fair and reasonable the Commission should be consulted.

25. Subsequent documents

(1) 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.

(2) If there have been no such changes this must be stated.

SECTION VI STANDARD OF CARE AND RESPONSIBILITY

26. Prospectus standard

(1) Any document must be prepared with the same standard of care as if it were a prospectus.

(2) This applies 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.

(3) Those who issue any such document must ensure that it remains accurate and up to date throughout the offer period, and must notify shareholders of any material change as soon as possible.

27. Sufficient information

(1) Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer.

(2) Such information must be available to shareholders early enough to enable them to make a decision in good time.

(3) The obligation of an offeror in these respects towards the shareholders of the offeree company is no less than the offeror's obligation towards its own shareholders.

28. Directors' joint and several responsibility

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

29. Commission's consent required for exclusion of directors

(1) If it is proposed that any director shall be excluded from such a statement, the Commission's consent is required.

(2) In such cases, the exclusion and reasons for it shall be stated in the document.

**SECTION VII
PROFITS FORECASTS**

30. Standard of care

(1) A profit forecast must be compiled with due care and objectivity by the directors, whose responsibility it is.

(2) The financial advisers must report whether or not they are able to satisfy themselves that the forecast has been so compiled with such report must be set out in the relevant document.

31. Assumptions

(1) 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.

(2) Such assumptions shall be specific rather than vague.

(3) All-embracing assumptions and those relating to the general estimates made in the profit forecast shall be avoided.

(4) Furthermore it will not normally 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, since such matters should be reflected directly in the profit forecast.

**SECTION VIII
ASSET VALUATIONS**

32. 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 must be included in the offer document or other document circulated to the shareholders of the offeree company by its board.

33. —

(1) The revaluations must be carried out or confirmed by an independent, professionally-qualified valuer or other expert and the basis of valuation clearly stated.

(2) The document shall include a statement that the valuer or other expert has

given and not withdrawn his consent to the issue of the document with the inclusion of the valuation in the form and context in which it is included. Preparing revaluations

SECTION IX ISSUANCE OF DOCUMENTS

34. Filing of documents for comments

(1) Two copies of all documents must be filed with the Commission for comment prior to release or publication and must not be released or published until the Commission has confirmed that it has no further comments thereon.

(2) The final copy of the document must be filed with the Commission and the Stock Exchange in duplicate.

35. Publication of announcements

All announcements must be published as a paid announcement in at least one daily newspaper of general circulation throughout Zambia.

SECTION X OFFER TIMETABLE

36. Minimum period

An offer must be open for at least 21 days following the date of posting of the offer.

37. Conditions

If the offer is conditional, it must specify the latest day when the offeror can declare the offer unconditional.

38. Fourteen day period for acceptance

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

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

(3) In the latter case, at least fourteen days notice in writing must be given before the offer is closed to those shareholders who have not accepted the offer.

39. Final day

Except with the consent of the Commission, an offer shall not be kept open after the expiry of sixty days from the date of the posting of the initial offer document unless it has previously become unconditional.

40. Revised offer

(1) If, in the course of an offer, the offeror revises its terms, all offeree shareholders, whether or not they have already accepted the offer, will be entitled to the revised terms.

(2) A revised offer must be kept open for at least fourteen days from the date of posting written notification of the revision to shareholders.

41. Acceptor's right to withdraw

An acceptor shall be entitled to withdraw his acceptance after twenty-one days from the first closing date of the offer, if the offer has not by then become unconditional. Such entitlement to withdraw shall be exercisable until the offer becomes unconditional.

SECTION XI ANNOUNCEMENT OF RESULTS OF OFFER

42.

(1) The offeror shall immediately inform the Commission and the Stock Exchange that an offer has been revised or extended, has expired or has become or has been declared unconditional and shall publish an announcement on the following day to that effect.

(2) The announcement shall state the number of shares which it or any person acting in concert with it 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 it during the offer period.

(3) The statement must also specify the percentages of the relevant classes of share capital, and the percentages of voting rights, represented by these numbers
Nature of announcement

43. Consequences of failure to announce

(1) The Commission shall be consulted if an offeror is unable to comply with any of the requirements of clause 42.

(2) The Commission may require that acceptors be granted a right of withdrawal, on terms acceptable to the Commission, until the requirements of this rule can be met.

SECTION XII RESTRICTIONS ON DEALINGS BEFORE AND DURING THE OFFER

44. Restrictions on dealings before the offer

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

(2) Such restriction does not apply to an offeror, or persons acting in concert with the offeror, in respect of such dealings if such dealings are transacted for purposes of the offer unless the offeror, or a person acting in concert with the offeror, is a director or employee of the offeree company.

