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SECURITIES (PUBLIC OFFERS) RULES 2007

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SECURITIES (PUBLIC OFFERS) RULES 2007

FSC Rules made by the Financial Services Commission under Section 155 of the Securities Act 2005.

1. Citation

These rules may be cited as the Securities (Public Offers) Rules 2007.

2. Interpretation

In these rules –

“Act” means the Securities Act 2005;

“Commission” means the Financial Services Commission established by section 3 of the Financial Services Act 2007;

“control” and “controlled” shall be construed in accordance with the meaning of “controller” (as defined in section 2 of the Act);

“expert” includes engineer, valuer, accountant and any other person recognized by a relevant professional body whose profession gives authority to a statement made by him;

“prospectus” has the same meaning as in the Act; and

“simplified prospectus” means a prospectus as authorized under rule 5.

3. Form and content of prospectus

- (1) Subject to the provisions of these rules, a prospectus shall contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of –
 - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
 - (b) the rights and liabilities attached to those securities.
- (2) Without prejudice to the generality of paragraph (1), a prospectus shall contain the information specified in the Schedule.
- (3) The information in a prospectus shall be presented in accordance with section 74 of the Act and in a comprehensible form.
- (4) Where, on the occasion of their listing of securities on an exchange, securities are offered on a pre-emptive basis to some or all of the existing shareholders, the Commission may authorise the omission from a prospectus of specified information provided that up-to-date information equivalent to that which would otherwise be required by this rule is available as a result of the requirements of that market.

- (5) Where a company –
- (a) makes an offer of securities, which it proposes to issue, to the public in Mauritius; and
 - (b) has, within the 6 months preceding the date on which the offer is first made, published a prospectus relating to a different class of securities which it has issued, or to an earlier issue of the same class of securities,

it may publish, instead of a prospectus, an addendum, in an appropriate and comprehensible form, which contains only the differences which have arisen since the publication of the prospectus and which are likely to influence the value of the securities, provided that the addendum is accompanied by the prospectus.

4. Exceptions

The Commission may authorise the omission from a prospectus of information whose inclusion would otherwise be required if the Commission is satisfied that –

- (a) the disclosure of that information would be contrary to the public interest;
- (b) the information is of minor importance only, and is not likely to influence assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects; or
- (c) the disclosure of that information would be seriously detrimental to the issuer.

5. Simplified prospectus

- (1) An issuer may, after the prospectus is granted registration, issue a simplified prospectus as the Commission may authorise.
- (2) A simplified prospectus shall contain the following particulars –
 - (a) the name of the company and the nature of the shares or debentures being subject of the public offer;
 - (b) the nature of the risks involved in investing in the shares or debentures;
 - (c) details of all amounts payable in respect of the shares or debentures (including any amount by way of fee, commission or other charge);
 - (d) a statement that copies of the prospectus are available for collection at the time and places specified in the simplified prospectus; and
 - (e) a statement that the directors are satisfied that the simplified prospectus contains a fair summary of the key information set out in

the prospectus.

- (3) A simplified prospectus shall not contain –
 - (a) any statement or matter that is false or misleading in the form or context in which it is included;
 - (b) any material information that is not contained in the prospectus; and
 - (c) any material information that differs from that set out in the prospectus.

6. Specifications for the purposes of the Act

- (1) For the purposes of section 70 (1)(h)(iii) of the Act, the period prescribed shall be not less than 6 months.
- (2) For the purposes of section 70 (5)(a) of the Act, a notice, for a proposed offer or issue, to the Commission shall be signed by not less than 2 directors.
- (3) For the purposes of section 71 (2)(c) of the Act, the prospectus shall be signed by not less than 2 directors of the issuer or the person making the offer, if different from the issuer.

7. Offences

Without prejudice to any sanction that may be imposed under the relevant Acts and such Regulations or Rules made, any person who contravenes or fails to comply with any provision of these rules shall commit an offence and shall be liable on conviction to a fine not exceeding 1 million rupees.

8. Commencement

These rules shall be deemed to have come into operation on 28 September 2007.

Made by the Financial Services Commission on 28 September 2007.

SCHEDULE

(rule 3)

REQUIRED CONTENT OF PROSPECTUS

PART I

GENERAL REQUIREMENTS

1. The name of the issuer, the address of its registered office and the date and place of incorporation.
2. If the issuer and the person making an offer are different, the name and address of the person offering the securities.
3. The names and functions of the directors of the issuer.
4. The date of publication of the prospectus.
5. A statement that the prospectus has been drawn up in accordance with the Act and these rules.
6. A statement that the Commission takes no responsibility for the contents of the prospectus and shall not be liable to any action in damages suffered as a result of any prospectus registered by the Commission.
7. Where the prospectus contains any statement by an expert, or any statement made in the prospectus to be based on a statement made by an expert, the prospectus shall state that the expert has given his consent, that such consent is filed with the Commission, and that the expert has not withdrawn his consent as at the date the prospectus is lodged with the Commission for an acknowledgement of filing.
8. The following words, "If you are in any doubt about the contents of this document you may consult an independent qualified person who may advise you accordingly", or words to the like effect.

PART II

PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS

9. The names, addresses (residential or business) and functions of those persons responsible for the prospectus or any part of the prospectus, specifying such part.
10. A declaration by the directors of the issuer (or, if the person making the offer is not the issuer, by the directors of the person making the offer) that they accept responsibility for the contents of the prospectus and that, to the best of their knowledge and belief, and after making reasonable enquiries, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect the import of such information.

