

RIGHTS ISSUES

1. DOCUMENTS IN SUPPORT OF APPLICATION

Requirement	
1.	Information Memorandum
2.	Certified Copy of the Latest version of the Memorandum and Articles of Association of Applicant
3.	Copy of announcement of board's resolution to recommend the additional issue to the shareholders and such announcement shall state that the issue is subject to the approval of the shareholders and the Authority
4.	Certified Copy of the Shareholders Resolution approving rights issue
5.	Legal Opinion
6.	Reporting Accountants' report
7.	Audited financial statements / annual reports for the last three financial years <i>NOTE: The latest audited financial statements to be less than 4 months old from the proposed date of offer. (The Authority may require latest management accounts, limited review of accounts and the applicant shall be advised accordingly if this is the case)</i>
8.	Copy of appraisal report where reserves were created following a revaluation of the assets of the issuer
9.	Certificate from the issuer's auditors indicating that the reserves are sufficient to cover capitalization
10.	A movement schedule of the capital and revenue reserves for the last three years
11.	Underwriting Agreement (if applicable)
12.	Draft Agreements between the issuer and members of the transaction team

2. DISCLOSURE REQUIREMENTS CHECKLIST

Fourth Schedule of the Capital Markets (Securities)(Public Offers, Listing and Disclosures) Regulations, 2002

	Requirement	Met: Y, N or N/A	Indicate the paragraph and page number of the Information Memorandum where the requisite disclosure has been made
1	An issuer of securities to the public must ensure equality of treatment for all holders of such securities of the same class in respect of all rights attaching to such securities.		
2	An issuer proposing to issue shares for cash may first offer those shares to existing shareholders in proportion to their existing holdings. Only to the extent that the securities are not taken up by such persons under the offer, may they then be issued for cash to others or otherwise than in the proportion to their existing holdings.		

	Requirement	Met: Y, N or N/A	Indicate the paragraph and page number of the Information Memorandum where the requisite disclosure has been made
	An issuer intending to make an additional issue should make an announcement within twenty four hours from the Board's resolution to make the additional issue to shareholders and such announcement shall state that the issue is subject to the approval of the shareholders and the Authority		
3	An issuer shall not issue shares which confer a controlling interest without prior approval of shareholders in general meeting through a special resolution.		
4	<p>(1) Where an issuer obtains a general approval from the shareholders to issue shares for purposes of acquisition and authorizes directors to issue such shares for that purpose, the directors shall disclose to the shareholders and the general public any acquisition involving such shares in which an existing shareholder has an interest, or where the shareholding percentage or structure of the existing shareholding will change as a result of such acquisition</p> <p>(2) Where as a result of such acquisition a shareholder by virtue of shares arising out of the acquisition is in a position to exercise control of an issuer, such acquisition shall only be carried out with a special resolution of the shareholders in general meeting notwithstanding the existence of the general provisions.</p>		
6	Where an issuer which has listed shares has received notification from its parent company that the parent company proposes to participate in future issues of shares by the issuer not made to existing shareholders in proportion to their existing holdings (in order to maintain its percentage shareholding in the issuer), such participation shall first be authorised by the shareholders in general meeting by special resolution and such authority shall be valid for a period of twelve months unless renewed by shareholders at another general meeting.		

