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S.I. 45 OF 2008

SECURITIES ACT, 2007

(Act No. 8 of 2007)

SECURITIES (TAKEOVERS) REGULATIONS, 2008

In exercise of the powers conferred by section 124 of the Securities Act, the Minister of Finance, on the recommendation of the Securities Authority makes the following Regulations –

PART I
PRELIMINARY

1.(1) These Regulations may be cited as the Securities (Takeovers) Regulations, 2008. Citation and application

(2) These Regulations shall apply to –

- (a) all takeover or merger offers affecting public companies listed on a Seychelles Securities Exchange; and
- (b) all takeover or merger offers affecting all other entities listed on a Seychelles Securities Exchange (including, without limitation, a limited partnership registered under the Limited Partnership Act 2003), and provisions of these Regulations applying to listed companies shall apply *mutatis mutandis* to all other listed entities.

(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.(1) In these Regulations, unless the context otherwise requires – Interpretation

“Authority” means the Securities Authority;

“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 10% of the issued share capital of the issuer; or

- (b) which entitles the person to exercise or control the exercise of more than 10% 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;

“share” means share in the capital of a company and includes an interest in a partnership and trust unit in a unit trust;

“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 mutual fund, 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 advisor, including a securities dealer, and its client in respect of the shareholdings of the advisor and persons controlling, controlled by or under the same control as the advisor;
- (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 25% or more of the voting rights of the other or if both are associated companies of the same company.

Object

3. (1) The object of these Regulations is to –

- (a) ensure fair treatment for shareholders who are affected by takeover transactions;
- (b) 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.

Contravention

4. A person who contravenes any provision contained in Part 3 of these Regulations commits an offence and is liable on conviction to a fine not exceeding \$50,000.

PART 2 GENERAL PRINCIPLES

Equality of treatment

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

Information to shareholder

6. (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 advisors 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.

Announcements

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

(2) The offeror and its financial advisors shall be satisfied that it can and will continue to be able to implement the offer in full.

8.(1) A shareholder shall be given sufficient information, advice and time to reach an informed decision on an offer and no relevant information shall be withheld.

Sufficient information and time

(2) Documents and advertisements issued in connection with takeovers and mergers shall be prepared with a high degree of care, responsibility and accuracy.

9.(1) All persons concerned with takeovers shall make full and prompt disclosure of all relevant information and take every precaution to avoid the creation or continuance of an uninformed market.

Full and prompt disclosure

(2) Parties involved in offers must take care that statements are not made which may mislead shareholders or the market.

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

Minority rights

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

Duties of directors

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

Independent advice

13.(1) In connection with takeover and merger transactions the Boards of an offeror and of an offeree company and their respective advisors and associates must accept that there are limitations in carrying out the transactions in the best interests of their shareholders.

Limitations on directors' actions

(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 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 –

No frustration of offer by offeree Board

- (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.

No less favourable terms

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

- (a) a written offer has been made to an offeree company; 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.

Full co-operation with Authority

16. All parties concerned with takeovers are required to fully co-operate with the Securities Authority, and to provide all relevant information.

PART III SPECIFIC REQUIREMENTS

Offer

17. An offer shall be put forward in the first instance to the Board of the offeree company or to its advisors, before the offer is announced to the public.

Identify of offeror

18. 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.

Implementation of offer

19. 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.

Confidentiality

20. (1) There shall be absolute privacy before an announcement of an offer or proposed offer.

(2) Without prejudice to the provisions of the Act relating to an insider dealing a person who has confidential information, particularly if it is price sensitive, shall take all due care not to disclose that information.

Board of offeree company

21. (1) A Board which receives an offer, or is approached with a view to an offer being made, shall, in the interests of shareholders, retain an independent

financial advisor or other appropriate expert to advise the Board as to whether the offer is, or is not, fair and reasonable.

(2) The advice, including reasons, shall 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 shall, if possible, establish an independent committee of the Board to discharge the Board's responsibilities in relation to the offer.

22. (1) If a director of an offeror which is a public company in Seychelles 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.

