



**SECURITIES & EXCHANGE COMMISSION
GHANA**

CODE
ON TAKEOVERS & MERGERS

JANUARY 2008



INTRODUCTION

The Code on Takeovers and Mergers referred to as “The Code” is issued by the Securities and Exchange Commission (SEC) in pursuance of section 9 of S.I.A1993 (PNDCL 333) which gives the responsibility of surveillance over activities in securities to ensure orderly, fair and equitable dealings to the SEC and section 23 of S.I.A1993 (PNDCL 333) which empowers the SEC to issue statements of principle with respect to conduct and financial standing expected of persons, licensed under the Law.

The Code is intended for use by licensees of SEC, Investors, Businessmen, Businesswomen, Professionals such as Lawyers, Accountants, Economists, Bankers, Policy makers and Students of law and business. It is useful to both the local and foreign investors.

The Code identifies the salient legal, regulatory obligations and procedures required to be complied with. **Part I** deals with Citation, Application and Interpretation of the Code. **Part II** covers Takeover Procedures on Mandatory Offers, Takeover Announcements and Statements; Obligations of the Offeree, the contents of Takeover Offer Documents, Requirements for Takeover Offers and Responsibilities of the Directors of Target Companies. **Part III** deals with the role of the Independent Adviser of the Offeree and Offeror, Independent Adviser's Statements and requirements for Independent Adviser. **Part IV** deals with the general provisions of the Offer. **Part V** is on the Acceptance of the Offer. Obligations of the Offeror are contained in **Part VI**. **Part VII** is on the obligations



of the Offeree. **Part VIII** details a number of prohibited actions not permissible under the Code. **Part IX** contains miscellaneous provisions on submission of information to the SEC, suspension of trading during a Takeover and issuance of shares of a subsidiary. **Part X** deals with the powers of the SEC. **Part XI** contains provisions on fees payable on submission of statements to the SEC.

The Code has five Schedules. The Schedules contain the details of the Offeror's Announcement, Offeror's Statement to Offeree, Contents of Offeror Takeover Documents, the Offeree's Statement to Shareholders and the Independent Adviser's Statements.

The Code specifies the conduct required of professionals engaged in the arrangement of Takeovers and Mergers as well as standards and procedures that have to be complied with, to ensure that all shareholders are fairly treated. The Code does not preclude further development of policies and procedures to enhance the disclosure requirements.

Users are advised to read the Securities Industry Act 1993, PNDCL 333 as amended by Securities Industry (Amendment) Act 2000, Act 590 for a fuller understanding of any specific legal provision.

Dr. Nii Kwaku Sowa
DIRECTOR-GENERAL



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PART I

CITATION, APPLICATION AND INTERPRETATIONS



PART I: CITATION, APPLICATION AND INTERPRETATIONS

1.0 Citation

- 1.1 These provisions are cited as the Takeovers and Mergers Code (“Takeovers Code” or “Code” or “Rules”). The Code shall be effective from October 2008

2.0 Application

- 2.1 This Code shall apply to:
- a. all takeovers and mergers where the target company is a public company; and
 - b. all takeovers and mergers between or among public companies, whether listed or unlisted.
- 2.2 The Rules relating to mergers and takeovers in this Code shall apply to consolidations, with the “consolidating companies” generally having the role of the “merged companies” and the “consolidated (i.e. new company) company” generally having that of the “surviving company”.
- 2.3 These Rules supersede any or all provisions relating to takeovers and mergers within the Rules of the Ghana Stock Exchange.



3.0 Interpretations

3.1 In these Rules, unless the context otherwise requires, expressions defined in the Securities Industry Act, 1993 PNDCL 333 (the “Act”) as amended and the Companies Act 1963 (Act 179) shall have the same meaning and include:

3.2. “Acquisition or takeover” shall mean and include:

- (i) The direct acquisition of the shares carrying voting rights in a target company, with no new company being formed; or
- (ii) The indirect acquisition of the shares or control of the shares carrying voting rights of a target company by virtue of the acquisition of holding companies, whether listed or unlisted, whether in Ghana or abroad, with no new company being formed;

3.3 “Acting in concert” shall mean and include persons who, pursuant to a formal or informal agreement or understanding, actively co-operate, directly or indirectly, through the acquisition of shares having voting rights in a public company to obtain or consolidate control of that target company;

3.4 “Associated person” shall mean a person associated with another person.

- (1) An associated person shall be construed as follows:–
 - a. Where the other person is a body corporate: –



- i. a director or secretary of the body corporate;
 - ii. a body corporate that is related to the other person; or
 - iii. a director or secretary of such a related body corporate;
- b. Where the matter to which the reference relates is the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate, a person with whom the other person has or proposes to enter into an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied—
 - i. by reason of which either of those persons may either, directly or indirectly, control the exercise or substantially influence the exercise of any voting power attached to a share in the body corporate;
 - ii. with a view to controlling or influencing the composition of the board of directors or the conduct of affairs of the body corporate; or
 - iii. under which either of those persons may acquire from each other shares in the body corporate or may be required to dispose of such shares in accordance with the directions of the other body;
- c. a person in concert with whom the other person is acting or proposes to act in relation to the matter to which the reference relates;



- d. where the matter to which the reference relates is a matter, other than the extent of power to exercise or to control the exercise of the voting power attached to voting shares in a body corporate—
- i. subject to subsection (2), a person who is a director of a body corporate that carried on a business of dealing in securities and of which the other person is also a director;
 - ii. subject to subsection (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carried on a business of dealing in securities; or
 - iii. a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
- e. a person with whom the other person is, by virtue of any regulation that may be introduced, regarded as associated in respect of the matter to which the reference relates;
- f. a person with whom the other person is, or proposes to become associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
- g. where the other person has entered into, or proposes to enter into a transaction or has done, or proposes to do, any other



act or thing, with a view to becoming associated with a person as mentioned in paragraph (a), (b), (c) (d), (e) or (f).

- (2) Where, in proceedings under this Law, it is alleged that a person referred to in subsections (I) (d) (i) and (ii) was associated with another person at a particular time, that person shall be deemed not to have been associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.
- (3) A person shall not be taken to be associated with another person by virtue of sub-section (I) (b), (c), (e) or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of functions that relate to his professional capacity or to his business relationship with the other person.
- 3.5. “Board” shall mean the Board of Directors as assigned to it in the Companies Act, (Act 179).
- 3.6. “Commission or SEC” shall mean the Securities and Exchange Commission of Ghana.
- 3.7. “Consolidation” shall mean the combination of two or more companies (i.e., consolidating companies) whereby the assets and liabilities of the consolidating companies are



- transferred into a new company (i.e., the consolidated company) and terminating the consolidating companies;
- 3.8 “Control” shall mean the right or entitlement to exercise or control the exercise of thirty (30%) or more of the voting shares at the general meetings of a company or the ability to control the composition of a majority of the Board of Directors of a company;
- 3.9 “Counter Offer” shall mean a Takeover offer made by an Offeree to an Offeror;
- 3.10 “Competing Takeover Offers” shall mean a situation where there are competing offers from independent Offerors at the same time.
- 3.11 “Convertible securities” of the Offeree means securities that are convertible to ordinary shares of the Offeree”.
- 3.12 “Days” shall mean business days.
- 3.13 “Effective control” is where a person makes an offer for the acquisition of effective control of an Offeree which holds shares which together with shares, if any, already held by such person or an associate person or a company or by any other company that is deemed by virtue of being a related company or by persons acting in concert with such person carry the right to exercise or control the exercise of not less than thirty percent (30%) of the votes attached to the ordinary shares of an Offeree which shall be deemed to be a takeover and the provisions of these Rules shall apply;



- 3.14 “General Offer” shall mean an offer made to all shareholders of a target company for the purchase of their shares.
- 3.15 “Mandatory Offer” shall mean acquiring 30% or more of the voting shares of a public company within a period of twelve (12) months, or acquiring voting shares that result in ownership of more than fifty percent (50%) of the voting shares of a public company;
- 3.16 “Merger” shall mean an arrangement whereby the assets of two or more companies become vested in or under the control of an existing company;
- 3.17 “Offer” shall mean an offer to which this Code applies for voting shares and any other securities to which the offer is required to extend under this Code (note: in securities markets, 'offer' is normally related to an offer to sell; 'bid' is related to a desire to buy);
- 3.18 “Takeover Offer Document” shall mean the documents containing details of the offer.
- 3.19 “Offer Period” shall mean the period between the date the Offeror submits the Offeror’s announcement to the Offeree under Rule 5.2 and the later date of either:
- i. the first closing date of the offer; or
 - ii. the date when the Takeover offer becomes or is declared unconditional as to acceptances; or lapses; or is withdrawn.



