

DIRECTIVE 2014/16/EAC OF THE COUNCIL OF MINISTERS

Of

(Date of Approval by Council of Ministers)

DIRECTIVE OF THE EAC ON TAKEOVERS AND MERGERS

Preamble

The Council of Ministers of the East African Community

Having regard to the Treaty for the establishment of the East African Community and in particular **Articles 85 (d), 14 and 16;**

WHEREAS Article 31 of the Common Market Protocol provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Common Market Protocol provides that the Partner States shall undertake to approximate their national laws and to harmonise their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ISSUED THIS DIRECTIVE

ARTICLE 1 INTERPRETATION

“acting in concert” means persons who pursuant to a formal or informal agreement or understanding actively co-operate through the acquisition by any of them of shares having voting rights in a public listed company to obtain or consolidate control of that company;

“Community” means East African Community established by Article 2 of the Treaty;

“Competent Authority” means the national regulatory agency that is the primary supervising entity of securities markets in the Partner State;

“Council of Ministers” means the Council of Ministers of the Community established by Article 9 of the Treaty;

“merger” means an arrangement whereby the assets of two or more companies become vested in or under the control of one company;

“minority shareholder” means a shareholder who owns less than 50% of the total shares of a company’s and does not have the voting control of the company;

“offeree company” means a company in respect of whose shares the takeover offer relates;

“offeror” means a person by or on whose behalf the takeover offer is made or is to be made;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;

“takeover bid” or **“bid”** means a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;

“Treaty” means the Treaty for the Establishment of the East African Community and any Annexes and Protocols thereto.

ARTICLE 2

PRINCIPLES

1. For the purposes of implementing this Directive, Partner States shall ensure that the following principles are complied with:
 - (a) all holders of the securities of an offeree company of the same class shall be afforded equal treatment;
 - (b) if a person acquires control of a company, the other holders of securities shall be protected;
 - (c) protection of minority shareholder interests;
 - (d) the holders of the securities of an offeree company shall have sufficient time and information to enable them to reach a properly informed decision on the bid; where it advises the holders of securities, the board of the offeree company shall give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;
 - (e) the board of an offeree company shall act in the interests of the company as a whole and shall not deny the holders of securities the opportunity to decide on the merits of the bid;
 - (f) false markets shall not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
 - (g) an offeror shall announce a bid only after ensuring that he can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and
 - (h) an offeree company shall not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.
2. With a view to ensuring compliance with the principles laid down in sub-article 1, Partner States:
 - (a) shall ensure that the minimum requirements set out in this Directive are observed; and
 - (b) may lay down additional conditions and provisions more stringent than those of this Directive for the regulation of bids.

ARTICLE 3 OBJECTIVES

The objective of this Directive is to:

- (a) establish minimum guidelines for the conduct of takeover bids and mergers; and
- (b) ensure an adequate level of protection for holders of securities throughout the Community.

ARTICLE 4 SCOPE

This Directive applies to takeover bids and mergers relating to the securities of companies admitted to trading on a regulated market in more than one Partner State (hereinafter referred to as a "regulated market").

ARTICLE 5 ACQUIRING EFFECTIVE CONTROL

1. A person shall not make an offer to acquire voting rights of a listed company which together with voting rights already held by that person or persons acting in concert or by associated person or persons or related company entitle that person to exercise effective control in the listed company without complying with the takeover procedure provided for under this Directive.
2. Where a person—
 - (a) holds more than 25% but less than 50% of the voting rights of a listed company, and who acquires in any one year more than 5% of the voting rights of such company;
 - (b) holds 50% or more of the voting rights of a listed company and acquires additional voting rights in the listed company;
 - (c) acquires a company that holds effective control in the listed company or together with the voting rights already held by an associated person or related company, resulting in acquiring effective control; or
 - (d) acquires any shareholding of 25% or more in a subsidiary of a listed company that has contributed 50% or more to the average annual turnover in the latest three financial years of the listed company preceding the acquisition,that person shall be presumed to have a firm intention to make a takeover of that listed company and required to comply with the takeover procedures .
3. A company that is already in control of 25% but less than 50% of the voting rights of a listed company may without the need to comply with the takeover procedures, acquire up to an additional 5% in any one year in that listed company up to a maximum of 50%.