	Requirement	Met: Y, N or N/A	Indicate the paragraph and page number of the Information Memorandum where the requisite disclosure has been made
	<p>er must obtain the consent of shareholders before any subsidiary company of the issuer makes any issue of shares for cash or transfer of existing shares of such subsidiary company so as to materially dilute the issuer's percentage interest in the shares of that subsidiary company. For the purposes of this paragraph and paragraph 5 (1) above, a subsidiary company which represents 25% or more of the aggregate of the share capital and reserves or profits (after deducting all charges except taxation and excluding extraordinary items) of the group will be regarded as a major subsidiary company.</p>		
8	<p>The obligation to obtain the consent of shareholders set out in paragraph 7 does not apply if the subsidiary company is itself listed and so must comply with paragraph 6. In such a case, the issuer must ensure that its equity interest in the subsidiary company is not materially diluted through any new cash issue or transfer of shares by such subsidiary company. In the case of a rights issue, if the issuer does not propose to take up its rights, an arrangement must be made for the rights to be offered to its shareholders so that they can avoid a material dilution in their percentage equity interest.</p>		
9	<p>In a rights issue or open offer an issuer need not comply with paragraph (8) above with respect to:</p> <ul style="list-style-type: none"> (a) securities representing fractional entitlements; or (b) securities which the directors of the issuer consider necessary or expedient to exclude from the offer on account of either legal problems under the laws of any territory, or the requirements of a regulatory body, provided that the Authority's consent is obtained. 		
10	<p>In relation to a rights issue in which shareholders are given the right to participate in proportion to the amount of existing shares, such rights shall allow for renunciability in part or in whole in favour of a third party at the option of the entitled shareholders.</p>		
11	<p>In relation to rights issues the issuer shall fix the closing date for the receipt of applications for, and acceptance of the new shares not later than thirty days after the books closing date.</p>		
12	<p>An issuer shall issue to the persons entitled to a rights issue within ten days after a books closing date:</p> <ul style="list-style-type: none"> (a) letter of entitlement of rights; and (b) provisional letter of allotment incorporating: <ul style="list-style-type: none"> (i) form of acceptance; (ii) request for splits; (iii) form of renunciation; and 		

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	(iv) excess shares application form.		
13	<p>Except in the case of a rights issue to shareholders, no director of an issuer shall be given preferential allotment directly or indirectly in an issue of shares or other securities with rights of conversion to shares unless shareholders in general meeting have approved of the specific allotment to be made to such director.</p> <p>The notice of meeting shall state:</p> <p>(a) the number of securities to be so allotted;</p> <p>(b) the precise terms and conditions of the issue; and</p> <p>(c) that such directors shall abstain from exercising any voting rights.</p>		
14	When shareholders are offered a specific entitlement in a new issue of shares, such entitlement must be on pro rata basis with no restrictions placed on the number of shares to be held before entitlements accrue.		
15	Once the basis of the entitlement is declared the issuer shall not make any subsequent alterations to such entitlements.		
16	<p>(1) Where the shares for which application is being made are offered by way of rights, open offer or otherwise or allotted by way of capitalization of reserves or undistributed profits or scrip dividend to the existing shareholders, the application shall be lodged with the Authority at least ten days prior to the date of books closure.</p> <p>(2) The Authority shall be at liberty to impose such conditions as it deems fit for the protection of existing shareholders and potential investors in approving the application</p> <p>(3) Where the shareholders resolutions have not been obtained, the Authority may approve the application subject to the approval of the shareholders.</p>		

	Requirement	Met: Y, N or N/A	Indicate the paragraph and page number of the Information Memorandum where the requisite disclosure has been made
	(a) the dates of resolutions passed by its board of directors and shareholders (where already obtained) furnish certified copies as required under the Companies Act, authorizing the issue of new shares, and if there were any proceedings of a court of law involved, the date and outcome of such proceedings;		
	(b) designation or title of each class of shares proposed for additional listing and its amount, par value and whether fully paid;		
	(c) the number of additional shares to be listed;		
	(d) the effective date on which the additional shares are to be fully qualified for admission to trading		
	(e) the exchange at which the applicant's shares are listed;		
	(f) purpose of issuance;		
	(g) the names of the persons responsible for the application;		
	(h) number of shares authorized by the articles and number of shares issued and fully paid;		
	(i) where applicable, the number of un-issued shares of each class of security reserved for issuance for any purpose, and purpose for which they are reserved;		
	(j) a brief description of the rights attached to the shares with regard		

