

COMPANIES ACT
(ACT NO. 15 OF 2013)

COMPANIES (PANEL ON TAKEOVERS AND MERGERS) RULES, 2016

IN EXERCISE of the powers conferred by section 298 (1) of the Companies Act 2013, I, JOSEPH MWANAMVEKHA, Minister of Industry, Trade and Tourism, make the following Rules—

PART I—PRELIMINARY

Citation 1. These Rules may be cited as the Companies (Panel on Take-Overs and Mergers) Rules, 2016.

Interpretation 2. In these Rules, unless the context otherwise requires—

Cap. 48:09 “Commission” means the Competition and Fair Trading Commission established by section 4 of the Competition and Fair Trading Act;

“custodian” means a person who, in the ordinary course of business, holds securities directly or indirectly on behalf of the beneficial owner of the securities;

“dissenting shareholder” means a shareholder who has not assented to the offer and a shareholder who has failed or refused to transfer his shares to the offeror in accordance with the terms of the offer;

“effective control” means the holding of securities by any person, either individually or together with a person acting in concert, which will result in that person, either individually or together with a person acting in concert, having the right to exercise, or control the exercise of, more than thirty per cent of the rights attached to the voting shares of a company;

“engaging in conduct” means doing or refusing to do an act, and includes—

(a) omitting to do an act; or

(b) making it known that an act will or will not be done;

“exchange of securities offer” means an offer in which the consideration includes securities of the offeror;

“firm intention” means a communication in writing, as referred to in rule 10;

“independent adviser” means an adviser whom the Panel considers as independent and who is approved by the Panel for the purposes of these Rules;

“offer” means an offer to which these Rules apply for voting securities and any other securities to which the offer is required to extend under these Rules;

“offeree” means—

(a) before an offer is made, a person who holds securities in a target company that has received a takeover notice relating to those securities; or

(b) after an offer is made, a person to whom an offer is made;

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

“offer document” means the offer document as referred to in rule 14;

“offer period” means the period from the time the offer document has been communicated to a shareholder of an offeree pursuant to rule 18 until the lapse of the offer or the closing date pursuant to rule 20;

“offer price” means the price per share offered by the offeror to the shareholder of the offeree;

“person acting in concert” means individuals who, or companies which, pursuant to an agreement or understanding, whether formal or informal, cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company;

“reply document” means the reply document of the offeree as referred to in rule 19;

“reporting issuer” has the same meaning as in the Act;

“target company” means a company—

- (a) whose voting securities are the subject of an offer; or
- (b) that has received a takeover notice; and

“voting right” means a currently exercisable right to cast a vote at meetings of shareholders of a company or security holders of another body corporate, not being a right to vote that is exercisable only in one or more of the following circumstances—

- (a) during a period in which a payment or distribution or part of a payment or distribution in respect of the security that confers the voting right is in arrears or some other default exists;
- (b) on a proposal that affects rights attached to the security that confers the voting right;
- (c) on a proposal to put the company or body corporate into liquidation or voluntary administration;
- (d) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company or body corporate;
- (e) during liquidation or voluntary administration of the company or body corporate;
- (f) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company or body corporate.

Application of
these Rules

3.—(1) These Rules apply to a company that—

- (a) is a party to a listing agreement with a registered exchange and that has securities that confer voting rights quoted on the registered exchange’s securities market; or
- (b) was within paragraph (a) at any time during the period of twelve months before a date or the occurrence of an event referred to in these Rules; or
- (c) has ten or more shareholders and ten or more share parcels;

(2) These Rules shall continue to apply to a transaction or an event regulated under these Rules even if a company that previously satisfied subparagraph (1)(c) ceases to have ten or more shareholders and ten or more share parcels.

(3) These Rules shall apply despite any provision to the contrary in any agreement, constitution of a company or similar document relating to another body corporate, resolution of the security holders of a company or of any other body corporate, deed, or otherwise.

(4) In this rule, shareholder means a shareholder holding a security that confers a voting right.

PART II—DESIGNATION OF THE PANEL ON TAKEOVERS AND MERGERS

4. For the purpose of section 297 of the Act, the Commission shall perform the functions of the Panel on Takeovers and Mergers and shall exercise all the functions and powers conferred on the Panel under the Act, until such a date as the Minister shall, by notice published in the *Gazette*, appoint for the Commission to cease to perform such functions.

Competition
and Fair
Trading
Commission to
be Panel

PART III—GENERAL

5.—(1) An offeror shall provide equal and fair treatment to all shareholders of the same class of an offeree, whether in relation to the consideration to be paid for their shares, the information to be supplied to them pursuant to these Rules, or otherwise.

Equality of
treatment to
shareholders

(2) An offeree shall make available all information about companies involved in an offer to all shareholders at the same time and in the same manner.

(3) An offeree shall give all shareholders full, complete and timely information to enable them to make an informed decision concerning the merits or demerits of an offer.

(4) The obligations of an offeror towards shareholders of an offeree shall, for the purposes of these Rules, be no less than its obligations towards its own shareholders.

6. Directors of an offeree shall, at all times when advising or informing the shareholders about a takeover—

Duties and
responsibilities
of
directors

(a) act only in their capacity as directors without regard to any personal or family interests;

(b) have regard only to the interests of the shareholders, employees and creditors; and

(c) act in good faith.

