

SECURITIES ACT 2001

SECURITIES (TAKEOVERS) REGULATIONS 2001

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SCHEDULES

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IN EXERCISE of the powers conferred on him by section 144 of the Securities Act, the Minister on the recommendation of the Commission makes the following Regulations:

SECURITIES (TAKEOVERS) REGULATIONS

PART I

GENERAL

1. Citation commencement and application

- (1) These Regulations may be cited as the Securities (Takeovers) Regulations 2001 and shall come into force on a date appointed by the Minister.
- (2) These Regulations apply to all takeover or merger offers affecting public companies registered under the Companies Act.
- (3) All persons engaged in takeover transactions shall observe the general principles and shall comply with the specific requirements set out in these Regulations.

2. Interpretation

- (1) In these Regulations, 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” in relation to a person means that, pursuant to an agreement or understanding, the persons actively co-operate to obtain or consolidate control of a company through the acquisition of voting rights of the company;

“control” means a holding, or aggregate holdings, of 50% 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 transaction however effected, including a scheme of arrangement which has similar commercial effect to takeovers and mergers, and offers by a parent company for shares in its subsidiary;

“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 is later) the date when such offer becomes or is declared unconditional in all respects or is declared to have lapsed;

“person” includes an individual or a company;

“rights over shares” include any rights acquired by the 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 the person;

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

“substantial shareholder”, in relation to an issuer, means a person who has an interest in shares of the issuer;

- (a) the stated value of which is more than 5% of the issued share capital of the issuer; or
- (b) which entitles the person to exercise or control the exercise of more than 5% of the voting power at a general meeting of the issuer;

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

“takeover” includes merger; 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 purpose of these Regulations, 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 and 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 and any of its pension funds, provident funds and employee share schemes;
 - (d) a fund manager and 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, and 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 and a close relative, related trusts and companies controlled by the individual or by a close relative or related trusts.
- (3) For the purpose of these Regulations, a company shall be deemed to be an associated company of another company if one of them owns or controls 20% or more of the voting rights of the other or if both are associated companies of the same company.

3. Object

- (1) The object of these Regulations is to ensure fair treatment for shareholders who are affected by takeover transactions.
- (2) The regulations 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 transactions.

4. Contravention

A person who contravenes any provision contained in Part III of these Regulations commits an offence and is liable on conviction to a fine not exceeding \$50,000.00.

PART II

GENERAL PRINCIPLES

5. Equality of treatment

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

6. 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 any shareholder that is not made available to all shareholders.

- (2) Sub-regulation (1) does not apply to the furnishing of information in confidence by the offeree company to a bona fide potential offeror or vice versa.

7. Announcements

- (1) An offeror should announce an offer only after careful and responsible consideration.
- (2) The offeror and its financial advisers should be satisfied that it can and will continue to be able to implement the offer in full.

8. Sufficient information and time

- (1) A shareholder should be given sufficient information, advice and time to reach an informed decision on an offer and no relevant information should be withheld.
- (2) Documents and advertisements issued in connection with takeovers and mergers should be prepared with the highest possible degree of care, responsibility and accuracy.

9. Full and prompt disclosure

All persons concerned with takeovers should make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of an uninformed market. Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.

10. Minority Rights

Rights of control should be exercised in good faith and there should be no oppression of minority or non-controlling shareholders.

11. Duties of directors

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

12. Competent independent advice

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

13. Limitations on directors' actions

- (1) In connection with takeover and merger transactions the boards of an offeror and of an offeree company and their respective advisers and associates must accept that there are limitations in carrying out the transactions in the best interests of their shareholders.
- (2) The limitations referred to in the sub-regulation (1) are contained in the general principles and the specific rules that control the actions of the boards of an offeror and of an offeree company and persons involved in the transactions.

14. No frustration of offer by offeree board

No action may be taken by the board of the offeree company, without the approval of shareholders in general meeting, in relation to the affairs of the company, which could effectively result in any bona fide offer being frustrated or in the shareholders being denied an opportunity to decide on its merits;

- (a) after a bona fide offer has been communicated to the board of the offeree company, or
- (b) after the board of the offeree company has reason to believe that a bona fide offer might be imminent.