Board of
offeror
company

(2) If the conflict is a material one the Authority 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 advisor 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. 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.

Persons not
suited to give
independent
advice

24. A financial advisor or other expert 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.

Independent
financial
advisors

25. (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.

Independent
committees

(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 presumption under subregulation (2) 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 cases of doubt the Authority shall be consulted.

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

Offers or
possible offers

26. 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 advisors).

27.(1) Before the Board of the offeree company is approached, the responsibility for making an announcement can lie only with the offeror who should, closely monitor the offeree company's share price and volume for any signs of undue movement.

Responsibilities of offeror and offeree for announcements

(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 shall closely monitor its share price and volume.

28.(1) When an announcement is required the offeror or offeree, as the case may be, shall notify the Authority and the securities exchange immediately that an announcement is imminent.

Suspension of trading

(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 consideration should be given to requesting a suspension of trading in the shares pending publication of the announcement.

(3) A potential offeror shall 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. (1) When a firm intention to make an offer is announced, the announcement shall contain –

Announcement of firm intention to make an offer

- (a) the terms of the offer;
- (b) the identity of the ultimate offeror or the ultimate controlling shareholder;
- (c) details of any existing holding of voting rights in the offeree company –
 - (i) which the offeror owns or over which it has control or direction;
 - (ii) which is owned or controlled or directed by any person acting in concert with the offeror;
 - (iii) in respect of which the offeror or any person acting in concert with him has received an irrevocable commitment to accept the offer; and

(iv) in respect of which the offeror or any person acting in concert with him holds an option to purchase or warrants or other convertible securities;

(d) all conditions (including normal conditions relating to acceptance, listing and increase of capital) to which the offer or the posting of it is subject; and

(e) details of any arrangement (whether by way of option, indemnity or otherwise) in relation to shares of the offeror or the offeree and which might be material to the offer.

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

Announ-
cement
of certain
purchases

30. (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 shall 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.

No
frustrating
action

31. (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 shall 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 Authority shall be consulted as soon as practicably possible 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) The Authority may, in what it regards to be appropriate circumstances, grant a waiver from the general requirement to obtain shareholders' approval.

32. If there is an announcement of a firm intention to make an offer, except with the consent of the Authority, the offeror shall 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.

No withdrawal of an offer

33. Relevant information relating to the offeree, including particulars of shareholders, given by the offeree shall, on request, be furnished promptly to any other bona fide potential offeror, who shall specify the questions to which it requires answers.

Information to offerors

34. Except with the consent of the Authority the directors of an offeree company shall not resign until the first closing date of the offer, or the date when the offer becomes or is declared unconditional, whichever is the later.

Resignation of directors of offeree company

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

Availability of information

36. (1) The offer document, which shall not be dated more than 4 days prior to dispatch, shall 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.

Time limit of offer document

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

Content of offer document

37. The offer document submitted by the offeror to the offeree shareholders shall contain the information required by Schedule 1 together with any other relevant information to enable offeree shareholders to reach a properly informed decision.

Offeree reply document

38. The offeree company shall send to its shareholders within 14 days of receipt by the offeree company of the offer document a document containing the information set out in Schedule 2 together with any other information it considers to be relevant to enable its shareholders to reach a properly informed decision on the offer.

Views of offeree's board and financial advisor

39. The offeree company's document shall include the views of its board on the offer and the advice of its financial advisor as to whether the offer is, or is not, fair and reasonable and the reasons for reaching that conclusion.

Subsequent documents

40. Documents subsequently sent to shareholders of the offeree company by either party shall 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.

Prospectus standard

41. (1) Any document shall 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 advisor on the company's behalf; or
- (c) any other person in relation to an offer.

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

Sufficient information

42. (1) Shareholders shall 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 shall be available to shareholders early enough to enable them to make a decision in a timely manner.

(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. Documents shall state that all directors of the offeror, or, as appropriate, the offeree, jointly and severally –

Director's
joint and
several
responsibility

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

Authority's
consent
required for
exclusion of
directors

45. (1) It is the responsibility of the directors to compile with due care and objectivity a profit forecast.