7.—(1) A person who issues a document or a statement in relation to a firm intention or an offer or during an offer period shall satisfy the highest standard of accuracy and the information given shall be adequately and fairly presented.

Standard of
care and
responsibility

(2) The standard required by subrule (1) shall apply whether the document is issued by the offeror or the offeree, or by an adviser on its behalf, or by any other person in relation to an offer.

8.—(1) All documents issued in connection with a takeover by an offeror or an offeree shall contain a statement signed by all the respective directors.

Joint and
several
responsibility
of directors

(2) The statement in subrule (1) shall contain—

(a) an undertaking by the directors that they jointly and severally accept full responsibility for the accuracy of the information contained in the that they jointly and severally accept full responsibility for the accuracy of the information contained in the documents;

(b) a confirmation by the directors that having made all reasonable inquiries and to the best of their knowledge, opinions expressed in the document have been arrived at after due and careful consideration; and

(c) confirmation that there are no other facts omitted from the document, which omission would make any statement in the document misleading.

Duty of
confidentiality

9. A person involved in an offer shall take such measures as are necessary to prevent the creation of a false market in the shares of either the offeror or the offeree and ensure that confidentiality is maintained at all times until a public announcement is made in accordance with these Rules.

PART IV—CONDUCT OF OFFER

Firm intention
to the board of
the offeree

10. The offeror shall communicate its firm intention to make an offer to the board of the offeree, to the Panel and to the relevant securities exchange, as the case may be.

Contents of a
firm intention

11.—(1) A firm intention shall contain—

(a) the proposed terms of the offer;

(b) the identity of the offeror or any person acting in concert;

(c) a confirmation by the board of the offeror that sufficient financial resources are available to satisfy the acceptance of the offer and where the offer includes non-cash consideration, that all reasonable measures have been taken to secure full payment of the shares acquired;

(d) details of any existing holding of shares by the offeror in the offeree, including—

(i) shares which are owned or controlled by the offeror; and

(ii) shares which are owned or controlled by any person acting in concert with the offeror;

(e) details of any agreement which exists between the offeree and the offeror or any person acting in concert in relation to the relevant shares, irrespective of whether or not any dealings have taken place; and

(f) all conditions which relate to the acceptances to which the offer is to be subject.

(2) Notwithstanding subrule (1), the Panel may request any other information which shall be communicated to the offeree.

No defensive
tactics

12.—(1) Where a firm intention of an offer has been communicated to the board of an offeree or where the board of an offeree has reason to believe that an offer may be imminent, the board of the offeree or any member thereof shall not engage in any action in relation to the offeree's affairs which may directly or indirectly result in—

(a) the offer being frustrated; or

(b) the shareholders of the offeree being denied an opportunity to decide on the merits of an offer.

(2) Notwithstanding subrule (1), the board of an offeree may, with the approval of the shareholders of the offeree in a meeting—

(a) issue shares;

(b) issue or grant options in respect of any unissued shares;

(c) create, issue or permit the creation or issue of any securities carrying rights of conversion into, or subscription for the shares of the offeree;

(d) sell, dispose of or acquire or agree to sell, dispose of or acquire assets of a material amount, or otherwise than in the ordinary course of business;

(e) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

(f) cause the offeree, any of its subsidiaries or associated companies to purchase or redeem any shares in the offeree or provide financial assistance for any such purchase.

13.—(1) A public announcement is required to be published forthwith—

Public
announcement

(a) by a board of an offeree, when a firm intention is made;

(b) by a board of an offeree, when there is undue movement in its share price or in the volume of shares traded, whether or not there is a firm intention;

(c) by an offeror where, before a firm intention has been made under rule 10, there is undue movement in its share price or in the volume of share turnover, and the Panel has reasonable cause to believe that it is the offeror's action which has led to the situation;

(d) by an offeror, upon an acquisition that gives rise to an obligation to make an offer under rule 33;

(e) by a board of an offeree, when an offeror has withdrawn its offer; or

(f) by an offeror or a board of the offeror upon direction being given by the Panel.

(2) The public announcement shall contain details as specified in rule 11.

(3) The public announcement shall be made—

(i) in the case of a company listed on an exchange in the manner required by that exchange for immediate public release after receiving the approval from the Panel; or

(ii) in any other case, in newspapers of general circulation in Malawi.

14. An offer document shall contain the information specified in the First Schedule to these Rules together with any other relevant information that may enable shareholders of the offeree to reach an informed decision.

Offer
document

15.—(1) An offeror shall determine an offer price.

Pricing
mechanism

(2) Where an offeree is listed on a securities exchange, an offer price shall be the sum of any premium and of the highest of—

(a) a price paid by an offeror or a person acting in concert with the offeror for any acquisition, including by way of allotment in a public issue, if any, during the six months period prior to the date of public announcement;

(b) a price paid by an offeror under a preferential allotment made to him or to a person acting in concert at any time during the twelve months period up to the date of closure of the offer; or

(c) an average of the weekly high and low of the closing prices of the shares of the offeree as listed on the securities exchange where the shares of the offeree are most frequently traded during the six months preceding the date of public announcement.

(3) Where an offeree is not listed on a securities exchange, the offer document shall contain information as to the means by which the offeror has determined the offer price.

(4) An offeror shall ensure that the means referred to in subrule (3), shall be fair and reasonable.