Unless extended by the SEC, the Offer Period shall not remain open longer than 120 days after the Offeror's announcement is made.

- 3.20 “Offeree” shall mean a person to whom an offer is made, or “Target Company”;
- 3.21 “Offeror” shall mean and include any person who acquires or agrees to acquire effective control in the Offeree either directly or with any associated person or related company or any person acting in concert with the Offeror.
- 3.22 “Partial Offer” shall mean an offer in which a person offers to acquire less than 100% of any class of the voting shares of a company;
- 3.23 “Person” shall mean and include a natural person or a legal body or organization, including a combination of such, with legal rights and obligations.
- 3.24 “Public Company” shall mean and include a body corporate which is not a private company;
- 3.25 “Private Company” is as described in the Companies Act;
- 3.26 “Reverse Takeover” shall mean a situation where an offeror makes a takeover offer for the voting shares of an offeree by means of an exchange of shares such that if the takeover offer is accepted, the shareholders of the offeree would control the offeror.
- 3.27 “Securities & Exchange Commission” shall mean Securities and Exchange Commission Ghana. (SEC)



- 3.28 “Takeover”, see “Acquisition” above;
- 3.29 “Takeover Bid or Bid” shall mean a general offer, to takeover all shares of the same class of the target company;
- 3.30 “Target Company” shall mean a company which is the subject matter of a takeover or merger, or “Offeree”;
- 3.31 “Tender Offer” shall mean an offer to the public to buy or exchange securities.
- 3.32 “Unlisted Company” means a company whose shares are not listed on a stock exchange.
- 3.33 “Voting Rights” shall mean the rights to vote at a general meeting of shareholders;



PART II

TAKEOVER PROCEDURES



PART II- TAKEOVER PROCEDURES

4.0 Mandatory Offer

4.1 No person shall make an offer to acquire shares or voting rights of a public company which together with shares or voting rights if any held by such person or by persons acting in concert entitle such person to exercise effective control in the Target Company without complying with the takeover procedures provided for under Rule 5.

4.2 Where a person or persons acting in concert:

- a. acquires or intends to acquire more than thirty percent (30%) but less than fifty percent (50%) of the voting shares of a public company in any 12-month period; or
- b. acquires or intends to acquire fifty percent (50%) or more of the voting shares of the public company; or
- c. acquires a company that holds effective control in the public company or together with the shares already held, will result in acquiring effective control of the public company,

The person shall be obliged to make a takeover offer of such public company and shall be required to comply with the takeover procedures set out under Rule 5.

4.3 Without prejudice to Rules 4.1 and 4.2 above, no person shall acquire effective control over a target company unless



such person makes the same offer to all shareholders of the same class of such company in accordance with these Rules.

4.4 The Mandatory Takeover offer requirement may not apply to situations including the following:

- a. any purchase of shares from un-issued shares provided that the acquisition will not result in a fifty percent (50%) or more ownership of shares by the purchaser;
- b. any purchase of shares from an increase in authorized share capital;
- c. acquiring of shares through inheritance;
- d. purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;
- e. purchases in connection with privatization undertaken by the Government of Ghana; and
- f. purchases in connection with liquidation or insolvency under court supervision.

4.5 Exemptions may be granted by the SEC, with respect to Rule 4.2, where applicable.



5.0 Notification: Takeover Offer Announcement and Statement

- 5.1 Any person making a Takeover offer shall make an announcement of his intention in a newspaper of general circulation, prior to the commencement of the offer; provided, however, that such announcement shall not be made until the bidder has the resources to implement the offer in full. A copy of the said notice shall be submitted to the Commission, the Offeree and the stock exchange on which the Offeree and Offeror are listed on the date of publication thereof.
- 5.2 A person who intends or proposes to acquire effective control in a public company shall not later than twenty-four (24) hours from the resolution of its board to acquire effective control in the target Company or not later than twenty-four (24) hours after making a decision to acquire effective control in the target company, announce the proposed offer by press announcement on the floor of the Exchange (if the target company is listed), in the electronic media and in at least two (2) daily newspapers of national circulation and submit a written notice of intent containing the particulars set out in Rule 5.3 to the:
- a. Proposed Offeree's Board of Directors at its registered office;
 - b. Stock Exchange at which the Offeree's voting shares are listed, if applicable; and



- c. The Securities and Exchange Commission (SEC).
- 5.3 The Press Announcement referred to in Rule 5.2 above shall:
- a. be made in at least two (2) English language daily newspapers of national circulation;
 - b. state that the person intends to acquire or has acquired effective control in the company and has at a stated date served a notice of intent to make a Takeover offer to the company or has made an application to the SEC for exemption from the takeover requirements, in compliance with these Rules; and
 - c. include the information as detailed in Schedule I, where applicable.
- 5.4 The Offeror shall submit to the Offeree and to the SEC within ten days from the date of the announcement of intention, a statement detailing the offer, containing the information specified in Schedule II to these Rules.
- 5.5 Where an Announcement of an intention to make a Takeover offer under Rule 5.1 or an Offeror's statement under Rule 5.4 have been submitted to the Offeree, the proposed Offeror shall not amend or withdraw the intention or the statement without the prior written consent of the SEC.
- 5.6 The SEC shall on application of the Offeror, permit the Offeror at any time prior to the Offeror serving the takeover statement upon the Offeree, to:



- a. amend in writing any notice or Statement lodged by the Offeror pursuant to Rules 5.2 and 5.4; or
- b. substitute in writing a fresh announcement or statement for an earlier announcement or statement lodged with the Offeree pursuant to Rules 5.2 or 5.4 in such manner and subject to such terms as the Offeror may consider as justified by the circumstances of the case and such announcement or statement shall require approval of the SEC.

5.7 For the purpose of Rule 5.6, the commencement of time of the offer period shall be from the date when the first written announcement is submitted by the Offeror.

6.0 Obligations of Offeree

6.1 Upon receiving the Offeror's Statement in accordance with Rule 5.4, the Board of Directors of the Offeree shall inform the relevant securities exchange(s) and the SEC, and make an announcement by a press notice of the proposed takeover offer within twenty-four (24) hours of receipt of the Offeror's Statement.

6.2 The press notice referred to in Rule 6.1 shall be made in at least two English language daily newspapers of national circulation and shall include all material information contained in the Offeror's Statement.



7.0 Takeover Offer Document

- 7.1 The Offeror shall within ten (10) days from the date of submitting the Offeror's Statement pursuant to Rule 5.4, submit to the SEC, for approval, the Takeover Offer Document which shall include the information contained in Schedule III and such other information that the SEC may require.
- 7.2 The Takeover Offer Document shall be signed by the individual if the Offeror is an individual, or by two (2) authorized directors, certifying that "To the best of our knowledge and belief, after making proper enquiry, the information contained in the Takeover Offer Document is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the Offeror under the Takeovers Code."
- 7.3 The SEC shall approve the Takeover Offer Document and advise the Offeror of such within thirty (30) days where the Document is in compliance with the requirements of these Rules or within such other time as may be determined by the SEC provided that where the SEC has determined it is not possible to grant approval within thirty days, it shall advise the Offeror of this fact.
- 7.4 The Takeover Offer Document approved by the SEC shall include a declaration in the following words: "Approval has been obtained from the SEC for the compliance with the



requirements relating to the Takeover Offer Document under Schedule III of this Code. As a matter of policy, the SEC assumes no responsibility for the correctness of any statements or opinions made in this Takeover Offer Document. Approval of this Takeover Offer Document is not either an indication of the merits of this offer or a recommendation by the SEC to the Offeree's shareholders".