Standard of
care

(2) The financial advisors shall 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. (1) When a profit forecast appears in any document, the assumptions, including the commercial assumptions, upon which the forecast is based shall be stated in the document.

Assumptions

(2) Assumptions shall 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. 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 shall be included in the offer document or other document circulated to the shareholders of the offeree company by its board.

Disclosure of
revaluations

- Preparing revaluations 48. (1) The revaluations shall be carried out or confirmed by an independent, professionally qualified valuer or other expert and the basis of valuation shall be clearly stated.
- (2) The document stating the revaluations shall 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.
- Filing of documents for comments 49. (1) Prior to release or publication, two copies of all documents shall be filed with the Authority for comment and shall not be released or published until the Authority has confirmed that it has no further comments on the documents.
- (2) The final copy of the document shall be filed with the Authority and the securities exchange in duplicate.
- Publication of announcement 50. All announcements shall be published in at least one newspaper published and circulating generally in Seychelles.
- Minimum period 51. An offer shall be open for at least 21 days following the date of posting of the offer.
- Conditions 52. If the offer is conditional, it shall specify the latest day when the offeror can declare the offer unconditional.
- Period for acceptance 53. (1) A conditional offer that becomes or is declared unconditional, shall 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 shall 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 shall be given before the offer is closed to the shareholders who have not accepted the offer.
- Final day 54. Except with the consent of the Authority, 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.
- Revised officer 55. (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 shall be kept open for at least 14 days from the date of posting written notification of the revision to shareholders.

56.(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.

Acceptor's
right to
withdraw

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

57.(1) The offeror shall immediately inform the Authority and the securities exchange that an offer has –

Nature of
announcement

- (a) been revised or extended;
- (b) expired; or
- (c) become or has been declared unconditional,

and shall publish an announcement as soon as possible to that effect.

(2) The announcement shall 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 announcement shall also specify the percentages of the relevant classes of share capital, and the percentages of voting rights, represented by these numbers.

58.(1) The Authority shall be consulted if an offeror is unable to comply with any of the requirements of regulation 57.

Consequences
of failures to
announced

(2) The Authority may require that an acceptor be granted a right of withdrawal, on terms acceptable to the Authority, until the requirements of this regulation can be met.

59. (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

Restrictions
on dealings
before the
offer

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.

Restrictions on
dealings
during the
offer

60. During an offer period, the offeror and any person acting in concert with the offeror shall not sell any securities in the offeree company except with the prior consent of the Securities Authority and following 24 hours public notice that the sales might be made.

Restrictions on
dealings by
offeror during
non-cash
offers

61. 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.

Dealings after
termination of
discussions

62. 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.

Dealings in
relevant
securities

63. (1) During an offer period all parties to a takeover or merger transaction and their advisors and any person acting in concert with any of the parties to a takeover or merger transaction and their advisor 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,

shall be disclosed forthwith in writing to the Authority.

(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 shall 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 shareholder who holds 10% or more of any class of issued securities in the company, 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. During an offer period, if a person, or group of persons acting in concert, owns or controls (directly or indirectly) 10% or more of any class of relevant securities, or as a result of any transaction will so own or control 10% 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) shall be disclosed to the Authority.

Dealings by
10%
shareholders

Discretionary
Accounts

65. 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.

When case
offer required

66. (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 Authority 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 Authority 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.

Highest price
paid

67. 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 shall increase the offer to not less than the highest price (excluding tax or duty, if any, and dealing costs) paid for any securities so acquired.

Offers
involving a
further issue of
listed
securities

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

70. Except with the consent of the Authority, 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. Special deals

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

72. (1) Except with the consent of the Authority, 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. Acceptance condition

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

73. (1) Except with the consent of the Authority, 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. Temporary ban

(2) 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. (1) Except with the consent of the Authority, 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 6 months delay before acquisition above offer price

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.

Disclosure of
acquisitions of
20% and
above.

75.(1) After an acquisition or disposal of shares carrying voting rights in a company, or rights over such shares, a person shall 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) shall 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.