Upward
revision of
price

16.—(1) Where an offeror or any person acting in concert with the offeror purchases shares in an offeree during an offer period at a price higher than an offer price, the offeror shall increase the offer to not less than the highest price paid for any shares so acquired.

(2) An offeror shall make a public announcement immediately following an acquisition giving rise to an obligation under subrule (1) stating the number of shares acquired

Filing of the
offer document

17. Where a decision to make an offer has been made, an offeror shall file a copy of the offer document with the Panel and the relevant securities exchange and shall pay the relevant fee to the Panel as specified in the Second Schedule to these Rules.

Communication
of the offer
document to
shareholders

18. Except where the Panel otherwise directs, an offeror shall, within fourteen days of filing a copy of an offer document with the Panel and relevant securities exchange, communicate a copy of the offer document by registered post or by any other expedient means of delivery to the shareholders of an offeree.

Reply
document of
an offeree

19. The board of an offeree shall communicate to its shareholders, within twenty one days of the date of the posting by an offeror of an offer document, a reply document containing—

(a) and information set out in the Third Schedule to these Rules;

(b) any other information that it considers relevant to enable its shareholders to reach an informed decision.

Communication
to the Panel
and
publications

20.—(1) An offeror shall immediately inform the Panel and the securities exchange when an offer—

(a) has been revised or extended; or

(b) has expired,

and shall, within five days of informing the Panel, make a public announcement to that effect in at least two daily newspapers of general circulation in Malawi.

(2) The public announcement referred to in subrule (1), shall state the number of shares which the offeror or any person acting in concert with the offeror has or controls before the offer period, the number of shares for which acceptance of the offer has been received, and the number of shares otherwise acquired by the offeror and any person acting in concert with him during the offer period.

(3) The public announcement made under this rule shall specify the percentages of the relevant classes of share capital, and the percentages of rights attached to voting shares, represented by the numbers.

21.—(1) Subject to subrule (2), an offer shall be open for at least thirty five days and shall not exceed sixty days following the date of communication of the offer document to the shareholders pursuant to rule 18. Offer period

(2) The Panel may, upon application and payment of the fee prescribed in the Second Schedule to these Rules, provide for an extension of the offer period as it deems fit.

PART V—INDEPENDENT ADVISER

22.—(1) Following communication of the offer document pursuant to rule 18, a board of an offeree shall, in the interests of its shareholders, appoint an independent adviser, who shall be qualified and have the competence and experience necessary to— Appointment of an independent adviser

(a) understand the type of arrangement proposed;

(b) evaluate consequences of the arrangement;

(c) assess effects of the arrangement on the value of securities and on rights and interests of a holder of any securities, or a creditor of the company; and

(d) express opinion, exercise judgment and make decisions impartially.

(2) An independent adviser shall not—

(a) have any relationship with the company or with a proponent of the arrangement, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised;

(b) have had any relationship contemplated in paragraph (a) within the immediately preceding two years; or

(c) be related to a person who has or has had a relationship contemplated in paragraph (a) or (b) above.

(3) Where a board of an offeree has appointed an independent adviser, it shall, within four days of such appointment, notify the Panel of the appointment.

(4) The Panel may, if it deems fit, direct the board of an offeree to remove any person appointed as independent adviser.

23.—(1) An independent adviser shall—

(a) advise a board of an offeree as to whether the offer is fair and reasonable; Functions of an independent adviser

(b) carry out or cause to be carried out a valuation of an offeree; and

(c) submit a report to board of the offeree, which report shall be in the Form prescribed in the Fourth Schedule to these Rules.

(2) The report submitted by an independent adviser pursuant to subrule (1) (c) shall be in writing and shall contain the advice, the valuation and the method of valuation used, including reasons and assumptions made.

(3) A summary of the report, submitted by an independent adviser pursuant to subrule (1) (c), shall be attached to a reply document as specified in rule 19.

(4) A full report and any summary of a report of an independent adviser shall include—

(a) a statement of qualifications and expertise of the independent adviser;

(b) a statement that the independent adviser has no conflict of interest that might affect his ability to provide an unbiased report; and

(c) a statement that the summary of the report is fair and not misleading, where applicable.

(5) Notwithstanding paragraph (b) of subrule (1), a Panel may direct a board of the offeree to appoint an independent valuer.

Consultation of
the report by
shareholders

24. The report of the independent adviser shall be kept at the registered office of the offeree and be made available for consultation upon request by any shareholder or by any person authorized in writing by a shareholder.

Recommendation
of directors
to shareholders

25.—(1) Directors of an offeree shall consider a report of an independent adviser and make a recommendation in good faith to the shareholders.

(2) Where there is a divergence of views among directors of an offeree as on the merits of an offer, a statement of the divergent views shall be attached to the reply document.

PART VI—RESTRICTIONS ON DEALINGS

Restrictions on
dealings before
an offer

26.—(1) No dealings of any kind in the shares of the offeree shall be made by any person who has confidential and price sensitive information concerning the offer between the time when there is reason to believe that an offer or a revised offer is contemplated, on the one hand, and the public announcement of the offer or revised offer, or of the termination of the takeover discussions, on the other hand.

(2) A restriction under subrule (1) shall not apply to an offeror, or a person acting in concert with the offeror, if such dealings are made for the purposes of an offer, unless the offeror or the person acting in concert with the offeror is a director or employee of the offeree.

