

Government Notice No.154 of 2010

THE SECURITIES ACT

**Regulations made by the Minister under section 94
of the Securities Act**

1. These regulations may be cited as Securities (Acquisition of Shares of Dissenting Shareholders during Takeovers) Regulations 2010.

2. In these regulations –

“Act” means the Securities Act;

“dissenting member” means a member who has not assented to the scheme or contract and a member who has failed or refused to transfer his shares to the transferee in accordance with the scheme or contract;

“member” has the same meaning as in the Companies Act;

“nominee” has the same meaning as in the Companies Act;

“takeover” means an offer made by or on behalf of a person (“offeror”) to acquire such securities of the offeree which will result in the offeror acquiring effective control of the offeree, either at one time or over a period of time.

3. Subject to regulation 7 where a scheme or contract involving a transfer of the shares included in a class of shares in a company to another person has, within 4 months after the making of a takeover offer in that behalf by that person, been approved by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares, other than shares already held at the date of the takeover offer by or by a nominee for that person, or where that

person is a company, its subsidiary, the person may, at any time within 2 months after the takeover offer has been so approved, give notice to a dissenting member in the form prescribed in the First Schedule that he desires to acquire the shares of that member.

4. Where a notice is given under regulation 3, the person shall, unless on an application made by a dissenting member within one month after the date on which the notice was given or within 14 days after a statement is supplied to a dissenting member under regulation 8 whichever is later, the Court thinks fit to order otherwise, be entitled and bound, subject to the other provisions of these regulations, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving members are to be transferred to that person.

5. Where shares are not divided into classes, those shares shall for the purposes of these regulations be deemed to constitute a class.

6. (1) Where alternative terms were offered to the approving members, the dissenting member may, not later than one month after the date on which the notice is given under regulation 3 or 14 days after the date on which a statement is supplied under regulation 8 whichever is later, elect which of those terms he prefers.

(2) Where the dissenting member fails to make the election within the time allowed by this regulation, that person may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting member.

7. Where shares in the company of the same class as the shares whose transfer is involved are already held in the manner specified in regulation 3, to a nominal value greater than one tenth of the aggregate of their nominal value and that of the shares (other than those already held in the manner specified in regulation 3) whose transfer is involved, regulation 3 shall not apply unless –

- (a) the transferee offers the same terms to all holders of the shares, other than those already held as mentioned in regulation 3, the transfer of which is involved; and
- (b) the members who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares, other than those already held in the manner specified in regulation 3, the transfer of which is involved, are not less than three-fourths in number of the holders of those shares.

8. Where the transferee has given notice to a dissenting member that he desires to acquire that member's shares, that member may require the transferee, by written notice served on the transferee within one month after the date on which the notice is given, to furnish to him a statement in writing of the names, and addresses of all other dissenting members as shown in the members' register.

9. (1) Where, in pursuance of such a scheme or contract, the transferee becomes entitled in his own name or through a nominee to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a company, any related corporation is, by itself or through a nominee, entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned –

- (a) the transferee shall, within one month after the date on which he becomes entitled by himself or through a nominee to those shares, unless in relation to the scheme or contract he has already complied with this requirement, give notice in the form prescribed in the Second Schedule of the fact to the holders of the remaining shares included in

that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferor under regulation 3;

- (b) such a holder may, within 3 months after the giving of the notice to him, require the transferee to acquire his shares and, where alternative terms were offered to the approving members, elect which of those terms he will accept.

(2) Where a member gives notice under regulation 9 (1)(a) with respect to his shares, the transferee shall be entitled and bound to acquire those shares –

- (a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to these shareholders, on the terms for which the member has elected, or where he has not so elected, for whichever of the terms the transferee determines; or
- (b) on such other terms as are agreed or as the Court, on the application of the transferee or of the member, thinks fit to order.

10. Where a notice has been given by the transferee under regulation 3 and the Court has not, on an application made by the dissenting member, ordered to the contrary, the transferee shall, within 14 days after –

- (a) the expiry of one month after the date on which the notice is given;
- (b) the expiry of 14 days after a statement under regulation 8 is supplied; or

(c) where an application has been made to the Court by a dissenting member, the application is disposed of, whichever occurs last, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the member, by a person appointed by the transferee and, on his own behalf, by the transferee, and pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that by virtue of these regulations, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

11. All sums received by the transferor company under these regulations shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company on deposit for the several persons entitled to the shares in respect of which they were respectively received.

