

## TAKE-OVER OFFER DOCUMENT CHECKLIST

### *Regulation 7 and 8 and the Second Schedule of the Capital Markets (Takeovers and Mergers) Regulations, 2002*

**NOTE:**

1. The Offeror shall within fourteen (14) days from the date of serving the Offeror's Statement pursuant to Regulation 4(4) submit to the Authority for approval, the Take-over Offer Document in relation to the take-over offer which shall include the information contained in the Second Schedule of the Regulations or such other information as the Authority may require.
2. The take-over offer document shall be served by the offeror on the offeree **within five (5) days from the date of approval of the take-over offer document** by the Authority.
3. The Offeror shall disclose in the Takeover Offer document all such information as the offeree shareholders and their professional advisers would reasonably require.

**A. DOCUMENTS IN SUPPORT OF APPLICATION**

Requirement	
1.	Application Letter from applicant
2.	Draft Takeover Offer
3.	Documents to be made available for inspection under the Takeover Offer Document

**B. DISCLOSURE REQUIREMENTS CHECKLIST**

	REQUIREMENT	Y/N N/A	Indicate page and paragraph of Takeover Offer Document where requisite disclosure is made
1	The offeror document shall state the following: (a) the identity of the ultimate offeror required under Regulation 21		
	(b) information regarding the offeror including the names of its directors and shareholders who hold notifiable interest in the offeror and the extent of their holdings		
	(c) whether the offeror has any intentions regarding the continuation of the business of the offeree and if so, stating the offeror's intentions		
	(d) the offeror's stated intentions regarding major changes to be introduced in the business, or strengthening the financial position of the offeree, whether such plans include a merger,		

	or liquidating the offeree, selling its assets or re-deploying its fixed assets or making any other major change in the structure of the offeree or its subsidiaries and if so, stating the offeror's intentions;		
	(e) whether there are any long term commercial justifications for the proposed take-over offer, and if so, stating the long term commercial justifications		
	(f) whether the offeror has any intentions with regard to the continued employment of the employees of the offeree company and of its subsidiaries and if so, stating the offeror's intentions		
2	Where the take-over offer is for cash, either in part or in whole, the offer must include a confirmation by a <b>financial adviser</b> of the offeror that the offeror has the financial capability to accept and carry out the take-over offer in full		
3	The offer document should also include a statement that the offeror and the offeror's financial advisers are satisfied that  (a) the take-over offer would not fail due to insufficient financial capability of the offeror;		
	(b) every shareholder who wishes to accept the take-over offer will be paid in full		
4	The offer document shall contain a statement as to whether: (a) Any agreement, arrangement or understanding exists between the offeror or any person acting in concert with it and any of the directors, past directors, holders of voting shares or past holders of voting shares having any connection with or dependence upon the take-over offer, and full particulars of any such agreement, arrangement or understanding. 'past directors' or 'past holders of voting shares' means such person who was during the period of six months immediately prior to the date of the written notice of the take-over offer, a director or a holder of the voting shares as the case may be;		
	(a) any voting shares acquired in pursuance of the take-over offer will be transferred within a foreseeable period from the date of the offer document to any other person, together with the names of the parties		

	to any such agreement, arrangement or understanding and the particulars of all securities in the offeree held by such persons, or a statement that no such securities are held		
	(c) any settlement of the consideration to which any holder is entitled under the take-over offer will be implemented in full in accordance with the terms of the take-over offer without regard to lien, right of set off, counter claim or other analogous rights to which the offeror may otherwise be or claim to be entitled as against the holder.		
5	The offer document shall state as at the latest practicable date, the number of and percentage holding of voting shares and convertible securities (if any) which; (a) the offeror and directors of the offeror hold, directly or indirectly, in the offeree;		
	(b) Persons associated or acting in concert with the offeror or related companies to the offeror hold directly or indirectly in the offeree together with the names of such persons acting in concert.		
	(c) persons who, prior to the sending of the take-over offer document, have irrevocably committed themselves to accept the take-over offer hold directly or indirectly in the offeree together with the names of such persons		
6	In the event that there are no holdings of voting shares and convertible securities, the offer document shall contain a statement to this effect		
7	Names and shareholdings of the ultimate shareholders, if any, and of the persons acting in concert with the offeror.		
8	Where any party whose holdings are required to be disclosed has dealt in the voting shares in question during the period commencing six months prior to the beginning of the offer period and ending with the latest practicable date prior to the sending of the offer document, the details, including the number of shares, dates and prices, must be stated. If no such deals have been made this fact should be so stated		
9	A statement as to whether the emoluments of the offeror's		

	directors shall be effected by the acquisition of the offeree, except in the case of an offeror making a cash offer only.		
10	Statement as to whether the offeree's securities shall continue to be listed at the securities exchange after the take-over offer has been successfully concluded		
11	Contain particulars of all service contracts of any directors or proposed director of the offeror or any of its subsidiaries (unless expiring or determinable by the employing company without payment of compensation within twelve months) and where there are no such contracts, this fact should be so stated.		
12	Where the contracts in paragraph 11 have been amended within six months of the date of the documents, the particulars of the contracts amended or replaced should be given and where there have been no new contracts or amendments this fact should be so stated		
13	The take-over offer shall be dated and shall unless varied under regulation 16, state that it will remain open for acceptance by the offeree for thirty days from the date of service of the take-over offer document by the offeror		
14	The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or being given to any director of the offeree or to any other person that is deemed to be related to the offeree, as compensation for loss of office or as consideration for, or in connection with, his retirement from the office		
15	<p>The offer shall state-</p> <p>(a) whether the offer is conditional upon acceptance of the offer under the take-over scheme, being received in respect of a minimum number of issued voting shares of the offeree and if so, the percentage;</p> <p>(b) where the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of such payment;</p> <p>(c) where the shares are to be acquired</p>		

	<p>through a share swap, the proportion of the share swap and the period within which the offeree's shareholders shall receive the new shares;</p> <p>(d) whether the offeror is engaged in the same line of business as the offeree, and whether the offer is conditional upon receiving approval under the Restrictive Trade Practices, Monopolies and Price Control Act or other regulatory approval outside Kenya where the transaction involves companies incorporated outside Kenya;</p> <p>(e) whether the offer is conditional upon maintenance of a minimum percentage of shareholding by the general public to satisfy the continuing eligibility requirements for listing; and</p> <p>(f) the circumstances that shall apply in the event the conditions in subparagraphs (a) to (e) are not fulfilled.</p>		
16	<p>Every take-over offer document shall contain the following words which shall be prominently displayed on the first page of the take-over offer document</p> <p>"If you are in any doubt about this offer, you should consult the independent adviser appointed by your board of directors, or your stockbroker, investment bank or other professional investment adviser".</p>		