Restrictions on
dealings during
the offer period

27. An offeror or a person acting in concert with the offeror shall not enter into any agreement relating to the purchase or sale of shares of an offeree at any time during offer period.

Restrictions on
dealings by
offeror during
non-cash offers

28. Where consideration offered for shares of an offeree consists only of shares of an offeror which are traded on a securities exchange, the offeror, or any person acting in concert with the offeror shall not engage in any purchase of the shares of the offeror for the duration of offer period unless the

offeror declines to proceed with the offer.

29. Except with the prior approval of the Panel, any offer, which has been made in accordance with these Rules, shall not be withdrawn.

No
withdrawal of
offer without
approval

PART VII—VARIATION OF AN OFFER

30.—(1) Subject to prior approval of the Panel, an offer may be varied in terms of the consideration offered for the shares proposed to be acquired where—

Variation of
offer

- (a) a cash sum is offered, by increasing the amount of that sum;
- (b) shares are offered, by increasing the number of those shares;
- (c) debentures are offered, by increasing the rate of interest payable under those debentures or by increasing the amount of those debentures;
- (d) an option to acquire unissued shares is offered, by increasing the number of unissued shares that may be acquired under that option; and
- (e) a combination of any of the above is offered, by increasing the amount or value of any component of the offer.

(2) Where the consideration offered for the shares to be acquired under an offer is varied under subrule (1), all the shareholders of the offeree shall be entitled to receive the consideration as so varied.

(3) Subject to the prior approval of the Panel and pursuant to rule 20, an offeror may vary an offer by extending the period during which it remains open.

(4) In the event of a variation of an offer, the offeror shall give to the offeree and its shareholders notice of the variation by post or by any other expedient means.

(5) Subject to rule 20, the revised offer shall remain open for at least fourteen days from the day of the notice of the variation.

(6) An offeror shall vary an offer not later than seven days after the communication of the reply document by the board of the offeree to the shareholders of the offeree pursuant to rule 18.

PART VIII—CONDITIONAL AND UNCONDITIONAL OFFERS

31.—(1) Except with the prior approval of the Panel, a voluntary offer to acquire all voting shares shall be conditional upon the offeror having received acceptances in respect of voting shares which, together with voting shares acquired or agreed to be acquired before or during the takeover offer, will result in the offeror and any person acting in concert with the offeror, holding more than fifty per cent of the voting shares of an offeree.

Conditional
and
unconditional
offers

(2) If an offer under subrule (1) is conditional, an offer document shall specify the last date when the offeror can declare the takeover offer unconditional.

Period for acceptance when an offer becomes or is declared unconditional

32. Upon a conditional offer becoming or being declared unconditional, it shall remain open for acceptance for not less than fourteen days thereafter.

PART IX—MANDATORY OFFER

Mandatory offer

33.—(1) A person shall make an offer under subrule (2) where—

(a) before the commencement of these Rules, that person, either individually or together with a person acting in concert with him—

(i) holds more than thirty per cent of rights attached to voting shares of a company; and

(ii) acquires or contracts to acquire additional voting shares of the company;

(b) that person, either individually or together with a person acting in concert with him, acquires effective control of a company; or

(c) following a dealing in securities of a company, that person, either individually or together with a person acting in concert with him, acquires the right to exercise, or control the exercise of, more than fifty per cent of rights attached to the voting shares of the company.

(2) Subject to subrule (1), a person shall make an offer in accordance with these Rules, on all voting shares of the offeree not already held by the offeror.

(3) Where a person makes an offer under subrule (2), he shall immediately make a public announcement pursuant to rule 13.

(4) The Panel and the relevant securities exchange shall be notified of any public announcement made under subrule (3).

Waiver of a mandatory offer

34.—(1) The requirement to make a mandatory offer, pursuant to rule 33, may be waived by Panel—

(a) upon a change in control as a result of a restructuring of the offeree;

(b) where the Panel deems that an offer is unfair or contradictory to the market's interests; or

(c) in any other case as the Commission may deem fit.

(2) The Panel shall consider an application for waiver under subrule (1) subject to payment of the relevant fee as specified in the Second Schedule to these Rules.

Mandatory offer to be unconditional

35. Notwithstanding rule 31, a mandatory offer shall not be subject to any condition.

PART X—DELAY BEFORE SUBSEQUENT OFFER

Delay

36.—(1) Except with the prior approval of the Panel and subject to the payment of the relevant fee as specified in the Second Schedule to these Rules, where a person, either individually or together with a person acting in

concert with that person, has made an offer and the offer has been withdrawn, that person, or a person acting in concert with him, shall not, within twelve months of the date on which such offer is withdrawn or lapses, make a subsequent offer to an offeree.

(2) Except with the prior approval of the Panel and subject to the payment of relevant fee as specified in the Second Schedule to these Rules, where a person, either individually or together with a person acting in concert with that person, has or is deemed to have effective control of a company, that person shall not, within six months of the closure of any previous offer made by him to the offeree which became or was declared unconditional, make a subsequent offer to the offeree.

PART XI—DISSENTING SHAREHOLDERS

37.—(1) For the purposes of this Part, an offer means an offer to acquire all voting shares in a company other than voting shares that at the date of the offer are already held by an offeror.

Notice to
dissenting
shareholders

(2) When an offeror has, by virtue of acceptance of an offer, acquired or contracted to acquire not less than ninety per cent of the voting shares to which the offer relates, he may give notice to any dissenting shareholder that he intends to acquire his voting shares.