SCHEDULE 1

(regulation 37)

REQUIRED CONTENT OF OFFEROR COMPANY'S OFFER DOCUMENT

The offer document shall 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 securities dealer, lawyer, accountant or other professional advisor."

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 dealer or other agent through whom the sale was effected for transmission to the purchaser."

The document shall include the following information:

The Offeror

1. (1) The name and address of the offeror and any financial advisor or other person who may be acting for the offeror, and of any person acting in concert with any of them.

The Offeror

(2) Unless otherwise agreed with the Authority, the offer document shall 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
- (e) 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 set out under paragraphs (a) to (c) there are no shareholdings, this fact shall 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, shall 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.

- | | | |
|---------|---|---|
| 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. | Shares offered for and dividends |
| 7. | The price or other consideration to be paid for the securities. | Conditions of offer. |
| 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. | Conditions upon acceptance |
| 9. | A statement whether or not the offeror intends to avail itself of any powers of compulsory acquisition. | Compulsory acquisition |
| 10. (1) | The closing price on the securities exchange of the securities of the offeree company which are the subject of the offer – | Market prices of offeror's shares being offered |
| | (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. | |
| 11. | Where the offer is in cash, or includes an element of cash, the offer document shall include confirmation by a financial advisor or by another appropriate independent party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. | Cash resources for offer |
| 12. (1) | In the case of a securities exchange offer there shall be the following information about the offeror – | Financial information |
| | (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 shall be disclosed and the approximate amount of the resultant variation shall be stated.

(3) In a highly-leveraged offer, the Authority shall require that the offer document contains a description of the financing arrangements.

(4) 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.

Details of benefit

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.

Details of agreement or arrangement

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 shall be given by the offeror when it is offering its securities in exchange for the securities of the offeree –

- (a) the nature and particulars of its business;

- (b) the date and country of its incorporation;
- (c) the address of its principal office in Seychelles;
- (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
- (l) how and when the documents evidencing title to the securities will be issued.

SCHEDULE 2

(regulation 38)

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

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

- | | |
|--|--|
| <p>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).</p> <p>(2) A copy of the written advice of the offeree's financial advisors shall also be given.</p> | <p>Views of
offeree board</p> |
| <p>2. Whether the directors and any person dealing directly on their behalf intend to accept the offer.</p> | <p>Acceptance</p> |
| <p>3.(1) The aggregate shareholdings in the offeror and in the offeree in which the directors of the offeree are interested shall be stated.</p> <p>(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 shall be given.</p> | <p>Director's
shareholdings
in offeree</p> |
| <p>4.(1) The shareholdings in the offeror company in which the following persons are interested—</p> <p style="margin-left: 40px;">(a) the offeree company, the offeree's holding company and any subsidiary or fellow subsidiary;</p> <p style="margin-left: 40px;">(b) each director of the offeree company; and</p> <p style="margin-left: 40px;">(c) the offeree's financial advisor, the advisor's holding company or any subsidiary or fellow subsidiary.</p> <p>(2) If any shares in the offeror company have been purchased or sold by such persons within 6 months before the announcement of the offer, details of the numbers, prices and dates shall be given.</p> | <p>Shareholdings
in the offeror</p> |
| <p>5.(1) The authorised and issued share capital and any outstanding options, and the rights of the shareholders in respect of capital, dividends and voting.</p> | <p>Share capital
of offeree</p> |

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

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

Financial
information

6.(1) The information about the offeree company shall be 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
- (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 shall be disclosed and the approximate amount of the resultant variation shall be stated.

Material
contracts

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

Arrangements
affecting
directors

8.(1) Details of any benefit to be given to any director of the offeree company as compensation for loss of office or otherwise in connection with the offer.

(2) Details of any agreement between any director of the offeree company and any other person which is conditional on the outcome of the offer or otherwise connected with the offer.

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

Director's
service
agreement

9. Details of any service contracts with the offeree company or any of its subsidiaries or associated companies in force for directors of the offeree company which have more than 12 months to run, or which have been entered into or amended within 6 months before the announcement of the offer.

MADE this 8th day of July, 2008.

**DANNY FAURE
MINISTER FOR FINANCE**