15. No less favorable terms

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

- (a) a written offer has been made to, or
- (b) 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.

16. Full co-operation with Commission

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

PART III
SPECIFIC REQUIREMENTS

17. Offer

An offer should 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.

18. 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.

19. 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.

20. Confidentiality

- (1) There must be absolute secrecy before an announcement of an offer or proposed offer.
- (2) In addition to the provisions of the Act relating to insider dealing a person who has confidential information, particularly if it is price sensitive, must take care not to disclose that information.

21. Board of offeree company

- (1) A board which receives an offer, or is approached with a view to an offer being made, should, 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) The advice, including reasons, should be obtained in writing and should be made known to shareholders by including it in the offeror's offer document along with the recommendation of the offeree's board regarding acceptance of the offer.

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

22. Board of offeror company

- (1) If a director of an offeror which is a public company in [Territory] is faced with a conflict of interest as a result of a proposed offer, the offeror's board should, if possible, establish an independent committee to assess the proposed offer.
- (2) If the conflict is a material one the Commission should be consulted to assess, having regard to, among other things, the materiality of the offer to the offeror whether
 - (a) the offeror's board should retain an independent financial adviser to advise the shareholders or independent shareholders, of the offeror, as the case may be; and
 - (b) the offer should be made conditional upon approval of the offer by a majority of the votes cast by the shareholders in attendance either in person or by proxy at a duly convened general meeting of the offeror's shareholders.

23. 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.

24. Independent financial advisers and independent shareholders

- (1) A financial adviser who is considered to have a relationship with the offeror, the offeree company, or the controlling shareholder of either of them, which is reasonably likely to affect the objectivity of the advice, will not be considered to be independent.
- (2) A shareholder who has an interest in the proposed transaction other than an interest as a shareholder of the offeror or offeree company, is not independent.

- (3) If there are shareholders who are not independent, the independent adviser should endeavor to represent the best interests of the offeror or the offeree company, respectively, by concerning itself only with the interests of the shareholders of the company who have no interest in the proposed transaction other than their interest as shareholders of the company.

25. 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 the purposes, of sub-regulation (1) there is a presumption that employees of an offeree company that is an associated company of the offeror have an indirect interest in the offer and are 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 the person has a direct interest in the offer.
- (4) For the purposes of Sub regulation (3) an affiliate is a person that 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 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.

26. 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) when, following an approach to the offeree company, the offeree company is the subject of rumor 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;
- (c) when, before an approach has been made, the offeree company is the subject of rumor 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
- (d) 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).

27. 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 who should, keep a close watch on the offeree company's share price and volume for any signs of undue movement.
- (2) After 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 who must, keep a close watch on its share price and volume.

28. Suspension of trading

- (1) When an announcement is required the offeror or offeree, as the case may be, should notify the Commission and the securities exchange immediately that an announcement is imminent.
- (2) 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 should be given to requesting a suspension of trading in the shares pending publication of the announcement.

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

29. 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 should 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.

30. 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 under regulation 66 or to increase an offer under regulation 67.
- (2) Immediately after any acquisition giving rise to an obligation under sub-regulation (1) an announcement must be made, stating (to the extent that it has not previously been announced) the number of voting rights acquired and the price paid, together with the information required by regulation 29.

31. No frustrating action

- (1) When a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, no action which could effectively result
 - (a) in an offer being frustrated; or
 - (b) 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) The board must not, without the approval of the shareholders of the offeree company in general meeting
 - (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 a 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) The Commission must be consulted at the earliest opportunity if, the company is under a prior contractual obligation to take any action referred to in sub-regulations (1) and (2), or where there are other special circumstances.
- (4) In appropriate circumstances the Commission may grant a waiver from the general requirement to obtain shareholders' approval.

32. No withdrawal of an offer

If there is an 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 fulfillment of a specific condition and that condition has not been met.