(3) A notice under subrule (2) may be given within twenty eight days from the last day on which the offer shall be accepted and shall be in the manner prescribed in the Fifth Schedule to these Rules.

(4) Where an offeror has not issued a notice pursuant to subrule (2), he shall within twenty eight days from the last day on which the offer shall be accepted, inform any dissenting shareholder of his rights provided under rule 41.

(5) At the time when an offeror is giving a notice under subrule (2), he shall furnish to the offeree a copy of the notice.

38.—(1) Any dissenting shareholder may request a statement in writing from the offeror within fourteen days of giving notice under rule 37.

Request for
statement

(2) A statement requested under subrule (1), shall contain details of other dissenting shareholders as shown in the shareholders' register.

(3) An offeror shall, within fourteen days of the request under subrule (1), provide a statement in writing to the dissenting shareholder.

39. Unless there is an application to court under rule 40, an offeror shall acquire the shares of any dissenting shareholder on the same terms as for the approving shareholders within twenty days of issue once of a notice.

Compulsory
acquisition

40. Where a notice is given under rule 37, any dissenting shareholder may make an application by motion to court for an order within twenty one days of the date on which the notice was given.

Application
to court

41. Where an offeror, by virtue of acceptance of an offer, has acquired or contracted to acquire not less than ninety per cent of the rights attached to voting shares to which the offer relates, any dissenting shareholder may

Protection of
minority
shareholders

(e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by any other person of these Rules or a term or condition of an exemption from these Rules; or

(f) conspiring with any other person to contravene these Rules or a term or condition of an exemption from these Rules.

46.—(1) Following the meeting specified in rule 45, the Panel may make a determination whether it is satisfied that a person has acted or is acting or intends to act in compliance with the Act or these Rules. Determination
ns

(2) If the Panel makes a determination under subrule (1), the Panel shall, as soon as it is reasonably practicable, give written notice of its reasons for the determination to the person the determination concerns.

(3) Where the Panel makes a determination on reasonable grounds under subrule (1)(b), the Panel may, at any time before the close of the second day after the date for which the meeting was convened—

(a) make a temporary restraint order relating to the non-compliance with the Act and these Rules that shall expire on the close of such day as shall be specified in the order, not being a day that is later than twenty one days after the date on which the temporary restraining order is made;

(b) make an order continuing any temporary restraining order relating to the non-compliance with the Act and these Rules made under rule 45(2) until the close of such day as may be specified in the order, not being a day that is later than twenty one days after the date on which the temporary restraining order is made;

(c) make a permanent compliance order relating to the non-compliance with the Act and these Rules;

(d) if it makes any order under this subrule, also make an order extending, for a reasonable time, the period for which a takeover offer must remain open.

(4) If the Panel makes an order under this rule, the Panel—

(a) shall immediately give written notice to the person to whom the order is directed of the terms and conditions of the order; and

(b) shall, as soon as is reasonably practicable, also give that person written notice of the reasons for the order; and

(c) may also give notice to any other person of those matters.

(5) An order made under this rule may be made on any terms and conditions that the Panel thinks fit.

47.—(1) The Panel may vary an order in the same way as it may be made under rule 46. Variations,
revocation
and
suspension

(2) The Panel may revoke or suspend an order on the terms and conditions it thinks fit.

48. For the purposes of rules 45 and 46, a temporary restraining order is an order for one or more of the following purposes— Temporary
restraining
orders

(a) restraining a person from acquiring securities in the target company concerned or any interest in or rights relating to such securities;

(b) restraining a person from disposing of securities in the target company concerned or any interest in or rights relating to such securities;

(c) restraining a person from exercising the right to vote attaching to securities in the target company concerned or any other right relating to such securities;

(d) restraining a person from taking any action, including from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of these Rules;

(e) directing the target company concerned not to make any payments in respect of any securities;

(f) directing the target company concerned not to register the transfer or transmission of any securities;

(g) directing the target company concerned not to issue or allot securities to any person; or

(h) securing compliance with any such order, an order directing a person to do or refrain from doing a specified act.

Permanent
compliance
orders

49. For the purposes of rules 45 and 46, a permanent compliance order is an order for one or more of the following purposes—

(a) prohibiting or restricting a person from making any statement or distributing any document that is or that may reasonably be expected to constitute a contravention of the Act or rules;

(b) directing a person to disclose in accordance with the order information for the purpose of securing compliance with the Act or these Rules;

(c) directing a person to publish, at the person's own expense, in the manner and at the times specified in the order, corrective statements that are specified in or are to be determined in accordance with the order; or

(d) securing compliance with any of those orders, an order directing a person to do or refrain from doing a specified act.

Witnesses and
counsel to have
privileges of
witnesses and
counsel in
court

50.—(1) A person shall have the same privileges in relation to providing information and documents to, and answering questions before, the Panel, a member, officer, or employee of the Panel, or a person authorized by the Panel, as witnesses have in proceedings before a court.

(2) A person appearing as counsel before the Panel, or a member, officer, or employee of the Panel, shall have the same privileges as counsel have in proceedings before a court.

(3) A person has the same privileges in relation to providing information and documents to the Registrar, as witnesses have in proceedings before a court.

PART XIV—PROCEDURES OF THE PANEL

51.—(1) The Panel may receive evidence through a member, officer, or employee of the Panel, or any two or more of them.