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	<p>(k) to voting, dividends, liquidation proceeds, pre-emption in future capital increases or any other special circumstances;</p> <p>(l) the date with effect from which the additional shares will qualify for dividend, whether dividend will be paid in full, and the circumstances relevant to the time limitation on the right to dividend;</p> <p>(m) the nature of the document of title (if any) and its proposed date of issue;</p> <p>(n) how any fractions will be treated;</p> <p>(o) details regarding the proposed listing of the letters of allocation, the subsequent listing of the new shares and the amount payable in respect of listing fees;</p> <p>(p) details regarding the letters of allocation such as -</p> <ul style="list-style-type: none"> (i) acceptance; (ii) renunciation; (iii) splitting; and (iv) mode of payment. <p>(q) in the case of a rights or scrip dividend issue or open offer -</p> <ul style="list-style-type: none"> (i) how shares not taken up will be dealt with and the time in which the offer may be accepted; (ii) whether or not the documents of title (if any) are renounceable; and <p>Where the shares for which application is being made are shares of a class which is already listed, being offered by way of rights or open offer, a table of high and low traded market values for the securities of the class to which the rights issue or offer relates for the first dealing day in each of the six months before the date of the information memorandum and for the last dealing day before the announcement of the rights issue or offer and (if different) the latest practicable date prior to publication of the information memorandum;</p> <p>(r) a statement pointing out possible tax implications for non-residents.</p> <p>(2) The issuer's application shall be endorsed with the following declaration under the</p>		

	Requirement	Met: Y, N or N/A	Indicate the paragraph and page number of the Information Memorandum where the requisite disclosure has been made
18	An issuer shall issue to the persons entitled to a rights issue within ten days after a books closing date: (a) letter of entitlement of rights; and (b) provisional letter of allotment incorporating:- (i) form of acceptance; (ii) request for splits; (iii) form of renunciation; and (iv) excess shares application form.		
19	An issuer shall not close its register to determine shareholders' entitlement to participate in a rights, scrip dividend or capitalization issue or open offer until one week after the information memorandum to shareholders has been approved by the Authority.		
20	All schemes involving the issue of shares or other securities (including options) to employees shall comply with the registration and approval procedures for employee share ownership schemes prescribed in The Capital Markets (Collective Investment Schemes) Regulations, 2001.		
21	The issuer shall in the case of rights or scrip dividend issue: (a) show a timetable in respect of the following events- (i) books closure date to determine rights entitlement; (ii) last day for splitting; (iii) last day for exercise of rights; (iv) last day for renunciation of rights; (v) last day for application for additional shares; and (b) state- (i) the rights new issue ratio, date and basis of determining the price of new issue shares; (ii) the expected net proceeds and its application; (iii) if any underwriting agreement exists, a copy of such agreement shall be submitted to the Authority; (iv) the names and addresses of the auditors who have audited the accounts of the		

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	<p>issuer during the preceding three years; and</p> <p>(v) the names and addresses of the stockbrokers sponsoring the application for admission to listing</p>		
22	<p>An application for rights issue shall be accompanied by the following:</p> <p>(a) information about the management of the applicant;</p> <p>(b) a statement on any important development(s) affecting the applicant or its business since the latest annual report of the applicant;</p> <p>(c) if the applicant's securities have been suspended, provide details of the same;</p> <p>(d) if the shares to be listed are to be issued in connection with the acquisition of a controlling interest in, or of all the assets subject to a liability of another company and that company's profit and loss accounts to the date of the last balance sheet supplemented by the latest available interim statements;</p> <p>(e) one copy of each contract, plan or agreement pursuant to which the shares applied are to be issued;</p> <p>(f) if the shares applied for are to be issued in acquisition of an equity interest in another company, or properties or other assets, one copy of any engineering, geological or appraisal report, which may have been obtained in connection with the proposed acquisition;</p> <p>(g) one copy each of all letters of approval from the relevant government authorities; and</p> <p>(h) a statement or estimate of the cost involved in the application divided into-</p> <p>(i) brokerage expenses;</p> <p>(ii) approval and listing fees;</p>		