7.5 The Takeover Offer Document shall be submitted by the Offeror to the Offeree within five (5) days from the date of approval of the Takeover Offer Document by the SEC.

7.6 The Offeree shall within fifteen (15) days from the date of receipt of the approved Takeover Offer Document circulate it to its shareholders to whom the Takeover offer relates, together with the Independent Adviser's Statement referred to in Rule 10.

8.0 Requirements for Takeover Offer

8.1 The Takeover Offer Document shall be dated and shall, unless varied under Rule 18, state that it will remain open for acceptance by the Offeree for thirty (30) days from the date of submission of the Takeover Offer Document by the Offeror to the Offeree.

8.2 The offer shall not be conditional upon the Offeree approving or consenting to any payment or other benefit being made or being given to any director of the Offeree or to any other person that is deemed to be related to the Offeree,



as compensation for loss of office or as consideration for, or in connection with, his retirement from the office.

8.3 The offer shall state:

- a. whether the offer is conditional upon acceptance of the offer being received in respect of a minimum number of issued voting shares of the Offeree and if so, the percentage;
- b. where the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of such payment;
- c. where the shares are to be acquired through a share swap, the proportion of the share swap and the period within which the Offeree's shareholders shall receive the new shares;
- d. whether the Offeror is engaged in the same line of business as the Offeree;
- e. whether the offer is conditional upon receiving approval under any Law in Ghana or other regulatory approval outside Ghana where the transaction involves companies incorporated outside Ghana;
- f. whether the offer is conditional upon maintenance of a minimum percentage of share holding by the general public to satisfy the continuing eligibility requirements for listing; and



- g. the circumstances that shall apply in the event the conditions in Rules 8.3. (a) through (f) are not fulfilled.
- 8.4 Every Takeover Offer Document shall contain the following words which shall be prominently displayed on the first page of the Takeover Offer Document: “To better understand the merits of this offer, you should consult the independent adviser appointed by your Board of Directors, or your Broker/Dealer, investment bank, or other professional investment adviser”.
- 9.0 Responsibilities of the Board of Directors of the Target Company**
- 9.1 Subject to the independent advice required under Rule 10, the Board of Directors of the Offeree shall within fifteen days (15) after the receipt of the Takeover Offer Document under Rule 7 issue a Statement to the holders of voting shares in the Offeree to which the takeover offer relates, indicating whether or not the Board of Directors of the Offeree recommend to holders of the voting shares the acceptance of the takeover offer(s) made by the Offeror .
- 9.2 The Statement referred to in paragraph (1) above shall include the information contained in Schedule IV.
- 9.3 The Board of Directors of the Offeree shall disclose in the Statement referred to in paragraph (1) above to every holder of the voting shares to which the takeover offer relates all



such information as the holders of such voting shares and their professional advisers would reasonably require or expect to find in such a Statement or for the purpose of making an informed assessment as to the merits of accepting or rejecting the takeover offer and the extent of the risks involved in such action.

9.4 Without prejudice to the generality of Rule 9.3, the Statement shall include, but is not limited to information on:

- a. the Offeror's stated intentions regarding the continuation of the business of the Offeree;
- b. the Offeror's stated intentions regarding major changes to be introduced in the business, including plans to liquidate the Offeree, sell its assets, re-deploy the fixed assets of the Offeree or make any other major change in the structure of the Offeree;
- c. the Offeror's stated long term commercial justification for the proposed takeover offer;
- d. the Offeror's stated intentions with regard to the continued employment of the management and employees of the Offeree and of its subsidiaries;
- e. the reasonableness of the takeover offer, including, the reasonableness and accuracy of profit forecasts for the Offeree, if such forecast is included by the Offeror in the Offer Document; and



f. any other information relevant for the informed assessment of the holders of voting shares and their professional advisers.

9.5 Two Directors of the Target company shall sign the Statement and certify “To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying this Statement is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the Target company under this Takeovers Code.”



PART III

INDEPENDENT ADVICE



PART III- INDEPENDENT ADVICE

10.0 Independent Adviser of the Offeree

- 10.1 The Board of Directors of the Offeree shall appoint an independent adviser, within five (5) days of receipt of the Offeror's Statement under Rule 5.4 in relation to the takeover offer.
- 10.2 The independent adviser appointed under paragraph (1) above shall be an investment adviser or a broker-dealer licensed by the SEC or any other professional acceptable to the SEC.
- 10.3 The substance of the independent adviser's advice must be made known to the holders of the class of the voting shares to which the Takeover offer relates, in a Statement by the Offeree to its shareholders.

11.0 Independent Adviser of the Offeror

- 11.1 The Board of Directors of the Offeror shall appoint an independent adviser where the takeover offer being made is a Reverse Takeover or where the Board of Directors of the Offeror is faced with a conflict of interest situation.
- 11.2 The advice given to the Board of Directors of the Offeror under paragraph (1) above shall be made known to all the holders of voting shares of the Offeror.
- 11.3 In the case of a Reverse Takeover, the Board of Directors of the Offeror shall obtain approval of the holders of voting



shares of the Offeror to which the Reverse Takeover relates prior to serving the Takeover Offer Document to the Offeree under Rule 7.5.

- 11.4 Where the Offeror has Convertible Securities outstanding, the appointed independent adviser shall make known its advice to the holders of such securities, together with the views of the Board of Directors of the Offeror or of the Offeree, as the case may be, on the Takeover offer or proposal.

12.0 Independent Advisers' Statements

- 12.1 The independent advisers appointed by the Board of Directors of the Offeree shall send a Statement to the Board of Directors of the Offeree and the SEC prior to the Statement being served on the Offeree's holders of voting shares to which the Takeover offer relates.
- 12.2 The Statement required to be sent by the Board of Directors of the Offeree to the Offeree's shareholders under Rule 9 and the independent adviser's Statement shall be posted to the relevant holders of voting shares within fifteen (15) days from the date of the Takeover Offer Document being served in accordance with Rule 7.
- 12.3 The independent adviser shall disclose all such information in the independent adviser's Statement to the holders of the voting shares of the Offeree, the Board of Directors of the Offeree and all holders of voting shares to which the



takeover offer relates as well as advice that professional advisers would reasonably require or expect to be informed about, in an independent advice or for the purpose of making an informed assessment as to the merits of accepting or rejecting the takeover offer and the extent of the risks involved in such action.

12.4 The information required to be disclosed under paragraph (2) above shall be that which:

- a. is within the knowledge of the Board of Directors and of the independent adviser; and
- b. the independent adviser would be able to obtain by making such enquiries as were reasonable in the circumstances.

12.5 For the purposes of paragraph (4) above, a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence of which, an employee or agent of the person having duties or acting on behalf of the employer or principal was aware of at the time.

12.6 Without prejudice to the generality of paragraph (4) above, an independent adviser shall include in the Statement to the Board of Directors of the Offeree and the Offeree shareholders all the information and Statements specified in Schedule V of these Rules.



13.0 Requirements for Independent Adviser

13.1 No person shall be eligible to be appointed as an independent adviser under Rules 10 and 11 where such a person:

- a. has an interest in ten percent or more of the voting shares of an Offeror or Offeree at any time during the twelve months preceding the date of announcement of the Offeror's intention of the takeover scheme;
- b. has a substantial business relationship with the Offeror or Offeree at the material time or at any time during the twelve months preceding the date of announcement of the Offeror's intention of the takeover offer;
- c. has a director on its Board of Directors who is also a director on the Board of Directors of the Offeror if the Offeror is a company or on the Board of Directors of the Offeree, as the case may be;
- d. is involved in financing the offer by the Offeror;
- e. qualifies as an associated person within rule 3 (c) of this code;
- f. is a substantial creditor of either the Offeror or the Offeree;
- g. has a financial interest in the outcome of the takeover offer other than that specified in paragraphs (a) to (d) above; or
- h. has been an adviser in planning or restructuring of the Offeror or Offeree including acquisitions, at any



time during the period of twelve months preceding the date of Announcement of the Offeror's intention of the takeover offer.