Receiving
evidence

(2) If a person who is summoned to give evidence requests that the evidence be received at a meeting of the Panel, then subrule (1) shall not apply, and the evidence must be received at a meeting of the Panel.

52. The Panel may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that, in the opinion of the person receiving it, may assist the Panel in dealing effectively with any matter before it.

Admissibility
of evidence

53.—(1) The Panel may receive evidence—

Manner of
giving
evidence

(a) given on oath;

(b) if the person receiving the evidence thinks it is appropriate, given by a written statement verified on oath; or

(c) given by audio-visual communication, if the Panel and the person giving the evidence agree.

(2) A member, officer, or an employee of the Panel may administer an oath for the purpose of a person giving evidence on oath.

54.—(1) A member of the Panel may issue a summons to a person requiring that person to appear before the Panel, or a member, officer, or employee of the Panel, in relation to any matter before the Panel and to do any of the following—

Power to
summon
witnesses

(a) give evidence; or

(b) provide any documents or information that are in the person's possession or control and that are relevant to the matter:

Provided that in the case of a body corporate, the body corporate shall appear by its authorized representative.

(2) The summons must be in writing, signed by a member of the Panel, and state—

(a) the date and time when, and the place where, the person must attend; and

(b) the documents or information that a person is required to provide, either generally, specifically, or by class, nature, content, or effect; and

(c) the person's right to request that the person do give evidence at a meeting of the Panel; and

(d) the penalty for failing to attend.

(3) A summons may be served,—

(a) in the case of a natural person, by delivering it personally to the person summoned or by leaving it at his or her usual place of residence or business at least twenty four hours before his attendance is required; or

	(b) in the case of a body corporate, by leaving it at the body corporate's usual place of business at least twenty four hours before its attendance is required.
Witness's expenses	55.—(1) If a person has appeared as a witness, whether summoned or not, the Panel may, if it thinks fit, order any sum to be paid to that witness for his expenses. (2) That sum payable under subrule (1) shall not exceed the amount that that would be payable to the witness if his attendance had been as a witness for the State in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the State in criminal cases.
Panel may accept undertakings	56.—(1) A Panel may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the Panel is exercising any of its powers or performing any of its functions under the Act or these Rules. (2) A person may withdraw or vary the undertaking with the consent of it of the Panel.
Enforcement of undertakings	57.—(1) If the Panel considers that a person who has given an undertaking under rule 56 has breached a term of that undertaking, the Panel may apply to the court for an order under subrule (2) below— (2) A court may make any of the following orders if it is satisfied that a person has breached a term of the undertaking— (a) an order directing a person to comply with that term; (b) an order directing a person to pay an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach; (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach; or (d) an order for any consequential relief that the court thinks appropriate.
Panel may hear proceedings in private	58. The Panel may decide whether to hold any meeting or any part of a meeting in public or in private.
Power to make confidentiality orders	59.—(1) The Panel may, on its own initiative or on the application of any person, make an order prohibiting— (a) the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry or other proceedings of the Panel; or (b) the giving of evidence involving any such information, document, or evidence. (2) The Panel may make an order under subrule (1) on the terms and conditions, that it thinks fit. (3) An order under subrule (1) may be expressed to have effect from the

commencement of any inquiry or other proceedings of the Panel to the end of that inquiry or proceedings.

PART XV—MISCELLANEOUS

60.—(1) Where an offeree is listed on a securities exchange, consideration for the shares shall be paid in accordance with any enactment, the rules of the relevant securities exchange and the rules of the relevant clearing and settlement facility. Transfer of shares and settlement of consideration

(2) Where an offeree is not listed on a securities exchange, transfer of the shares shall be made in accordance with the provisions of any enactment and consideration for the shares shall be paid within three days from the receipt of the duly signed acceptance and transfer.

61. The fees set out in the Second Schedule to these Rules shall be paid to the Panel. Fees

62. The Panel may require payment to it of the costs incurred by it in holding any meeting under rules 45 and 46. Costs

63. The Panel may recover any money payable as a civil debt by a party responsible for payment under these Rules for any fees payable. Civil debt

FIRST SCHEDULE

(rule 14)

INFORMATION TO BE CONTAINED IN AN OFFER DOCUMENT

The offer document shall contain the following statements in a prominent position—
“OFFER MADE BY OFFEROR TO THE SHAREHOLDERS OF OFFEREE”

Offer document on the takeover scheme proposed by the offeror for the shareholders of offeree whereby the offeror offers to the shareholders of the offeree to purchase their shares in offeree for a cash consideration of K per share or alternatively in the case of non-cash consideration, the exchange of share ratio.

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

(i) “If you are in doubt as to any aspect of this offer, you should consult a professional adviser.”

(ii) The shareholders of an offeree shall be registered at the close of business on a date, to be eligible for the offer.

(iii) An Acceptance and Transfer Form is attached with respect to your shareholding in offeree. To signify your acceptance, please sign the form and return it to the offeror, through the address of offeror at latest, by[date].

(iv) Last date for acceptance of the offer is[date]

DISCLAIMER

This offer document is not a prospectus. This offer document sets out the terms of the offer made by the offeror and has been prepared in compliance with the laws of Malawi.