33. Information to offerors

- (1) Relevant information relating to the offeree, including particulars of shareholders, given by the offeree should, on request, be furnished equally and promptly to any other bona fide potential offeror, who should 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.

34. Resignation of directors of offeree company

Except with the consent of the Commission the directors of an offeree company should 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.

35. 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.

36. Time limit of offer document

(1) The offer document, which must not be dated more than 3 days prior to despatch, should normally be posted by or on behalf of the offeror company within 21 days (or, in the case of a securities exchange offer, 35 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.

37. Content of offer document

The offer document submitted by the offeror to the offeree shareholders should contain the information required by the First Schedule together with any other relevant information to enable offeree shareholders to reach a properly informed decision.

38. Offeree reply document

The offeree company should send to its shareholders within 14 days of the posting of the offer document a document containing the information set out in the Second Schedule together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the offer.

39. 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 for reaching that conclusion.

- (2) 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.

40. Subsequent documents

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; if there have been no such changes this must also be stated.

41. Prospectus standard

- (1) Any document must be prepared with the same standard of care as if it were a prospectus.
- (2) Sub-regulation (1) applies whether the document is issued by
 - (a) the company;
 - (b) an adviser on the company's behalf; or
 - (c) any other person in relation to an offer.
- (3) A person who issues 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.

42. 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) The 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.

43. Directors' joint and several responsibility

Documents should state that all directors of the offeror, or, as appropriate, the offeree, jointly and severally

- (a) accept full responsibility for the accuracy of information contained in the document;
- (b) 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
- (c) confirm that there are no other facts not contained in the document, the omission of which would make any statement in the document misleading.

44. Commission's consent required for exclusion of directors

If it is proposed that any director should be excluded from a document, the Commission's consent is required and the exclusion and reasons for it should be stated in the document.

45. Standard of care

- (1) It is the responsibility of the directors to compile with due care and objectivity a profit forecast.
- (2) The financial advisers must report whether or not they are able to satisfy themselves that the profit forecast has been so compiled and the report must be set out in the relevant document.

46. 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 and should be specific rather than vague.
- (2) All-embracing assumptions and those relating to the general estimates made in the profit forecast should be avoided.

- (3) Assumptions should not normally 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.

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

48. Preparing revaluations

- (1) The revaluations must be carried out or confirmed by an independent, professionally qualified valuer or other expert and the basis of valuation must be clearly stated.
- (2) The document stating the revaluations should include a statement that the consent of the valuer or other expert to the issue of the document with the inclusion of the valuation in the form and context in which is included has not been withdrawn.

49. Filing of documents for comments

- (1) Prior to release or publication, two copies of all documents must be filed with the Commission for comment and must not be released or published until the Commission has confirmed that it has no further comments on the documents.
- (2) The final copy of the document must be filed with the Commission and the securities exchange in duplicate.

50. Publication of announcements

All announcements must be published in at least one newspaper published and circulating generally in [Territory].

51. Minimum period

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

52. Conditions

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

53. Period for acceptance

(1) A conditional offer that becomes or is declared unconditional, should remain open for acceptance for not less than 14 days.

(2) In an 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 case, referred to in sub-regulation (2), at least 14 days notice in writing must be given before the offer is closed to the shareholders who have not accepted the offer.

54. Final day

Except with the consent of the Commission, an offer shall not be kept open after the expiry of 60 days from the date of the posting of the initial offer document unless it has previously become unconditional.

55. 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 14 days from the date of posting written notification of the revision to shareholders.

56. Acceptor's right to withdraw

(1) An acceptor shall be entitled to withdraw the acceptance after 21 days from the first closing date of the offer, if the offer has not by then become unconditional.

- (2) The entitlement to withdraw shall be exercisable until the offer becomes unconditional.

57. Nature of announcement

- (1) The offeror shall immediately inform the Commission and the securities exchange that an offer has
 - (a) been revised or extended;
 - (b) expired; or
 - (c) become or has been declared unconditional,and shall publish an announcement on the following day to that effect.
- (2) The announcement must state the number of shares
 - (a) which it or any person acting in concert with it has or controls;
 - (b) for which acceptances of the offer have been received; and
 - (c) 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.

