

The text below is an internet version of the Rules made by the Financial Services Commission under section 93 of the Financial Services Act 2007 and section 155 of the Securities Act 2005 and is for information purpose only. Whilst reasonable care has been taken to ensure its accuracy, the authoritative version is the one published in the *Government Gazette* of Mauritius.

SECURITIES (INVESTMENT BY FOREIGN INVESTORS) RULES 2013

FSC Rules made by the Financial Services Commission under section 155 of the Securities Act 2005 and section 93 of the Financial Services Act 2007

1. Citation

These Rules may be cited as the **Securities (Investment by Foreign Investors) Rules 2013**.

2. Interpretation

In these Rules –

“Commission” has the same meaning as in the Financial Services Act;

"exempt foreign investor" means a foreign investor which is a body corporate (whether open-ended or closed-ended), a unit trust or any other collective investment vehicle incorporated or otherwise established with the objective of spreading investment risk and managing assets for the benefit of shareholders and participants and which has been designated as exempt by the Commission under rule 5:

"foreign investor" means a non-citizen or an entity which is not resident in Mauritius;

"investment" includes the acquisition by a foreign investor of any interest in a Mauritian company (including either equity or debt securities) or any increase in

the percentage of its interest in a Mauritian company as a result of a rights, bonus or similar issue or as a result of a capital reconstruction;

“investment dealer” has the same meaning as in the Securities Act;

“Mauritian company” means a company, partnership, société or any other body corporate or unincorporated association which is listed on a securities exchange licensed under the Securities Act other than -

- (a) a collective investment scheme authorised under the Securities Act which was structured as an approved investment institution; and
- (b) any other such entity as the Commission may designate;

"Mauritian Sugar Company" means a Mauritian company whose principal activity involves either the cultivation of sugar cane in Mauritius or the production or marketing of sugar and related products produced from sugar cane grown in Mauritius or a combination of any of those activities and which is listed on a securities exchange licensed under the Securities Act;

“non-citizen" has the same meaning as in the Non-Citizens (Property Restriction) Act;

“resident in Mauritius" has the same meaning as in the Non-Citizens (Property Restriction) Act;

“securities exchange” means a securities exchange licensed under the Securities Act.

3. Prior written consent of the Commission

- (1) No foreign investor shall, without the prior written consent of the Commission, make an investment in securities where, as a result of that investment, 15 per cent or more of the voting capital (including any capital having an element of equity) of a Mauritian Sugar Company would be held by foreign investors.
- (2) No investment dealer shall implement any investment transaction if, to its knowledge, having made all reasonable enquiries, the transaction would result in a breach of any restriction specified in paragraph (1).
- (3) An investment dealer shall take all reasonable steps to determine whether a proposed investment transaction is to be made by or on behalf of a foreign investor.
- (4) The restrictions specified under this Rule shall not apply to exempt foreign investors.

4. Notification to the Commission

- (1) Where the securities exchange becomes aware that 10 per cent or more of the voting capital of a Mauritian Sugar Company is held by foreign investors, other than exempt foreign investors, notification of this fact shall be forthwith made to the Commission and all investment dealers, naming the Mauritian Sugar Company concerned.
- (2) Where a notification is made under this Rule and the notification has not been withdrawn, no investment may be made by any foreign investor, other than an exempt foreign investor, in the Mauritian Sugar Company referred to in paragraph (1), and no investment dealer shall permit any such investment to be made, without the prior consent of the Commission.

5. Exempt Foreign Investors

- (1) The Commission may designate certain foreign investors as exempt foreign investors in accordance with the provisions of this rule.
- (2) An application for the designation of a foreign investor as an exempt foreign investor shall be made to the Commission and shall be accompanied by -
 - (a) the constitutive documents of the applicant;
 - (b) a statement of the current investment policy and a copy of the current prospectus or equivalent offering document of the applicant;
 - (c) a statement of the investment restrictions applicable to the applicant where this has not already been provided in the documents submitted under subparagraphs (a) and (b);
 - (d) particulars of the regulatory regime governing the applicant;
 - (e) details of the procedure whereby an applicant may alter its investment policy and restrictions; and
 - (f) any further information that the Commission considers necessary in order to consider the application.
- (3) No foreign investor shall be designated by the Commission as an exempt foreign investor unless the Commission is satisfied that -
 - (a) the applicant is an entity of the nature outlined in the definition of exempt foreign investor in these rules;

- (b) the applicant's investment policy and restrictions are such that it is a passive investor and does not exercise or seek to exercise control over any entity in which it invests;
 - (c) the regulatory regime governing the applicant is at least as rigorous as that imposed upon a collective investment scheme authorised under the Securities Act which was structured as an approved investment institution in Mauritius; and
 - (d) the applicant is suitable to be granted the privilege of exempt foreign investor status.
- (4) Any designation by the Commission of a foreign investor as an exempt foreign investor may be subject to conditions and these conditions may include -
 - (a) restrictions as to the percentage of voting capital (including any capital having an element of equity) of any Mauritius company which an exempt foreign investor may hold;
 - (b) the requirement that the Commission be given prior notification of any proposed amendments to the investment policy or restrictions of the exempt foreign investor; and
 - (c) further restrictions which the Commission considers necessary in order to provide for the smooth and orderly operation of the securities exchange.
- (5) The Commission may cancel the designation of an exempt foreign investor where the exempt foreign investor -

- (a) fails to comply with the conditions of its designation as specified by the Commission; or
 - (b) ceases to be regulated by an appropriate regulatory authority; or
 - (c) is no longer considered suitable by the Commission to be granted the privilege of exempt foreign investor status.
- (6) Where the designation of an exempt foreign investor is cancelled, the foreign investor in question shall have a reasonable time within which to reduce its holdings in Mauritian Sugar companies in order to comply with the conditions regarding investments specified in Rule 3.

6. Commencement

These Rules shall come into operation on 01 April 2013.

Made by the Financial Services Commission on 25 March 2013.