PANEL ON TAKEOVERS DISCLAIMER

The no objection of the Panel for circulation of this offer document shall not in any way imply that the Panel has conveyed its approval, or otherwise, vouched for the financial soundness, accuracy or opinion expressed in this offer document with regards to this offer.

DIRECTORS STATEMENT

The board of the offeror accepts full responsibility for the correctness of the information contained in the offer document, and having made all reasonable enquiries, states that to the best of its knowledge and belief, there is no material fact, the omission of which would make any statement herein, whether of fact or opinion, misleading.

DOCUMENTS AVAILABLE FOR INSPECTION

The original of the offer document is available for inspection during the normal business hours at the registered office of the offeror at an address of the offeror. The document shall include the following information, along with any further information which may be necessary and relevant to enable the shareholders to make an informed decision—

1. The Offeror

The name and address of the offeror, any adviser or any other person who may be acting for the offeror, and any person acting in concert with the offeror. If either the offeror or any person acting in concert with the offeror is a company, the names and addresses of its directors and controlling shareholders.

2. Other parties related to the offer

The names and addresses of the parties to any agreement, arrangement or understanding for the transfer of any shares to any other persons pursuant to the offer, together with particulars of all shares held by such persons in the offeree, or a statement that no such shares are held.

3. Offer date and closing date

The date the offer is open for acceptance, its duration and the date and time of the closing of the offer.

4. Intention of the offeror

- (a) The offeror's intention regarding the continuation of the business of the offeree;
- (b) The offeror's intention regarding any major changes to be introduced in the business, including any redeployment of the fixed assets of the offeree;
- (c) The long-term commercial justification for the proposed offer;
- (d) The offeror's intention with regard to the continued employment of the employees of the offeree and of its subsidiaries; and
- (e) The object and purpose of the acquisition of shares and future plans, including disclosures of intended disposal of any assets in the succeeding two years except in the ordinary course of business and details about implementation of future plans.

5. Shareholdings and dealings

- (a) The shareholdings of the offeror in the offeree.
- (b) The shareholdings of the directors of the offeror in the offeree.

- (c) The shareholdings of any person acting in concert in the offeree.
- (d) The shares in the offeror and in the offeree owned or controlled by a person with whom the offeror or any person acting in concert has any arrangement, or any other agreement or understanding, formal or informal, of whatever nature, which might be an inducement to deal or refrain from dealing.

If in any of the above categories, there is no shareholding, this fact shall be expressly stated.

Details including dates and prices of any dealing in shares made by any person, mentioned within the above categories taking place during the period beginning six months prior to the offer period until the communication of the offer document.

If no such dealings have taken place, this fact shall be expressly stated.

6. Dividend entitlement

Precise particulars of the shares 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.

7. Offer price of offeree's shares

Detailed explanation of the mechanisms through which the offer price was reached.

8. Cash resources for offer

Where the offer is in cash, or includes an element of cash, the offer document shall include a confirmation by an adviser that the resources available to the offeror are sufficient to satisfy full acceptance of the offer.

9. Exchange of securities offer

(a) In the case of an exchange of securities offer the following information about the offeror—

- (i) for the last three financial years, turnover, net profit or loss before and after taxation, the charge for tax, exceptional items, minority interests, dividends, earnings per share and dividends per share;
- (ii) a statement of the assets and liabilities shown in the last published audited accounts;
- (iii) 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;
- (iv) details relating to the items referred to in (i) above in respect of any interim statement or preliminary public announcement made since the last published audited accounts; and
- (v) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures.

(b) 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.

(c) The Panel may require that the offer document contains a description of the financing arrangements, if any.

10. Arrangements in connection with offer

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

11. Regulatory obligations

A statement of the obligations of the offeror and the rights of the shareholders of the offeree under these Rules and any other relevant enactments.

12. Further information in cases of exchange of securities offers

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 registered office in Malawi;
- (d) the stated 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 in 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) the highest and lowest closing market prices in respect of the offeror's shares with the relevant dates during the period commencing six months preceding the commencement of the offer period and ending on the day prior to the posting of the offer document;
- (h) details of any restructuring 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, security interests, 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 litigation to which the company is, or may become, a party;
- (k) details of every material contract entered into by the offeror and its subsidiaries 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 intended to be carried on by the company;
- (l) how and when the documents of title to the securities will be issued; and
- (m) whether and in what manner the emoluments of the directors of the offeror will be affected by the acquisition of the offeree or by any other associated transaction. If there will be no effect, this fact shall be expressly stated.

13. Disclaimer

- (1) The offeror shall in clear terms include, in the offer document, the following

statement “to the best of my/our knowledge and belief, after making proper enquiry, the information contained in or accompanying the takeover notice of the offer document is, in all material respect true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the offeror under the Companies (Panel of Takeover and Mergers) Rules, 2016.

- (2) Where the offeror is a company or corporate body, the statement under paragraph (1) shall be signed by at least two directors.