58. Consequences of failure to announce

- (1) The Commission should be consulted if an offeror is unable to comply with any of the requirements of regulation 57.
- (2) The Commission may require that an acceptor be granted a right of withdrawal, on terms acceptable to the Commission, until the requirements of this rule can be met.

59. 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) The restriction referred to in Sub regulation (1) does not apply to an offeror, or a person acting in concert with the offeror, in respect of such dealings if the 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 dealings may take place in the securities of the offeror company except where the offer is not price sensitive in relation to those securities.

60. Restrictions on dealings during the offer

During an offer period, the offeror and person 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 24 hours public notice that the sales might be made.

61. 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 securities exchange (and for which there is no cash alternative) the offeror, and persons acting in concert with the offeror, 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.

62. Dealings after termination of discussions

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.

63. Dealings in relevant securities

(1) During an offer period all parties to a takeover or merger transaction and their advisers and any person acting in concert with any of the parties to a takeover or merger transaction and their adviser are free to deal, subject to regulations 59, 60, 61, 62, 67, 68, and 70 and to the disclosures and restrictions mentioned in this regulation being made and complied with by them.

(2) Dealings in relevant securities by

(a) a person referred to in sub-regulation (1) for that person's own account during an offer period;

(b) a person referred to in sub-regulation (1) for discretionary accounts (but not for non-discretionary accounts) of investment clients during an offer period;

(c) any company having a material trading arrangement with an offeree company,

must be disclosed forthwith in writing to the Commission.

(3) For the purposes of this regulation

(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 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;
- (v) if the disclosure is made by a 5% shareholder, a statement to that effect; and
- (vi) the resultant total amount of relevant securities owned or controlled by the person in question (including those of any person with whom there is an agreement or understanding) and the percentage which it represents.

64. Dealings by 5% shareholders

During an offer period, if a person, or group of persons acting in concert, owns or controls (directly or indirectly) 5% or more of any class of relevant securities, or as a result of any transaction will so own or control 5% 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.

65. 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.

66. When cash offer required

- (1) If,
 - (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 6 months prior to its commencement and such shares carry 10% or more of the voting rights of the offeree company;
 - (b) an offeror making a non-cash offer (for which there is no cash alternative) acquires shares of the offeree for cash during the offer period and thereby becomes obligated to increase its offer pursuant to regulation 67; or

- (c) in the view of the Commission there are circumstances which render such a course necessary in order to give effect to regulation 5.

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 6 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 6 months prior to its commencement.

67. Highest price paid

If the offeror or any person acting in concert with it 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.

68. 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 securities 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 endeavor, as far as practicable, to effect such increase while maintaining the same ratio of cash to securities as is represented by the offer.

69. Shareholder notification

Shareholders of the offeree company must be notified in writing of the increased price at least 14 days before the offer closes, and an announcement must be made stating the number and class of securities purchased and the price paid.

70. Special deals

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 the arrangements have special conditions which are not extended to all shareholders.

71. Subjective conditions

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

72. Acceptance condition

(1) Except with the consent of the Commission, all offers 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 50% of the voting rights of the offeree company.

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

73. 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 12 months from the date on which the offer is withdrawn or lapses make an offer for the offeree company.

(3) The restriction in sub-regulation (1) 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 after the announcement.

74. 6 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 that person holds more than 50% of the voting rights of a company, neither that person nor any person acting in concert with that person may 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, within 6 months of the closure of any previous offer made by that person to the shareholders of that company that became or were declared wholly unconditional.
- (2) For the purpose of sub-regulation (1) the value of a securities exchange offer shall be calculated as at the day the offer became, or was declared, unconditional.