13.2 A person is deemed a “substantial creditor” if:

- a. the credit extended represents more than ten percent of the credit outstanding in the Offeror or the Offeree; or
- b. the credit extended to either the Offeror or the Offeree represents more than ten percent of the shareholders' funds of the person based on the latest audited accounts; or
- c. the person is a lead banker in a syndicated loan extended to either the Offeror or the Offeree in the preceding three years.



PART IV

GENERAL PROVISIONS REGARDING THE OFFER



PART IV - GENERAL PROVISIONS REGARDING THE OFFER

14.0 Offer to Dissenting Shareholders

- 14.1 Where a takeover results in the Offeror acquiring ninety percent (90%) or more of the Offeree's voting shares, the Offeror shall offer the remaining shareholders a consideration that is equal to the prevailing market price of the voting shares or the price offered to the other holders, whichever is higher.
- 14.2 Where a takeover results in the Offeror acquiring ninety percent (90%) or more of the Offeree's voting shares, the remaining shareholders can accept or decline the proposed offer.

15.0 Competing Takeover Offer

- 15.1 Where a decision has been reached to make a Competing Takeover Offer, all provisions in these Rules relating to the takeover procedures shall apply including necessary changes except the notice period to the Competing Offer.
- 15.2 The Competing Offeror shall serve a competing Takeover Offer Document required under Rule 7.5 at least ten (10) days prior to the closure of the original offer period and this period shall also apply to revisions that may be made to the competing offer.



- 15.3 Any information given to any Offeror, including particulars of shareholders shall be furnished equally and promptly on request to any other competing Offeror who has made a Competing offer in terms of these Rules.
- 16.0 Offer Period, Lapsing of an Offer, and Extension of Offer Period**
- 16.1 An Offeror must keep a takeover offer open for acceptances for a period of thirty (30) days from the date the Takeover Offer Document is first served in accordance with Rule 7.5 or such period as may be determined by the SEC.
- 16.2 An offer (period) shall be deemed to have lapsed:
- in the event of the non-fulfilment of any obligations by the Offeror under these Rules; or
 - where all conditions to which the offer is subject are not fulfilled within twenty-one (21) days of the first closing date of the offer or on the date the offer becomes or is declared unconditional as to acceptances; or
 - upon the non-acceptance of the offer after the expiry of the offer period.
- 16.3 In the case of an offer which lapses in terms of the provisions of Rule 16.2(a), the Offeror shall be prohibited from making any offer for the acquisition of shares of any listed company for a period of twelve months from the date of failure to fulfil the obligation.



- 16.4 No offer may be extended beyond the offer period without the approval of the SEC.
- 16.5 Where an extension of an offer is allowed by the SEC under Rule 16.4 above, the Offeror shall inform the shareholders of the target company of the next closing date by press announcement on the floor of the Exchange (in the case of a listed company), in the electronic media and in at least two (2) daily newspapers of national circulation.

17.0 Conditional Offer

- 17.1 Where the offer is conditional upon acceptances in respect of a minimum percentage of shares being received, the offer shall specify a date not being more than thirty (30) days from the date of service of the takeover offer or such later date as the SEC may allow as the latest date on which the Offeror can declare the offer to have become free from that condition.

18.0 Variations of the Takeover Offer

- 18.1 An Offeror may vary the terms and conditions of a takeover offer including increasing the consideration offered in relation to the whole or part thereof provided such variation shall be made at least five (5) days prior to the closure of the offer period. The SEC shall be notified of variation to the offer.



- 18.2 The Offeror may vary the offer only if the variation is to do with any of the following:
- to increase an existing component or components of the consideration;
 - to add a cash component to the consideration;
 - to include in the offer a cash alternative; or
 - to extend the offer period, but not beyond the maximum offer period permitted.
- 18.3 If a variation to an offer increases the consideration offered, the Offeror must provide the increased consideration to each person whose securities are taken up, whether or not the person accepted the offer before or after the variation was made.
- 18.4 If a variation to an offer includes a cash alternative in the offer, the Offeror must give all acceptors, including those who have accepted the offer before the variation is made, the opportunity to take the cash alternative as consideration.
- 18.5 The varied Takeover Offer Document shall set out in an appropriate form the particulars of such modification of the Offeror's Statements and information required under Schedule II as are necessary regarding the variations.
- 18.6 The Offeror shall after notification to the SEC submit the varied Takeover Offer Document to the Offeree, the SEC, and the securities exchange (if applicable) within twenty-four (24) hours of making the decision to vary the takeover



offer, and simultaneously make a public announcement by press notice in at least two (2) English language dailies of national circulation disclosing material variations to the offer.

19.0 Withdrawal of the Takeover Offer

- 19.1 An Offeror shall not withdraw a takeover offer without the prior written approval of the SEC.
- 19.2 Where a takeover offer has been withdrawn, the Offeror and all persons acting in concert with the Offeror shall not, within twelve months from the date on which the takeover offer was withdrawn:
- a. make a takeover offer for the voting shares that had been the subject of the takeover offer that has been withdrawn; or
 - b. acquire any additional voting shares of the Offeree other than as provided under Part II Rule 4.
- 19.3 The Offeror and all persons acting in concert or associated with the Offeror shall furnish the SEC with details of any acquisition by the Offeror and persons acting in concert or associated with the Offeror of any share of the Offeree including any option to acquire any share in the Offeree each month for a period of twelve months from the date on which the takeover offer was withdrawn.
- 19.4 Withdrawal of a takeover offer may occur where:



- a. the Offeree's shareholders have rejected the takeover offer;
- b. events, occur, rendering either the Offeror or Offeree or both incapable of fulfilling their obligations under the takeover offer; or
- c. a counteroffer is accepted by the Offeree.

19.5 In the event of the SEC's approval of and withdrawal of the offer, the Offeror shall within 24 hours:

- a. inform the Board of Directors of the target company;
- b. inform the securities exchange on which the shares of the Offeror and/or target company are listed, if applicable; and
- c. make a public announcement in the same daily newspapers in which the public Announcement of the offer was made, indicating the reasons for the withdrawal of the offer.

20.0 Closing of the Takeover Offer

20.1 A takeover offer shall be deemed to close at the end of the last day of the offer period.

20.2 A holder of the voting shares in the Target Company may refuse acceptance at any time before the closing of the offer.



PART V

ACCEPTANCES OF THE OFFER



PART V - ACCEPTANCES OF THE OFFER

21.0 Pro-Rata Acceptances of the Offer

- 21.1 Where an Offeror receives acceptances by shareholders of the Offeree which are in excess of the total number of shares to which the takeover offer relates, the Offeror shall undertake a pro-rata acceptance.
- 21.2 For the purposes of this Rule, "pro-rata acceptance" means an allocation of acceptance by the Offeror in proportion to the total number of shares accepted by each Offeree shareholder in relation to the percentage upon which the offer was conditional.

22.0 Announcement of Acceptances of the Offer

- 22.1 The Offeror shall inform the SEC and the stock exchange, where applicable, within ten (10) days of the closure of the offer.
- 22.2 The Offeror shall make a press notice, on the same day as the Announcement made to the SEC in relation to Rule 22.1 above, in (at least) the same two English language dailies of national circulation on the total number of voting shares to which the takeover offer relates:
- for which acceptances of the takeover offer have been received after having been served with the Takeover Offer Document by the Offeror to Offeree shareholders in accordance with Rule 7.4;



- b. held by the Offeror and all persons acting in concert with the Offeror at the time of serving the Offer Document to the Offeree shareholders in accordance with Rule 7.4;
- c. acquired or agreed to be acquired during the offer period; and
- d. the shareholding structure of the Offeree subsequent to the Takeover offer.