(3) No such dealings may take place in the securities of the offeror except where the offer is not price sensitive in relation to those securities.

45. Restrictions on dealings during the offer

During an offer period, the offeror and persons acting in concert with the offeror must not sell any securities in the offeree company except with the prior consent of the

Commission and following twenty-four hours public notice that such sales might be made.

46. Restrictions on dealings by offeror during non-cash offers

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

47. Dealings after termination of discussion

If 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, no dealings in securities of the offeree company by any person privy to this information may take place prior to an announcement of the position.

**SECTION XIII
DISCLOSURE OF DEALINGS DURING OFFER PERIOD**

48. Dealings in relevant securities

(1) During an offer period all parties to a takeover or merger transaction and their advisers and any persons acting in concert with any of them are free to deal, subject to clauses 44, 45, 46, 47, 52, 53 and 54 and to the disclosures and restrictions mentioned in this clause being made and complied with by them, as follows—

(a) Own account-Dealings in relevant securities by any such person for his own account during an offer period must be disclosed forthwith in writing to the Commission.

(b) Discretionary accounts-Dealings in relevant securities by any such person for discretionary accounts (but not for non-discretionary accounts) of investment clients during an offer period must be disclosed forthwith in writing to the Commission.

(c) Material trading arrangement-Dealings in relevant securities by any company having a material trading arrangement with an offeree company must be disclosed

forthwith in writing to the Commission.

(2) For the purposes of this rule—

(a) dealings include the purchase and sale of securities, the exercise or conversion of rights over securities, subscriptions for securities, and redemptions or purchases by a company of its own securities;

(b) disclosure of dealings must include the following information—

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

(ii) the prices paid or received;

(iii) the identity of the person(s) dealing;

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

(v) if the disclosure is made by a five per cent shareholder, a statement to that effect;

(vi) 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.

49. Dealings by five per cent shareholders

During an offer period, if a person, or group of persons acting in concert, owns or controls (directly or indirectly) five per cent or more of any class of relevant securities, or as a result of any transaction will so own or control five per cent or more, dealings in such securities of that company by such person or persons (or any other person through whom ownership or control is derived) must be disclosed to the Commission.

50. Discretionary Accounts

If a person manages investment accounts on a discretionary basis, relevant securities so managed will be treated, for the purpose of this rule, as controlled by that person and not by the person on whose behalf the relevant securities are managed.

SECTION XIV CASH OFFER

51. When cash offer required

(1) Where-

(a) shares of any class under offer in the offeree company have been purchased for cash by an offeror, and any person acting in concert with the offeror, during the offer period and within six months prior to its commencement and such shares carry

ten per cent or more of the voting rights or 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 clause 52; or

(c) in the view of the Commission there are circumstances which render such a course necessary in order to give effect to General Principal One set forth in the Second Schedule, the offer or revised offer, as the case may be, shall be in cash or accompanied by a cash alternative and, in the case of (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 it for shares of that class during the offer period and within six months prior to its commencement.

(2) The consent of the Commission is required if the offeror wishes to make its offer for a price other than the highest price paid by it, or any person acting in concert with it for shares of the class that is the subject of the offer during the offer period and within six months prior of its commencement.

SECTION XV PURCHASES AT ABOVE OFFER PRICE

52. Highest price paid

If the offeror or any person acting in concert with its purchases securities in the offeree company in the market or otherwise during the offer period at above the offer price, then the offeror must increase the offer to not less than the highest price (excluding stamp duty and dealing costs) paid for any securities so acquired.

53. Offers involving a further issue of listed securities

(1) 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 should normally be established by reference to the average traded price of such securities traded during the immediately preceding trading period.

(2) 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 must endeavour, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

54. Shareholder notification

Shareholders of the offeree company must be notified in writing of the increased price at least fourteen days before the offer closes, and an announcement must be made stating the number and class of securities purchased and the price paid.

55. Special dates

Except with the consent of the Commission neither the offeror nor any person acting in concert with it 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.