ARTICLE 6

SUPERVISION OF THE BID

1. Competent Authorities shall exercise their functions impartially and independently of all parties to a bid.
2.
 - (a) The Competent Authority responsible for supervision of a bid shall be that of the Partner State in which the offeree company has its registered office and its securities are admitted to trading on a regulated market in that Partner State;
 - (b) If the offeree company's securities are not admitted to trading on a regulated market in the Partner State in which the company has its registered office, the Competent Authority to supervise the bid shall be that of the Partner State on the regulated market of which the company's securities are admitted to trading;
 - (c) If the offeree company's securities are admitted to trading on regulated markets in more than one Partner State, the Competent Authority to supervise the bid shall be that of the Partner State on the regulated market of which the securities were first admitted to trading;
 - (d) If the offeree company's securities were first admitted to trading on regulated markets in more than one Partner State simultaneously, the offeree company shall determine which of the Competent Authorities of those Partner States shall be the authority competent to supervise the bid by notifying those regulated markets and their Competent Authorities on the first day of trading;
 - (e) A Competent Authority shall ensure that the decisions referred to in paragraphs (c) and (d) are made public;
 - (f) In the cases referred to in paragraphs (b), (c) and (d), matters relating to the consideration offered in the case of a bid, in particular the price, and matters relating to the bid procedure, in particular the information on the offeror's decision to make a bid, the contents of the offer document and the disclosure of the bid, shall be dealt with in accordance with the rules of the Competent Authority;
 - (g) In matters relating to the information to be provided to the employees of the offeree company and in matters relating to company law, in particular any derogation from the obligation to launch a bid, as well as the conditions under which the board of the offeree company may undertake any action which might result in the frustration of the bid, the applicable rules and the Competent Authority shall be those of the Partner State in which the offeree company has its registered office.

ARTICLE 7 CONFIDENTIALITY

1. Persons employed or formerly employed by a Competent Authority shall be bound by professional secrecy.
2. Information covered by professional secrecy may not be divulged to any person or authority except under provisions laid down by law.

ARTICLE 8 COOPERATION

1. The Competent Authorities and other authorities supervising capital markets shall cooperate and supply each other with information wherever necessary for the application of the rules drawn up in accordance with this Directive.
2. Information exchanged shall be covered by the obligation of professional secrecy to which persons employed or formerly employed by the Competent Authorities receiving the information are subject.
3. Cooperation shall include the ability to serve the legal documents necessary to enforce measures taken by the Competent Authorities in connection with bids, as well as such other assistance as may reasonably be requested by the Competent Authorities concerned for the purpose of investigating any actual or alleged breaches of the rules made or introduced pursuant to this Directive.

ARTICLE 9 DISPUTE RESOLUTION

This Directive shall not affect the power of Partner States to designate judicial or other authorities responsible for dealing with disputes in respect to the application of this Directive.

ARTICLE 10 PROTECTION OF MINORITY SHAREHOLDERS

1. A Competent Authority shall ensure that a person who has acquired effective control makes a bid as a means of protecting the minority shareholders of that company, and that bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price.
2. The obligation to launch a bid shall not apply where effective control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings.

ARTICLE 11 EQUITABLE PRICE

1. Equitable price shall be the highest price paid for the same securities by the offeror or by persons acting in concert with him, over a period to be determined by a Competent Authority, of not less than six (6) months and not more than twelve (12) months.
2. Where the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him, purchases securities at a price higher than the offer price, the offeror shall increase his offer so that it is not less than the highest price paid for the securities so acquired.
3. The Competent Authority may require the offeror to adjust the price referred to in sub-articles 1 and 2 in the following circumstances:
 - (a) where the highest price was set by agreement between the purchaser and a seller;
 - (b) where the market prices of the securities in question have been manipulated; and
 - (c) where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued.
4. Any decision by a Competent Authority to require adjustment of the equitable price shall be substantiated and made public.
5. The offeror shall offer cash or a combination of cash and securities by way of consideration.
6. In addition to the protection provided for in sub-articles 1 and 2, a Competent Authority may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

ARTICLE 12 INFORMATION CONCERNING BIDS

1. An offeror shall inform the securities exchange and Competent Authority of its decision to make a bid and that decision shall be made public immediately.
2. An offeror shall draw up and make public in good time an offer document containing the information necessary to enable the holders of the offeree company's securities to reach a properly informed decision on the bid.
3. Where an offer document has been approved, it shall be recognised in any other Partner State on the market of which the offeree company's securities are admitted to trading.