PART VI

OBLIGATIONS OF THE OFFEROR



PART VI- OBLIGATIONS OF THE OFFEROR

23.0 Identity of the Offeror

- 23.1 No person shall initiate discussions or negotiations with any person in relation to a takeover offer without disclosing the identity of the proposed Offeror and all related companies or persons acting in concert with the proposed Offeror, where applicable.

24.0 Evidence of the Ability of the Offeror to Implement the Takeover

- 24.1 An Offeror shall ensure, and the Offeror's financial adviser shall be reasonably satisfied that the takeover offer:
- a. would not fail due to insufficient financial capability of the Offeror; and
 - b. every shareholder of the Offeree who wishes to accept the Takeover offer will be paid in full.
- 24.2 A person who has no intention of completing an offer in the nature of a takeover offer shall not give notice or publicly announce the intention to make a takeover offer.
- 24.3 A person shall not make a takeover offer or give notice or publicly announce that it intends to make such an offer if it has no reasonable or probable grounds for believing that it will be able to perform its obligations if the offer is accepted.



25.0 Fair and Equal Treatment to Shareholders of Offeree

- 25.1 The Offeror shall not enter into any agreement, deals, arrangement or understanding to deal in or make purchases or sales of voting shares of the Offeree, either during a takeover offer or when such a takeover offer is reasonably in contemplation by the Offeror where the agreement, arrangement or understanding contains favourable conditions which are not being extended to all shareholders of the same class of the Offeree.
- 25.2 Where the Offeror makes a partial offer, i.e., the offer may be made under this Code for less than all the voting shares of a Target Company, it must be extended to all holders of voting shares of the Target Company other than the Offeror.

26.0 Minimum Offer Price and Revisions to Offer Price

- 26.1 The minimum offer price shall be the highest of the following:
- a. the highest price paid by the Offeror or persons acting in concert for acquisitions, including through an allotment in a public or rights issue, if applicable, during a period of 26 weeks prior to the date of the Announcement of the offer; or
 - b. the price paid by the Offeror under a preferential allotment, if applicable, made to the Offeror or persons acting in concert, at any time during the



twelve-month period immediately prior to the date of the closure of the offer; or

- c. the average of the highest weekly prices realized by the shares of the Target Company in the 6-month period immediately prior to the date of the public Announcement of the offer.

26.2 If the Offeror or any person acting in concert with the Offeror, purchases securities of the Target Company after the Announcement and prior to the closure of the offer at a price exceeding the offer price, the Offeror shall:

- a. increase its offer price to an amount not less than the highest price paid for such securities; and
- b. immediately after the purchase, report to the SEC and to the stock exchange on which it is listed, if applicable, as well as to the shareholders of the Target Company and to the media mentioned in Rule 5.2, the revised offer price in accordance with this Rule; and
- c. state the number of shares purchased; and
- d. if the Target Company is listed, request the stock exchange to make an immediate announcement of the revised offer price.



27.0 Convertible Securities

- 27.1 Where a takeover offer is made for the voting shares of an Offeree and the Offeree has issued convertible securities, the Offeror shall make a takeover offer to purchase the convertible securities and shall make appropriate arrangements to ensure that the interests of holders of convertible securities are safeguarded.
- 27.2 The Offeror shall serve the Takeover Offer Document to purchase the securities referred to in paragraph (1) above to the holders of the convertible securities at the same time as when the Takeover Offer Document is served on the Offeree shareholders in accordance with Rule 7.4.
- 27.3 The Takeover Offer to holders of Convertible Securities referred to in paragraph (1) above may be effected by way of a takeover scheme approved at a meeting of the holders of the Convertible Securities.

28.0 Sales and Disclosures During Offer Period

- 28.1 The Offeror shall not sell any voting shares to which the takeover offer relates during an offer period.
- 28.2 A related company or a person acting in concert with the Offeror shall not sell any voting shares to which the takeover offer relates other than to the Offeror.
- 28.3 The following persons shall disclose the total number and price of all voting shares of the Offeror and the Offeree which are dealt in for their own account:



- a. the Offeror and all related companies or persons acting in concert with the Offeror;
 - b. the chief executive, a director, or an officer of the Offeror who occupies or acts in a senior managerial position in the Offeror;
 - c. a person who is an associated person in relation to persons referred to in paragraphs (a) and (b) above; and
 - d. a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraphs (a), (b) or (c) above.
- 28.4 The disclosure under paragraph (3) above shall be made to the stock exchange where the securities of the Offeror are listed, if applicable, and to the SEC, within twenty-four (24) hours of the transaction.
- 28.5 All dealings in voting shares of the Offeror and Offeree made by an associated person for the account of clients who are not themselves associated persons shall be disclosed to the relevant securities exchange, if applicable, and to the SEC, at such time and in such manner as is specified in paragraphs (3) and (4) above.



PART VII

OBLIGATIONS OF THE OFFEREE



PART VII- OBLIGATIONS OF THE OFFEREE

29.0 Information Provided by the Offeree

29.1 An Offeree shall provide the Offeror with the following information:

- a. a list and addresses of the Offeree's holders of voting shares in the Target Company to which the takeover offer relates;
- b. published annual reports and financial statements including the latest half-yearly results of the Offeree and its subsidiaries; and
- c. a copy of the competing Offeror's Statement, if applicable.

30.0 Restrictions of the Offeree after Offer is made

30.1 The Offeree shall not, after contact with the Offeror or its agent or on receipt of the Announcement of intention of the takeover offer under Rule 5.2, if the Offeree has reason to believe that a bona fide takeover is imminent, or during the course of a takeover offer:

- a. issue any authorized shares of the target company;
- b. issue or grant options in respect of any un-issued shares of the Offeree;
- c. create or issue or permit the creation or subscription of any shares of the Offeree;
- d. sell, dispose of or acquire or agree to sell, dispose of



or acquire assets of the Offeree or of any of its subsidiaries; or

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

30.2 Paragraph (1) above shall not apply where a bona fide contract has been entered into prior to contact with the Offeror or its agent or on receipt of the notice of intention of the Takeover Announcement under Rule 5.2 which is not designed to defeat a takeover offer or change the activity of the Offeree, and if such transaction has the approval of shareholders in a general meeting or, where special circumstances exist, and the SEC's approval has been obtained.

31.0 Disclosure by an Offeree

31.1 During the offer period, the total number and price of all voting shares of the Offeror and the Offeree which are dealt in by the following persons shall be disclosed by them respectively:

- a. the Offeree;
- b. substantial shareholders of the Offeree;
- c. any chief executive, or a director of the Offeree;
- d. any officer of the Offeree who occupies or acts in a senior managerial position in the Offeree;



- e. a person who is an associated person in relation to persons referred to in paragraphs (a), (b), (c) and (d) above; and
 - f. a person who is accustomed to act in accordance with directions or instructions of the persons referred to in paragraph (a), (b), (c), (d) or (e) above.
- 31.2 The disclosure under Rule 31.1 above shall be made outside of exchange trading hours to the relevant securities exchange, if applicable and to the SEC within twenty-four (24) hours of the transaction.
- 31.3 All dealings of voting shares of the Offeror or the Offeree made by an associated person for the account of clients who are not themselves associated persons shall be disclosed to the relevant stock exchange if applicable, and to the SEC, as provided in Rules 31.1 and 31.2 above.
- 32.0 Transfer to the Offeror**
- 32.1 On completion of the takeover offer, the Offeree shall ensure prompt (i.e., within 3 business days) transfer of the accepted voting shares to the Offeror in the register of members maintained as required under the Rules of the Stock Exchange or Rules of the SEC or the Central Securities Depository Act, 2007 Act 733 in the case of electronic transfer and registration.