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	<ul style="list-style-type: none"> (iii) printing; (iv) advertising; (v) professional fees (legal, auditors, valuers); and (vi) other costs. 		
23	<p>The issuer shall state in tabular form, for each issue or series of funded or long-term debt of the issuer and its subsidiary companies, the following-</p> <ul style="list-style-type: none"> (a) full title (including interest rate and maturity date); (b) amount authorized by the debt instrument; (c) amount issued to-date; (d) amount redeemed; (e) amount outstanding; (f) issue price; (g) date of payment of interest; and (h) date and terms of redemption. 		
24	<p>The issuer shall, in the case of acquisitions, state-</p> <ul style="list-style-type: none"> (a) whether the shares applied for are to be issued as a total or part of the consideration for the acquisition of- <ul style="list-style-type: none"> (i) a controlling interest in, or the major part of the business and assets of, another company; or (ii) specific assets or properties; (b) names of parties involved in the acquisition and the date of contract entered into; (c) the transaction, and the assets or business to be acquired, in sufficient detail to indicate the relative value thereof in relation to the consideration to be paid; (d) the principle followed and factors considered in determining the consideration to be paid in the acquisition, and the persons making the determination and their relationship to the applicant; (e) why the management of the issuer regards the acquisition as a favourable one from its point of view; and 		

	Requirement	Met: Y, N or N/A	Indicate the paragraph and page number of the Information Memorandum where the requisite disclosure has been made
	(f) whether or not any officer, director or major shareholder of the issuer (or a related company of the issuer) has any direct or indirect beneficial interest in the assets to be acquired or the consideration to be paid and, if such interest does exist, describe it.		
25	If the controlling interest in, or the major part of the business and assets of, another company is being acquired, the issuer shall state briefly the history and business of that other company and furnish the financial statements of that other company.		
26	If any engineering, geological or appraisal reports, were obtained in connection with the proposed acquisition the issuer shall include appropriate excerpts from such reports.		
27	If the shares applied for are in respect of bonus shares capitalized from reserves the issuer shall- (a) identify the reserves from which the bonus shares are to be capitalized; (b) show a three year schedule of the movements in the relevant reserve accounts; and (c) where any of the reserves were created following a revaluation of the assets of the issuer, submit a copy of the relevant appraisal report, and a certificate from the issuer's auditors that the reserves are sufficient to cover the capitalization.		
28	The issuer shall: (a) make a declaration that the annual accounts have been audited; and (b) furnish a statement from the issuer's auditor stating all circumstances regarding the additional listing known to the auditor, which could influence the evaluation by investors of the assets, liabilities, financial position, results and prospectus are included in the report.		
29	Where an issuer considers it necessary to make underwriting arrangements for the rights issue, details of such underwriting arrangements shall be subject to the approval of the Authority.		
30	Disclosure of underwriting agreement, costs, details of the underwriter and relationship (if any) of the underwriter to the issuer or any of its directors shall be made.		

Corporate Governance requirements as per the Capital Markets Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya,2002

REQUIREMENTS	MET Y/N	COMMENT
Identify reasons for non-compliance, where the company is not fully compliant, and indicate steps on how to comply.		
Have an effective board to offer strategic guidance, lead the company and be accountable to shareholders.		
Board to establish relevant committees to perform specific mandates.		
Board to specifically establish an audit and nominating committee.		
Board composes of a balance of executive and non-executive directors (including at least one third independent and non-executive directors of diverse skills or expertise (should be disclosed in the annual report).		
Every person, save for a corporate director, who is a director of a listed company shall not hold such position in more than five public listed companies at any one time		
Clear separation of roles and responsibilities of the chairman and chief executive.		
Every person who is a Chairperson of a public listed company shall not hold such position in more than two public listed companies at any one time		
The Board should appoint a nominating committee consisting mainly of independent and non-executive directors who will consider candidates for directorship proposed by the chief executive and shareholders.		
Establishment of an audit committee of at least three independent and non-executive directors by the board who shall report to it.		