4. The Competent Authority may require the inclusion of additional information in the offer document only if such information is specific to the market of a Partner State or Partner States on which the offeree company's securities are admitted to trading.
5. The additional information that may be included under sub-article 4 may only relate to the formalities to be complied with to accept the bid and to receive the consideration due at the close of the bid as well as to the tax arrangements to which the consideration offered to the holders of the securities will be subject.
4. The offer document shall include:
 - (a) the terms of the bid;
 - (b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that company;
 - (c) the securities or, where appropriate, the class or classes of securities for which the bid is made;
 - (d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;
 - (e) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;
 - (f) details of any existing holdings of the offeror, and of persons acting in concert with him, in the offeree company;
 - (g) all the conditions to which the bid is subject;
 - (h) the offeror's intentions with regard to the future business of the offeree company including safeguarding of the jobs, material change in the conditions of employment, offeror's strategic plan, and the place of business;
 - (i) the time allowed for acceptance of the bid;
 - (j) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
 - (k) information concerning the financing for the bid;
 - (l) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;
 - (m) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts; and

(n) the offeror shall state whether the offeree's securities will continue to be listed at the securities exchange after the takeover offer has been successfully completed.

5. The parties to a bid shall provide the Competent Authority upon request with all the information in their possession concerning the bid.

ARTICLE 13 TIME ALLOWED FOR ACCEPTANCE

1. The time allowed for the acceptance of a bid may not be less than thirty (30) calendar days nor more than sixty (60) calendar days from the date of publication of the offer document.
2. The period of sixty (60) calendar days may be extended on condition that the offeror gives at least two (2) weeks' notice of his intention to close the bid.
3. The period referred to in sub-articles 1 and 2 may change in specific cases to allow the offeree company to call a general meeting of shareholders to consider the bid.

ARTICLE 14 DISCLOSURE

1. A bid shall be made public in order to prevent the publication or dissemination of false or misleading information.
2. The information and documents shall be readily and promptly available to the holders of securities on the regulated markets of which the offeree company's securities are admitted to trading.

ARTICLE 15 OBLIGATIONS OF THE BOARD OF THE OFFEREE COMPANY

1. The board of the offeree company shall issue a circular to the holders of voting shares in the offeree to which the take-over offer relates, indicating whether or not the board of directors of the offeree recommend to holders of the voting shares the acceptance of the take-over offer made by the offeror under the take-over scheme within fourteen (14) calendar days from the date of receipt of the takeover document from the offeror.
2. The board of directors of the offeree shall disclose in the circular referred to in sub-article 1 to every holder of the voting rights to which the take-over offer relates all such information as the holders of such voting shares and their professional advisers would reasonably require or expect to find in such a circular or for the purpose of making an informed assessment as to the merits of accepting or rejecting the take-over offer and the extent of the risks involved in such action.

3. The board of directors of the offeree shall appoint an independent adviser, on receipt of the offeror's notice of intention to takeover.
4. The independent adviser's advice shall be made known to the holders of the class of the voting shares to which the take-over offer relates, in a circular by the offeree to its shareholders.

ARTICLE 16 RULES APPLICABLE TO THE CONDUCT OF BIDS

The rules that govern the conduct of bids shall include:

- (a) the lapsing of bids;
- (b) the revision of bids;
- (c) competing bids;
- (d) the disclosure of the results of bids; and
- (e) the irrevocability of bids and the conditions permitted.

ARTICLE 17 SANCTIONS

A person who contravenes this Directive commits an offence that may lead to sanctions or penalties prescribed by national laws.

ARTICLE 18 RIGHT OF APPEAL

Decisions taken pursuant to laws, regulations and administrative provisions issued in accordance with this Directive shall be subject to the right of appeal to the relevant court.

ARTICLE 19 AMENDMENTS

1. This Directive may be amended by the Council of Ministers.
2. Any proposals for amendment shall be submitted in writing by the Partner States to the Secretary General of the East African Community.

ARTICLE 20
IMPLEMENTATION

1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' issuance of the Directive.
2. The Partner States shall inform the Council of Ministers of the implementation of sub-article 1.
3. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication and shall be laid down by Partner States.

ARTICLE 21
ENTRY INTO FORCE

This Directive shall enter into force upon issuance by the Council of Ministers.

ARTICLE 22
ADDRESSEES

This Directive is addressed to the Partner States.

Done in Arusha, Tanzania