12. Where a sum or other property is held on deposit by a company for another person under these regulations and has been so held for not less than 2 years, the company shall, before the expiry of 10 years after the date on which the sum was paid, or the consideration was allotted or transferred to the company, pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it, to the Official Receiver.

13. The Official Receiver shall –

(a) sell or otherwise dispose of any property other than cash transferred to him under these regulations and any property that becomes substituted for it that he comes to hold in right of any property other than

cash received under regulation 12 in such manner as he thinks fit; and

- (b) deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to him in respect of shares in a corporation as if they were monies paid to him under section 349 of the Companies Act.

14. Where any property other than cash transferred to the Official Receiver under these regulations includes shares in a corporation, the Official Receiver may –

- (a) pay any calls;
- (b) make any contribution to the debts and liabilities of the corporation;
- (c) discharge any other liability, in respect of the shares, whether the obligation arises before or after the date of the transfer; or
- (d) be sued for any calls, contribution or other liability.

15. Nothing in regulation 14 shall affect the right of the company to forfeit a share upon which a call or contribution remains unpaid or a liability undischarged.

16. Nothing in these regulations shall be construed as affecting the protection of minority shareholders under the Companies Act.

17. These regulations shall be deemed to have come into operation on 1 June 2009.

Made by the Minister on 9 July 2010

FIRST SCHEDULE

[Regulation 3]

NOTICE TO DISSENTING SHAREHOLDER

Toof
.....

Whereas (the transferee) on the
..... day of 20..... made a takeover
offer to the holders of *shares in.....
Ltd/*shares included in class of shares
in Ltd for the transfer of those shares to the transferee, not
being an offer made pursuant to a scheme or contract arising out of
the making of takeover offers or a takeover announcement under the
law relating to the acquisition of shares; and

the scheme or contract involving the transfer of those shares to the
transferee was on or before the day of 20
approved by the holders of not less than nine tenths in nominal value
of the shares* in that company/*included in that class of shares, other
than shares already held at the date of the takeover offer by, or by a
nominee for, the transferee or, where the transferee is a company, its
subsidiary; and

you are a dissenting shareholder of the shares *in the
company/*included in that class of shares, that is to say a shareholder
who has not assented to the scheme or contract or has failed or
refused to transfer your shares to the transferee in accordance with the
scheme or contract.

Now therefore the transferee gives you notice under Regulation 1 that
the transferee desires to acquire those shares held by you. You are

SECOND SCHEDULE

[Regulation 9]

NOTICE TO REMAINING SHAREHOLDER

To of

Take notice that (the transferee) on the day of

20.... made offers to the holders of shares* in

Ltd/* included in class of shares in

..... Ltd for the transfer of shares to the transferee,

not being offers made pursuant to a scheme or contract arising out

of the making of takeover offers or a takeover announcement under

the law relating to the acquisition of shares; and in pursuance of the

scheme or contract the transferee became on the day of.....

20..... beneficially entitled to shares in that company which

together with any other shares in that company to which the

transferee, or the transferee and any corporation related to the

transferee, is beneficially entitled, comprise or include nine-tenths

in nominal value of the shares* in Ltd/*

included in that class of shares in Ltd;

and you are the holder of remaining shares* in that company/*

included in that class of shares in that company and have not assented

to the scheme or contract or been given notice in respect of those

shares by the transferee under regulation 9.

Now therefore the transferee gives you notice under regulation 9 that

in pursuance of that scheme or contract the transferee on the

..... day of 20..... became

beneficially entitled to shares in Ltd and those shares

together with any other shares in that company to which the transferee

or the transferee and any corporation related to the transferee, is

beneficially entitled, comprise or include nine-tenths in nominal value

of the shares* in that company/* included in that class of shares in

that company.

You are entitled, under regulation 9, within 3 months after the date on which this notice is given, by notice to the transferee, to require the transferee to acquire your shares

*You are entitled, under regulation 9, within 3 months after the date on which this notice is given, to elect by notice to the transferee which of the alternative terms offered to the approving shareholders under the scheme or contract you will accept

The alternative terms are as follows -

If you require the transferee so to acquire the shares held by you the transferee shall be entitled and bound to acquire those shares on the terms that under the scheme or contract were offered to the approving shareholders or, where alternative terms were offered, on the terms for which you have elected or, where you do not so elect, on whichever of the terms the transferee determines, or on such other terms as are agreed or as the Supreme Court of Mauritius on the application of the transferee or of yourself thinks fit to order.

Dated this day of 2010.

Signature of transferee

*Delete whichever is inapplicable