SECOND SCHEDULE (rules 17, 21(2), 34(2), 43(3), and 61)

PREScribed FEES PAYABLE TO THE PANEL

Activity	Fee payable K
1. Filing of the offer document with Panel	0.25 of the value of the offer subject to a maximum of K500 000
2. Extension of the offer period	50 000.00
3. Waiver of the mandatory offer	100 000.00
4. Application for making a subsequent offer	100 000.00
5. Application for exemptions	100 000.00

THIRD SCHEDULE

(rule 19)

INFORMATION TO BE CONTAINED IN THE REPLY DOCUMENT

The reply document of the offeree shall include the following information, along with any other information which may be necessary and relevant to enable the shareholders to make an informed decision—

1. Views of offeree's board
 - (a) Whether the directors of the offeree recommend that the shareholders shall accept or reject the offer, with reasons for the recommendation.
 - (b) The summary of the report of the independent adviser as to whether the offer is fair and reasonable and the reasons thereof.
 - (c) Whether the directors and any person dealing directly on their behalf intends to accept the offer.
2. Directors' interests in the offeree
 - (a) The aggregate shareholdings in the offeror and in the offeree in which the directors of the offeree have an interest shall be stated.
 - (b) If any securities in the offeree have been purchased or sold by the directors of the offeree within six months prior to the public announcement of the offer, details of the

numbers, prices and dates shall be given.

3. Shareholdings in the offeror

- (a) The shareholdings of the offeree, the offeree's holding company or any of its subsidiaries in the offeror shall be disclosed.
- (b) If any shares in the offeror have been purchased or sold by such persons within six months before the public announcement of the offer, details of the numbers, prices and dates shall be given.

4. Stated capital of offeree

- (a) The stated capital and the rights of the shareholders in respect of capital, dividends and voting.
- (b) The number of shares issued since the end of the last financial year of the offeree.
- (c) If any of the securities of the offeree are not listed on a securities exchange, any information available as to the number and price of transactions which have taken place during the period commencing six months preceding the commencement of the offer period shall be stated.

5. Financial information

- (a) The following information about the offeree—
 - (i) audited financial statements for the last three years;
 - (ii) 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;
 - (iii) any interim statement or preliminary public announcement made since the last published audited accounts; and
 - (iv) significant accounting policies together with any points from the notes to the accounts which are of major relevance to an appreciation of the figures.
- (b) 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.

6. Material contracts

Details of every material contract entered into by the offeree and its subsidiaries 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.

7. Arrangements affecting directors

- (a) Details of any benefit to be given to any director of the offeree as compensation for loss of office or otherwise in connection with the offer.
- (b) Details of any agreement between any director of the offeree and any other person that is conditional on the outcome of the offer or otherwise connected with the offer.
- (c) Details of any material contract entered into by the offeror in which any director of the offeree has any interest.

8. Directors' service agreement

Details of any existing service contracts between the offeree or any of its subsidiaries or associated companies and directors of the offeree which have more than twelve months to terminate, or which have been entered into or amended within six months before the public announcement of the offer.

FOURTH SCHEDULE

(rule 23(1)(c))

INFORMATION THAT MUST BE CONTAINED IN THE REPORT OF THE INDEPENDENT ADVISER

1. Identity of adviser

The name of the adviser.

2. Adviser's qualifications and expertise

A statement of the adviser's qualifications and expertise.

3. No conflict of interest

A statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

4. Statement in relation to rule 23 report and further rule 23 report

(1) This clause applies to a report that is required under rule 23 (a rule 23 report) or a further rule 23 report obtained under rule 30 (a further rule 23 report).

(2) A rule 23 report must contain the following statement in a prominent position at the front of the report—

“Purpose of report

“1 This report is not a report on the merits of the offer.

“2 This report has been obtained by the offeror.

“3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

“4 A separate independent adviser's report on the merits of the offer, commissioned by the directors of [name of target company], must accompany [name of target company]'s target company statement.

“5 The offer should be read in conjunction with this report and the separate independent adviser's report on the merits of the offer.”

(3) A further rule 23 report must contain the following statement in a prominent position at the front of the report—

“Purpose of report

“1 This report is not a report on the merits of the offer as varied by the variation notice dated [date of variation notice].

“2 This report has been obtained by [name of offeror] in connection with the variation to the offer.

"3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

"4 The offer should be read in conjunction with this report and the separate independent adviser's report on the merits of the offer (which you will have received with [name of target company]'s target company statement)."

"5 Explanation for further rule 23 report if the report is a further rule 23 report, an explanation of why the further rule 23 report is required in addition to the rule 23 report.

FIFTH SCHEDULE

(rule 37 (3))

NOTICE TO DISSENTING SHAREHOLDER

To

An offer was made on the day of 20..... by.....

.....

.....

..... (the offeror)

for K..... per share in.....

.....

.....

(the offeree).

(the offeror) has, within the relevant time period specified in rule 37 of the Companies

(Panel on Takeovers and Mergers) Rules, 2016 satisfied the conditions contained in Part XI

of the Companies (Panel on Takeovers and Mergers) Rules, 2016.(the

offeror) gives notice that he now intends to exercise his right under Part X of the Companies

(Panel on Takeovers and Mergers) Rules, 2016 to acquire shares held by you in

.....(the offeree). If you do not make application to court (see below)

.....(the offeror) will acquire your shares on the following terms:

.....

.....

Note: You are entitled under rule 40 of the Companies (Panel on Takeover and Mergers)

Rules, 2016 to make application to court within twenty one days of the date of this notice

for an order stating that either (the offeror)

shall not be entitled and bound to acquire your shares or that different terms to those of the

offer shall apply to the acquisition. If you are contemplating such an action you may wish

to seek legal advice.

Signed..... Date.....

Made this 1st day of June, 2016.

JOSEPH MWANAMVEKHA

Minister of Industry,

Trade and Tourism

(FILE NO. INV/22)