75. Disclosure of acquisitions of 20% and above

- (1) After 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 the person's 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 as a result of
 - (a) the acquisition the person comes to hold, with any shares or rights over shares already held by the person, shares or rights over shares representing 20% or more but less than 50% of the voting rights in a company; or
 - (b) the acquisition or disposal of the shares or rights over shares already held by the person represents 20% or more of the voting rights and is increased or decreased to or beyond any whole percentage figure representing 20% or more but not exceeding 50%; or
 - (c) a disposal of the shares or rights over shares held by the person decreases from one representing 20% or more of the voting rights to one representing less than 20%.

- (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 holdings and acquisitions must be aggregated and treated as a holding or acquisition by one person for the purpose of this regulation.
- (3) A person acting in the manner referred to in sub-regulation (2) must ensure that the obligations arising under this regulation are fulfilled.
- (4) The manner, timing and terms of the disclosures are the same (with any necessary modifications as may be appropriate) as for regulation 63.

FIRST SCHEDULE

**REQUIRED CONTENT OF OFFEROR COMPANY'S
OFFER DOCUMENT**

The offer document should contain the following statements in a prominent position:

Important

“If you are in doubt as to any aspect of this offer, you should consult a licensed brokerage company, a bank manager, lawyer, professional accountant, or other professional adviser.”

If you have sold all your shares inyou should at once hand this document and the accompanying form to the purchaser or to the bank or broker or other agent through whom the sale was effected for transmission to the purchaser.”

The document should include the following information:

The Offeror

1. (1) The name and address of the offeror or any financial advisor or other person who may be acting for the offeror, and of any person acting in concert with any of them.
- (2) Unless otherwise agreed with the Commission, the offer document must contain a statement as to whether or not any securities acquired in pursuance of the offer will be transferred to any other persons, together with the names of the parties to the agreement, arrangement or understanding and particulars of all securities in the offeree company held by such persons, or a statement that no such securities are held.
2. If either the offeror or any person acting in concert with it is a company, the names of its directors and controlling shareholders.

Intentions regarding the offeree company and its shareholders

3. (1) The offeror's intentions regarding
 - (a) the continuation of the business of the offeree company;
 - (b) any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree company; and
 - (c) the continued employment of the employees of the offeree company and of its subsidiaries.
- (2) The long-term commercial justification for the proposed offer.

Shareholdings and dealings

4. (1) The shareholdings
 - (a) of the offeror in the offeree company;
 - (b) in the offeror (in the case of a securities exchange offer only) and in the offeree company in which directors of the offeror are interested;
 - (c) in the offeror (in the case of a securities exchange offer only) and in the offeree company which any persons acting in concert with the offeror own or control (with the names of such persons acting in concert);
 - (d) in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by any persons who, prior to the posting of the offer document, have irrevocably committed themselves to accept or reject the offer, together with the names of such persons; and
 - (d) in the offeror (in the case of a securities exchange offer only) and in the offeree company owned or controlled by a person with whom the offeror or any persons acting in concert with the offeror has any arrangement of an indemnity or option nature,

or any other agreement or understanding, formal or informal, of whatever nature,

which might be an inducement to deal or refrain from dealing.

- (2) If in any of the categories (a) to (c) there are no shareholdings, this fact should be stated.
- (3) If any party whose shareholdings are required by this regulation to be disclosed has dealt for value in the shares in questions during the period beginning 6 months prior to the offer period and ending with the latest practicable date prior to the posting of the offer document, the details, including dates and prices, must be stated.
- (4) If no such dealings have taken place, this fact should be stated.

Partial offer

5. If applicable, an explanation as to why the number of offeree shares it is proposed to acquire, together with the shares beneficially owned by the persons specified in sub-regulation (3), is less than the total number of shares in issue.

Shares offered for and dividends

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

Conditions of offer

7. The price or other consideration to be paid for the securities.
8. All conditions attached to acceptances and in particular whether the offer is conditional upon acceptances being received in respect of a minimum number and the last day on which the offer can become unconditional.
9. A statement whether or not the offeror intends to avail itself of any powers of compulsory acquisition.