PART VIII

PROHIBITED CONDUCT



PART VIII-PROHIBITED CONDUCT

33.0 Prohibition on Preventing Disclosure

- 33.1 No person shall prevent or attempt to prevent the Board of Directors of a Target Company from:
- making a disclosure as required by these Rules; or
 - request the stock exchange, if applicable, to grant a temporary suspension of trading in its shares at any time the Board of Directors thinks appropriate.

34.0 Prohibited Actions

- 34.1 It shall be a fraudulent, deceptive or manipulative act or practice, in connection with any takeover offer:
- to employ any device, scheme, or pretence to defraud any person;
 - to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
 - to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or
 - to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a



takeover offer that has not yet been commenced, if the person:

- i. is making the announcement of a potential takeover offer without the intention to commence the offer within a reasonable time and complete the offer;
- ii. intends, directly or indirectly, by the announcement to manipulate the market price of the stock of the bidder or subject company; or
- iii. does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

34.2 No person shall announce or act on information relating to the offer, including trading in the securities of the Offeror or Offeree, until a disclosure or announcement is made in accordance with these Rules.

34.3 The Offeror and persons acting in concert with the Offeror shall not purchase either directly or indirectly shares of the Target Company during the offer period.

34.4 No person privy to confidential price sensitive information concerning an offer or contemplated offer shall act or pass on that information or make a recommendation related to that information to any other person unless it is necessary to do



so for the purpose of preparing any document in connection with the offer.

- a. A person who shall become aware of a potential takeover offer before the takeover offer has been publicly announced shall not directly or indirectly buy or sell, or pass on non-public information about, the securities of the Target Company until the offer is publicly announced.
- b. Such buying, selling, passing on, or use of non-public information shall constitute insider trading under Section 128 of the Securities Industry Act. 1993, PNDC L333.

- 34.5 No person who is privy to confidential price sensitive information concerning the offer shall engage in dealings of any kind, including options to purchase ordinary shares, in the securities of the Target Company or of the Offeror.
- 34.6 During the offer period, the Offeror, the Offeree or any person acting in concert with the Offeror or Offeree shall not sell any shares in the Target Company without notification and approval from the SEC.
- 34.7 If during the takeover period a director of the Offeree is offered a job or position with the acquiring company, then that director is obliged to make disclosure of such and to excuse himself in decision making of the Offeree's Board of Directors.



34.8 The Offeror or persons acting in concert with the Offeror shall not enter into any agreement, arrangement, or understanding to deal in or make purchases or sales of any securities of the target company, either during an offer or when an offer is in contemplation if such agreement or arrangement to deal in or make purchases or sales of securities would have the effect of attaching thereto any favourable conditions to such purchases or sales, which are not being extended to all shareholders of the Target Company.

35.0 False and Misleading Information

35.1 No person shall:

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



35.2 Where information or a document has been circulated or provided to holders of voting shares or their professional advisers and the person who provided the information or document, or engaged in the conduct becomes aware that the document or information was false or misleading or contains a material omission or the conduct in question was misleading or deceptive, the person shall immediately disclose the fact to the SEC and the relevant securities exchange, if applicable, and make an announcement by way of press notice in at least two English language daily newspapers of national circulation containing such matters as are necessary to correct the false or misleading information, omission, or conduct.



PART IX

MISCELLANEOUS PROVISIONS



PART IX - MISCELLANEOUS PROVISIONS

36.0 Submission of Information to the SEC

36.1 A person involved in a Takeover, merger, consolidation, or mandatory acquisition, shall submit such information to the SEC as it may from time to time require.

37.0 Suspension of Trading During a Takeover

37.1 The trading of shares of the security of the Offeree shall not be suspended unless for the purpose of enabling the Offeree to disclose information on the takeover offer or as may be directed by the SEC for the purpose of obtaining material information on the offer.

37.2 The trading of shares of the Target Company, and where appropriate, in the shares of the Offeror, may be suspended by the SEC until the required actions are complied with and the relevant information is provided, as per this Code.

37.3 The SEC shall make this determination for the suspension of trading as well as the resumption of trading, whether on an exchange or in the over-the-counter market, as related to paragraphs (1) and (2) above.



38.0 Issuance of Shares of a Subsidiary

38.1 No issuance of shares of a subsidiary of a public company comprising:

- a. twenty-five percent (25%) or more of the share capital of that subsidiary; or
- b. fifteen percent (15%) or more of the share capital of the subsidiary, that has contributed to twenty-five percent (25%) or more to the average turnover in the latest three financial years of the public company (preceding the proposed issuance of shares).

shall be made without full disclosure through an Information Statement to the shareholders of the public company, of all relevant information relating to the transaction for which the shares are being issued subject to the prior approval of the issuance of such shares by the SEC.

38.2 The Information Statement referred to in rule 38.1 above shall:

- a. be subject to prior approval by the SEC and,
- b. comply with the directives of the SEC from time to time in force.



PART X

POWERS OF THE SECURITIES AND EXCHANGE COMMISSION



PART X - POWERS OF THE SECURITIES AND EXCHANGE COMMISSION

39.0 Enforcement

39.1 The SEC shall enforce the Code.

39.2 The SEC, upon determination of a violation of these rules, may nullify the purchase of shares through a takeover, consolidation, or merger. This shall be without prejudice to the imposition of other sanctions under the Code and the Securities Industry Laws.

40.0 Power to Give Instructions

40.1 The SEC may, in the interest of the securities market and for the protection of investors, give such instructions in respect of transactions governed by these Rules, as it deems fit, including:

- a. instructing any person to refrain from dealing in securities that are the subject of such transactions;
- b. prohibiting any person from disposing of any of the securities acquired in violation of these Rules;
- c. instructing any person to sell the securities acquired in violation of the provisions of these Rules; and
- d. taking any other action available to the SEC under Law against any person concerned in any such transactions.



**41.0 Power to Grant Exemptions and Withdrawals
from Offer**

- 41.1 The SEC may grant such waivers or exemptions from the application of these Rules as it deems appropriate in the interest of the public or the protection of investors.
- 41.2 Any person seeking a waiver or an exemption from the operations of the provisions of these Rules or desiring to withdraw an offer shall seek a written approval from the SEC following provisions of Rule 19.
- 41.3 The application for approval shall state the waiver or exemption sought and the grounds on which the waiver or exemption is being sought.
- 41.4 The SEC shall make a determination either granting or refusing the application within thirty (30) days of the receipt of the application.
- 41.5 The determination of the SEC may be disseminated to the parties to the transaction and the general public by such means as the SEC may consider appropriate.



PART XI

FEES PAYABLE



PART XI - FEES PAYABLE

42.0 Fees to be Determined by the SEC

- 42.1 At the time of filing with the SEC of any Statement required under Rule 4, for any takeover, consolidation, or merger offer, the Commission shall require payment of a fee as may be determined by the SEC from time to time.