SECTION XVI MANDATORY OFFER

56. When mandatory offer required

Subject to the granting of a waiver by the Commission, if—

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

(b) two or more persons are acting in concert, and they collectively hold less than thirty-five per cent of the voting rights of a company, and any one or more of them acquires voting rights and such acquisition has the effect of increasing their collective holding of voting rights to thirty- five per cent or more of the voting rights of the company;

(c) any person holds not less than thirty-five per cent, but not more than fifty per cent, of the voting rights of a company and that person acquires additional voting rights and such acquisition has the effect of increasing that person's holding of voting rights of the company by more than five per cent from the lowest percentage holding of that person in the twelve-month period ending on and inclusive of the date of the relevant acquisition; or

(d) two or more persons are acting in concert, and they collectively hold not less than thirty-five per cent, but not more than fifty per cent, of the voting rights of a company, and any one or more of them acquires additional voting rights and such acquisition has the effect of increasing their collective holding of voting rights of the company by more than five per cent from the lowest collective percentage holding of such persons in the twelve-month period ending on and inclusive of the date of the relevant acquisition, that person, or the principal members of the concert group, as the case may be, shall extend offers, on the basis set out in this rule, 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. Offers for different classes of equity share capital must be comparable and the Commission shall be consulted in advance in such cases.

57. Conditions

Except with the consent of the Commission—

(a) offers made under clause 56 must be conditional upon, and only 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 it holding more than fifty per cent of the voting rights; and

(b) no acquisition or voting rights which would give rise to a requirement for an offer under clause 56 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.

58. Consideration

(1) Offers made under clause 56 must, in respect of each class or equity share capital involved, be in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror or any person acting in concert with it for voting rights of the offeree within the preceding six months.

(2) The cash offer or the cash alternative must remain open after the offer has become or is declared unconditional for not less than fourteen days thereafter.

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

(4) The Commission's consent is required if the offeror considers that the highest price should not apply in a particular case.

59. Restrictions on control by offeror

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

60. Prompt registration of transfers

The board and 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.

SECTION XVII CONDITIONS

61. Subjective conditions

An offer must not normally be made subject to conditions which depend on judgments by the offeror or the fulfilment of which is in its hands.

62. Acceptance condition

(1) Except with the consent of the Commission, 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 it holding more than fifty per cent of the voting rights of the offeree company.

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

(3) Mandatory offers made under clause 56 shall be subject to no other conditions, whether as to minimum or maximum levels or acceptances required to be received or otherwise.

(4) It follows that the offer should be unconditional as to acceptances where the offeror and persons acting in concert with it hold more than fifty per cent of the voting rights before such offer is made.

SECTION XVIII

DELAY BEFORE SUBSEQUENT OFFER

63. Temporary ban

(1) Except with the consent of the Commission, 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 it in the course of the original offer, nor any person who is subsequently acting in concert with any of them, may within twelve months from the date on which such offer withdrawn or lapses either—

(a) make an offer for the offeree company; or

(b) acquire any voting rights of the offeree company if offeror or persons acting in concert with it would thereby become obliged under clause fifty-six to make an offer.

(2) The restriction in this Rule 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 offering might be made, does not announce a firm intention either to make, or not to make, an offer within a reasonable time thereafter.

64. Partial offers

(1) The restrictions in clause 63 also apply following a partial offer which could result in a holding of not less than thirty-five per cent of the voting rights of the offeree company whether or not the offer has become or been declared wholly unconditional.

(2) When such an offer has become or been declared wholly unconditional, the period of twelve months runs from the date.

65. Six months delay before acquisition above offer price

(1) Except with the consent of the Commission, if a person, together with any person acting in concert with him holds more than fifty per cent of the voting rights of a company, neither that person nor an person acting in concert with him may, within six months of the closure of any previous offer made by him to the shareholders of that company which become 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.

(2) For this purpose the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.

SECTION XIX SUBSTANTIAL ACQUISITIONS

66. Disclosures

(1) Following an acquisition or disposal of shares carrying voting rights in a company, or rights over such shares, a person must disclose that acquisition or disposal and his total holding to the company not later than 9.00 a.m. on the dealing day following the date of the acquisition or disposal, if—

(a) as a result of the acquisition he comes to hold, with any shares or rights over shares already held by him, shares or rights over shares representing twenty per cent or more but less than thirty-five per cent of the voting rights in a company; or

(b) as a result of the acquisition or disposal his holding of shares or rights over shares already represents twenty per cent or more of the voting rights and is increased or decreased to or beyond any whole percentage figure representing twenty per cent or more but not exceeding thirty-five per cent; or

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

(2) Where two or more persons act by agreement or understanding in the acquisition by one or more of them of shares carrying voting rights in a company, or rights over such shares, their holding and acquisitions must be aggregated and treated as a holding or acquisition by one person for the purpose of this Rule.

(3) Each person acting in such manner must ensure that the obligations arising under this Rule are fulfilled.

(4) The terms of such disclosures are the same (with any necessary modifications as may be appropriate) as for clause 48.