Market prices of offeror's shares being offered

- 10.** (1) The closing price on the securities exchange of the securities of the offeree company which are the subject of the offer
- (a) on the latest practicable date prior to the publication of the document;
 - (b) on the latest business day immediately preceding the date of the initial announcement of the offer; and
 - (c) at the end of each of the 6 calendar months preceding the date of the initial announcement.
- (2) The highest and lowest closing market prices with the relevant dates during the period between the start of the 6 months preceding the date of the initial announcement and the latest practicable date prior to the posting of the offer document.

Cash resources for offer

- 11.** Where the offer is in cash, or includes an element of cash, the offer document must include confirmation by a financial adviser or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer.

Financial information

- 12.** (1) In the case of a securities exchange offer the following information about the offeror:
- (a) for the last 5 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
 - (b) a statement of the assets and liabilities shown in the last published audited accounts;

- (c) all material changes in the financial or trading position of the offeror subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (d) details relating to the items referred to in (a) in respect of any interim statement or preliminary announcement made since the last published audited accounts; and
 - (e) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures.
- (2) Where, because of a change in accounting policy, figures are not comparable to a material extent, this should be disclosed and the approximate amount of the resultant variation should be stated.
 - (4) In a highly-leveraged offer, the Commission will normally require that the offer document contains a description of the financing arrangements.
 - (5) An offer may be considered to be highly-leveraged if, as a result of the offer, the offeror will incur a high level of debt and the payment of interest and repayments of security for the debt will substantially depend on the business of the offeree company.

Arrangements in connection with offer

- 13.** Details of any benefit which will be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer.
- 14.** Details of any agreement or arrangement between the offeror and any of the directors of the offeree company or any person which is conditional on the outcome of the offer or otherwise connected with the offer.

Regulatory obligations

- 15.** A statement of the obligations of the offeror and the rights of the offeree shareholders under regulations 51 to 58.

Further information in cases of securities exchange offers

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

- (1) how and when the documents evidencing title to the securities will be issued.

SECOND SCHEDULE

**REQUIRED CONTENT OF OFFEREE COMPANY'S
REPLY DOCUMENT**

The offeree company's document should include the following information:

Views of offeree board

1. (1) Whether the directors of the offeree company recommend that the shareholders should accept or reject the offer, or a statement that the directors do not wish to make a recommendation (with reasons for the recommendation or for making no recommendation).
- (2) A copy of the written advice of the offeree's financial advisers must also be given.
2. Whether the directors and any person dealing directly on their behalf intend to accept the offer.

Directors' shareholdings in offeree

3. (1) The aggregate shareholdings in the offeror and in the offeree in which the directors of the offeree are interested must be stated.
- (2) If any securities in the offeree company have been purchased or sold by such persons within 6 months before the announcement of the offer, details of the numbers, prices and dates should be given.

Shareholdings in the offeror

4. (1) The shareholdings in the offeror company in which the following persons are interested:
 - (a) the offeree company, the offeree's holding company and any subsidiary or fellow subsidiary;
 - (b) each director of the offeree company; and

- (b) the offeree's financial advisor, the advisor's holding company or any subsidiary or fellow subsidiary.
- (2) If any shares in the offeror company have been purchased or sold by such persons within 6 months before the announcement of the offer, details of the numbers, prices and dates should be given.

Share capital of offeree

- 5. The authorised and issued share capital and any outstanding options, and the rights of the shareholders in respect of capital, dividends and voting.
- 6. The number of shares issued since the end of the last financial year of the company.
- 7. Details of options, warrants and conversion rights affecting shares in the offeree company.

Financial information

- 8. (1) Information about the offeree company as follows:
 - (a) for the last 5 financial years for which the information has been published, turnover, net profit or loss before and after taxation, the charge for tax, extraordinary items, minority interests, the amount absorbed by dividends, and earnings and dividends per share;
 - (b) a statement of the assets and liabilities shown in the last published audited accounts;
 - (c) all material changes in the financial or trading position or prospects of the company subsequent to the last published audited accounts or a statement that there are no known material changes;
 - (d) details relating to items referred to in (i) above in respect of any interim statement or preliminary announcement made since the last published audited accounts; and