PART XII - GENERAL

43.0 Revisions and Guidance Notes

- 43.1 The SEC reserves the right to publish revisions of this Code as may be required to provide for more effective regulation of the matters provided for herein.
- 43.2 The SEC also reserves the right to issue Guidance Notes from time to time to establish or clarify procedures for the effective implementation of the provisions of this Code

ISSUED BY SECURITIES AND EXCHANGE COMMISSION
OCTOBER 2008



PART XII

GENERAL



PART XII-GENERAL

43.0 Revisions and Guidance Notes

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**ISSUED BY SECURITIES AND EXCHANGE COMMISSION
OCTOBER 2008**



PART XIII

SCHEDULES



SCHEDULE I

OFFEROR'S ANNOUNCEMENT

The Offeror shall make an Announcement of a takeover offer containing the following information, if applicable:

1. the specific date on which the public Announcement is published;
2. the identity of the Offeror and all companies related to or persons associated or acting in concert with the Offeror;
3. the identity of the Offeree and the exchange at which its shares are listed;
4. whether the Offeror intends to make a takeover offer or apply to the SEC, for exemption from making a takeover offer;
5. the scheduled expiration date of the takeover offer, whether the takeover offer may be extended, and, if so, the procedures for extension of the takeover offer;
6. the type and amount of consideration being offered;
7. details of the holdings in the Target Company which the Offeror or persons acting in concert with the Offeror owns or controls;
8. the type, class, and total number of voting shares of the Offeree:



- a. which have been acquired, held, or controlled directly or indirectly by the Offeror or any person acting in concert with the Offeror;
 - b. in respect of which the Offeror or any person acting in concert with the Offeror has received an irrevocable undertaking from other holders of voting shares to which the takeover relates to accept the takeover offer; and
 - c. in respect of which the Offeror or any person acting in concert with the Offeror has an option to acquire;
9. the details of any existing or proposed agreement, arrangement or understanding relating to voting shares referred to in paragraph (iv) above between the Offeror or any person acting in concert with the Offeror and the holders of the voting shares to which the takeover relates;
 10. the conditions of the takeover offer, including conditions relating to acceptances, listing, and increase of capital; and
 11. confirmation by the auditors of the Offeror in the event the Offeror is a corporate body or by the bankers of the Offeror in the event the Offeror is an individual, that resources which are available to the Offeror are sufficient to satisfy full acceptance of the offer.



SCHEDULE II

OFFEROR'S STATEMENT TO OFFEREE

The Offeror's Statement of a takeover offer shall be dated and signed by two (2) Directors of the Offeror, or if the Offeror is an individual, by the individual, and shall include the following details:

1. The identity and background of the Offeror(s) as follows:
 - 1.1 the names, descriptions, addresses of all directors (if a company) or principals of the Offeror;
 - 1.2 a summary of the principal activities of the Offeror company or individuals;
 - 1.3 a list of significant / major shareholders and subsidiaries of the Offeror, if applicable;
 - 1.4 a summary of the latest audited financial statements including:
 - (i) balance sheet;
 - (ii) income statement;
 - (iii) statement of the changes in equity;
 - (iv) cash flow statement; and
 - (v) earnings per share (prior to the takeover offer and post takeover); and
 - 1.5 the number, description, type, class, and amount of marketable securities in the Offeree held by or on



behalf of the Offeror, or if none are so held, a statement to that effect.

2. The terms of the offer, where:
 - 2.1 the consideration for the acquisition of shares under the takeover offer is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be made to secure payment of the cash and if there are no such arrangements, a declaration shall be made in the statement to this effect; or
 - 2.2 the consideration for the acquisition of shares under the takeover offer is to be satisfied in whole or in part by a share (or other securities) swap, the Statement shall contain details of the arrangements that have been, or will be made to transfer the shares (or other securities) and the proportion of the shares (or other securities) being swapped, and if there are no such arrangements, a declaration shall be made in the Statement to this effect.
3. All conditions to which the offer is subject, including whether:
 - 3.1 it is proposed in connection with the takeover offer that a payment or any other benefit shall be made or be given to any director of the Offeree or of



- any company which is a related company to the Offeree as a consideration for, or in connection with, his retirement from office and, if so, the particulars of the proposed payment or benefit;
- 3.2 there is any agreement or arrangement made between the Offeror and any of the directors of the Offeree in connection with or conditional upon the outcome of the offer, and if so the particulars of such agreement or arrangement;
- 3.3 there has been within the knowledge of the Offeror any material change in the financial position or prospects of the Offeree since the date of the latest balance sheet laid before the Offeree's general meeting and if so, the particulars of such change; and
- 3.4 there is an agreement or arrangement by which shares acquired by the Offeror in pursuance of the offer will or may be transferred to any other person, and if so:
- (i) The names of the persons who are party to the agreement or arrangement and the number and description of the shares which will or may be so transferred; and
 - (ii) The number, if any, description and amount of shares of the Offeree company held by or on behalf of each person, or if no such shares are so held, a statement to that effect.



4. Confirmation:

- (a) by the auditors of the Offeror, if the Offeror is a corporate body, or
- (b) by the bankers of the Offeror, if the Offeror is an individual, that the available resources of the Offeror are sufficient to satisfy full acceptance of the offer.



SCHEDULE III

OFFER DOCUMENT

The Offeror shall submit the Offer Document to the SEC for approval prior to submission to the Offeree.

1. The documents shall contain the following information:
 - 1.1 the identity of the Offeror as required under Rule 23;
 - 1.2 information regarding the Offeror including the names of its directors and the names of shareholders, who hold 5% or more of the voting shares of the offeror and the extent of their holdings;
 - 1.3 whether the Offeror has any intentions regarding the continuation of the business of the Offeree and if so, stating the Offeror's intentions;
 - 1.4 the Offeror's stated intentions regarding major changes to be introduced in the business, or strengthening the financial position of the Offeree, whether such plans include a merger, or liquidating the Offeree, selling its assets or re-deploying its fixed assets or making any other major change in the structure of the Offeree or its subsidiaries and if so, stating the Offeror's intentions;
 - 1.5 whether there are any long-term commercial justifications for the proposed takeover offer, and if



- so, stating the long-term commercial justifications;
- 1.6 whether the Offeror has any intentions with regard to the continued employment of the employees of the Offeree company and of its subsidiaries and if so, stating the Offeror's intentions;
 - 1.7 the maximum number of shares the Offeror company proposes to acquire;
 - 1.8 the price and other terms of the offer in respect of those shares; and
 - 1.9 details of the offer and timetable of the offer.
2. Where the takeover offer is for cash, either in part or in whole, the Offer Document must include a confirmation by a financial adviser of the Offeror that the Offeror has the financial capability to accept and carry out the takeover offer in full.
3. In addition, the Offer Document should also include a declaration that the Offeror and the Offeror's financial advisers are satisfied that:
- 3.1 the takeover offer would not fail due to insufficient financial capability of the Offeror; and
 - 3.2 every shareholder who wishes to accept the takeover offer will be paid in full.
4. The Offer Document shall contain statements as to whether:
- 4.1 any agreement, arrangement or understanding exists between the Offeror or any person acting in concert



with it and any of the directors, past directors, holders of voting shares or past holders of voting shares having any connection with or dependence upon the takeover offer, and full particulars of any such agreement, arrangement or understanding. "Past directors" or "past holders of voting shares" means such person who during the period of six months immediately prior to the date of the written Announcement of the takeover offer, was a director or a holder of the voting shares, as the case may be;

- 4.2 any voting shares acquired in pursuance of the takeover offer will be transferred within a foreseeable period from the date of the Offer Document to any other person, together with the names of the parties to any such agreement, arrangement or understanding and the particulars of all securities in the Offeree held by such persons, or a statement that no such securities are held; and
- 4.3 any settlement of the consideration to which any holder is entitled under the takeover offer will be implemented in full in accordance with the terms of the takeover offer without regard to lien, right of set-off, counter claim, or other analogous rights to which the Offeror may otherwise be or claim to be entitled as against the holder.



5. The Offer Document shall state as at the latest practical date, the number of and percentage holding of voting shares and convertible securities (if any) which:
 - 5.1 the Offeror and directors of the Offeror hold, directly or indirectly, in the Offeree;
 - 5.2 persons associated or acting in concert with the Offeror hold directly or indirectly in the Offeree together with the names of such persons acting in concert; and
 - 5.3 persons who, prior to the sending of the Takeover Offer Document, have irrevocably committed themselves to accept the takeover offer hold directly or indirectly in the Offeree together with the names of such persons.
6. In the event that there are no holdings of the nature required to be stated under paragraph (5) above, the Offer Document shall contain a statement to this effect.
7. The Takeover Offer Document shall state the names and shareholdings of the shareholders, if any, of the persons acting in concert with the Offeror.
8. Where any party whose holdings are required to be disclosed has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date prior to the



sending of the Offer Document, the details, including the number of shares, dates and prices, must be stated. If no such deals have been made this fact should be so stated.

9. The Takeover Offer Document shall state, whether the emoluments of the Offeror's directors shall be affected by the acquisition of the Offeree, except in the case of an Offeror making a cash offer only.
10. The Offeror shall state whether the Offeree's securities shall continue to be listed at the relevant securities exchange, if applicable, after the Takeover offer has been successfully concluded.
11. The Offer Document shall contain details of all service contracts of any directors or proposed director of the Offeror or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months) and where there are no such contracts, this fact should be so stated.
12. Where the contracts under paragraph (11) above have been entered into or amended within six months of the date of the documents, the particulars of the contracts amended or replaced should be given and where there have been no new contracts or amendments this fact should be so stated.



SCHEDULE IV

OFFEREE'S STATEMENT TO SHAREHOLDERS

The Statement of the Offeree to its shareholders shall include:

1. the date of the Offeror's Statement;
2. the number, description, and amount of marketable securities in the Offeree company held by or on behalf of each director of the Offeree company, or in the case where no such securities are held, a statement to that effect;
3. in respect of each director of the Offeree company by whom or on whose behalf shares to which the takeover offer relates are held whether the:
 - 3.1 present intention of the director is to accept any takeover offer that may be made in pursuance of the takeover offer in respect of the Shares; or
 - 3.2 director has decided not to accept such a takeover offer;
4. whether any marketable securities of the Offeror company are held by, or on behalf of, any director of the Offeree company and, if so, the number, description and amount of the marketable securities so held;
5. whether it is proposed in connection with the takeover offer that any payment or other benefit shall be made or be given to any director of the Offeree or of any other company related to the Offeree as consideration, or in connection



- with, retirement from office and if so, particulars of the proposed payment or benefit;
6. whether there is any other agreement or arrangement made between the director or the Offeree and any other person in connection with or conditional upon the outcome of the takeover offer and if so the particulars of such agreement or arrangement;
 7. whether a director of the Offeree has a direct or indirect interest in any contract entered into by the Offeror and if so, the details of the nature and extent of such interest;
 8. whether there has been any material change in the financial position of the Offeree since the date of the last balance sheet laid before the company in general meeting, and if so, the particulars of such change;
 9. a recommendation:
 - 9.1 either:
 - a. a recommendation by the directors to accept or reject the offer and the reasons for such recommendation; or
 - b. a declaration that the directors are unable to make, or are not making, a recommendation and the reasons for not making a recommendation;
 - 9.2 if any of the directors dissent from a recommendation or from any statement under sub-clause (1)(b) above made by the directors or abstain



from making a recommendation or any statement under sub-clause (1)(b) above, their names and their reasons for dissenting or abstaining;

- 9.3 if no recommendation is made, but all or any of the directors propose to make a recommendation, or to reconsider their decision not to make a recommendation, a declaration to that effect and, if the directors consider it appropriate, a declaration to the effect that shareholders should not accept the offer in the meantime.

10. the identity of the independent adviser who has provided a Statement under Rule 10 and a copy of the independent adviser's Statement under Rule 10 including details as provided for in Schedule V of this Code.



SCHEDULE V

INDEPENDENT ADVISER'S STATEMENT

1. The Independent Adviser's Statement must include comments and advice on the:
 - 1.1 Offeror's stated intentions regarding the continuation of the business of the Offeree;
 - 1.2 Offeror's stated intentions regarding any major changes to be introduced in the business, including any plans to liquidate the Offeree, sell its assets, re-deploy its fixed assets or make any other major change in the structure of the Offeree;
 - 1.3 Offeror's stated long-term commercial justification for the proposed Takeover offer;
 - 1.4 Offeror's stated intentions with regard to the continued employment of the employees of the Offeree and of its subsidiaries; and
 - 1.5 Merits of the takeover offer, including the reasonableness and accuracy of profit forecasts and underlying assumptions for the Offeree, if any, contained in the Offer Document.
2. The Independent Adviser's Statement shall, in so far as is possible, contain comments on the:



- 2.1 outlook, for the next twelve months, of the industry in which the Offeree has its core or major business activities;
 - 2.2 prospects, for the next twelve months, of the Offeree in terms of financial performance as well as positioning in the industry including competitive advantage, threats and opportunities; and
 - 2.3 risk factors associated with the Offeree's business and the reasonable probability of such risks materialising for the next twelve months.
3. The Independent Adviser's Statement shall also state:
 - 3.1 whether the Offeree holds directly or indirectly, any voting shares or convertible securities in the Offeror and if so, the number and percentage holding of such voting shares and convertible securities;
 - 3.2 whether the directors of the Offeree hold, directly or indirectly any voting shares or convertible securities in the Offeror or the Offeree and if so, the number and percentage holding of such voting shares and convertible securities so held; and
 - 3.3 whether the directors of the Offeree intend, in respect of their own beneficial holdings to accept or reject the takeover offer.



4. In the event that there are no holdings of the nature required to be stated under paragraph (3) above, the Independent Adviser's Statement shall contain a statement to this effect.
5. The Independent Adviser's Statement must also contain a declaration from the directors of the Offeree stating any other interest held by them in the Offeror and in the Offeree.
6. Where any party whose holdings are required to be disclosed pursuant to the Law has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practical date prior to the sending of the Offer Document, the details, including the number of shares, dates and prices, must be stated and where such deals have been made, this fact should be so stated.
7. The Independent Adviser's Statement shall contain particulars of all service contracts of any director or proposed director with the Offeree or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months from the date of the Offer Document) and where there are no such contracts, this fact shall be so stated.



8. Where the service contracts referred to in paragraph (7) above have been entered into or amended within six months of the date of the Document, the particulars of the contracts or amendments shall be given and where there have been no new service contracts or amendments, this fact shall be so stated.
9. The Statement must state the qualifications and expertise of the adviser as well as include a declaration that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report and statement.

**Timeline for Takeovers as per Draft Takeovers Code**

(for reference purposes only)

DAY	EVENT or ACTIVITY	RULE REFERENCE
0	Board of Directors of Offeror votes for Takeover	5.2
1	Offeror announces Takeover; Offer period begins	5.2 and Schedule I
11	Offeror submits Offer Statement to Offeree	5.4 and Schedule II
12	Offeree announces Takeover	6.1
16	Offeree appoints Independent Adviser	10.1
21	Offeror submits Offer Document to SEC	7.1 and Schedule III
51	SEC approves Offer Document	7.3
56	Offeror submits Offer Document to Offeree	7.5
60	Independent Adviser of Offeree sends Statement to Board of Offeree	7.5
71	Offeree submits Offer Document, Offeree's Statement, and Independent Advisor's Statement to shareholders of Offeree	7.6, 9.1, and 12.2 and Schedules IV and V
76	Competing offer may be submitted by another Offeror	15.2
81(-116)*	Original Offeror may decide to vary offer	18.1
82(-117)*	Original Offeror must announce and submit varied offer, if decided to vary offer	18.6
85(-120)*	Original Offeror may decide to withdraw offer, receives SEC approval to withdraw offer, and announces and submits withdrawal of offer	19.5



DAY	EVENT or ACTIVITY	RULE REFERENCE
86(-121)*	Original Offeror keeps offer period open for Offeror's shareholders acceptance	8.1 and 16.1
86(-121)*	Original Offer accepted by shareholders of Offeror and Offeror closes offer; offer period ends	20.1
89(-124)*	Shares transferred from shareholders of Offeror to original Offeror	32.1
96(-131)*	Original Offeror informs SEC of closure and announces closure of Offer	22.1 and 22.1

“Day” above represents the maximum number of business days from Day “0”, Board of Directors of Offeror votes for Takeover.

*Maximum days offer period remains open is 120 days after announcement of Offer by Offeror (i.e., on Day “1”), unless SEC approves extension.

NOTE: The SEC may determine to either shorten the timeline or lengthen the timeline, according to the resources and needs of the SEC and as made necessary by changing market conditions.