PART III

THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER

11. A description of the securities being offered, including the class to which they belong and a description of the rights attached to them including (where applicable) –

(a) if the securities are shares, rights as regards to –

- (i) voting;
- (ii) dividends;
- (iii) distribution on the winding up of the issuer;
- (iv) redemption;

and a summary of the consents necessary for the variation of any of those rights;

(b) if the securities are debentures, rights as regards to –

- (i) interest payable;
- (ii) repayment of principal.

(c) any conversion rights or option warrants.

12. The dividend policy of the issuer, and in particular whether it has paid dividends within the last 3 years (and, if so, how much and when), and whether the issuer expects to pay dividends over the next year.

13. The date(s) (if any) on which entitlement to dividends or interest arises.

14. The procedure for the exercise of any right of pre-emption attached to the securities.

15. (1) A statement as to whether –

- (a) the securities being offered are listed on a securities exchange; or
- (b) an application for listing has been made.

(2) Where no such application for listing has been made, or such an application has been made and refused, a statement as to whether or not there are, or are intended to be, any other arrangements for there to be dealings in the securities and, if there are, a brief description of such arrangements.

16. The purpose for which the securities are being issued.

17. The number of securities being issued and offered and, in the case of shares, earnings per share and net asset value per share as applicable.

18. The authority for the issue and offer of the securities.

19. The total proceeds that it is expected to raise by the offer and the expected net proceeds, after deduction of the expenses, of the offer, stating the amount or the estimated amount of the expenses of the offer and by whom they are payable.

20. Details as to the use of the proceeds of the issue and in particular their use for capital expenditure, debt reduction, acquisitions, working capital or others.

21. Where the prospectus relates to shares that are offered for subscription, particulars as to –

- (a) the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following –
 - (i) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue; and
 - (ii) any preliminary expenses payable by the issuer in connection with the issue or proposed issue.
 - (b) the amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
22. The names of any person or persons underwriting the offer.
23. The amount or the estimated amount of the expenses of the offer and by whom they are payable.
24. The name and address of any transfer or registration agent.
25. The period during which the offer of the securities is open.
26. The price at which the securities are offered and the method and timetable for fixing the price.
27. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery where applicable.
28. The arrangements during the period prior to the delivery of the securities being offered relating to the moneys received from applicants including the arrangements for the return of moneys to applicants where their applications are not accepted in whole or in part and the timetable for the return of such moneys.

PART IV
GENERAL INFORMATION ABOUT THE ISSUER AND ITS CAPITAL

29. The date and place of incorporation of the issuer.
30. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.
31. A summary of the provisions in the issuer's constitution, if any, determining its objects.
32. The amount of the issuer's stated capital.
33. In the case of a debt issue, any borrowing limits to which the issuer is subject.
34. The number and particulars of any listed and unlisted securities issued by the issuer not representing share capital.

35. The number of shares of each class making up the stated capital and, in the case of the shares issued, the amount paid up on the shares.
36. If the issuer is a member of a group, a brief description of the group and of the issuer's position in it, stating, where the issuer is controlled by another person, the name and status of the controlling person.
37. In so far as the person making an offer has the information, an indication of the persons, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer and particulars of the proportion of the issuer's voting capital held by such persons.

PART V THE ISSUER'S PRINCIPAL ACTIVITIES

38. A description of the issuer's principal activities and of any exceptional factors which have influenced its activities.
39. A statement of any dependence of the issuer on particular customers or suppliers, or on patents or other intellectual property rights, licences or particular contracts, where any of these are of fundamental importance to the issuer's business.
40. With regard to risk factors, a list in order of importance of the factors which the issuer considers to be the most substantial risks to an investor in this offering (e.g. untested products, cash-flow or liquidity problems, dependence upon a key supplier or customer, management ability, nature of business, absence of a trading market, etc.) and which constitute the greatest threat that an investment may be lost in whole or part, or not provide an adequate return.
41. Information regarding capital expenditure items in progress or authorised by the directors where they are significant.
42. Information on any legal or arbitration proceedings, whether active, pending or threatened against, or being brought by, the issuer or any member of its group which are having or may have a significant effect on the issuer's financial position.

PART VI THE ISSUER'S FINANCIAL POSITION

43. Subject to paragraph 45, the issuer's financial statements for the last 3 years together with—
 - (a) a statement by the directors of the issuer that the accounts have been prepared in accordance with the Act and relevant accounting standards, and that they accept responsibility for them, or a statement why they are unable to make such a statement;
 - (b) the names and addresses of the auditors of the accounts;
 - (c) a copy of the auditor's reports on the financial statement; and
 - (d) a statement by the auditors that they consent to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date or a statement why they are unable to make such a statement.

44. (1) Where more than 9 months have elapsed at the date on which the offer is first made since the end of the last financial year in respect of which accounts are required to be included in the prospectus by paragraph 43, there shall also be included in the prospectus a report by the audit firm of the issuer, covering the period referred to in sub-paragraph (2), with respect to the state of affairs and profit or loss of the issuer together with the name and address of the person responsible for preparing the report, and a statement by him that he consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.
- (2) The report should cover the period beginning at the end of the last financial year, in respect of which accounts are required to be included in the prospectus by paragraph 43, and ending on the latest practicable date (but not in any event more than three months) before the date on which the offer is first made.
45. If an issuer has not been in existence for the whole of the last 3 years, the prospectus shall contain a report by the audit firm of the issuer which includes –
- (a) details of the profit or loss of the issuer in respect of the period beginning with the date of its formation and ending on the latest practicable date before (but not in any event more than three months before) the date on which the offer is first made, and of its state of affairs at that latest practicable date; and
- (b) a statement by the reporting auditor that in his opinion the report gives a true and fair view of the state of affairs and profit or loss of the issuer and that he consents to the inclusion of his report in the prospectus and accepts responsibility for it, or a statement why he is unable to make such a statement.
46. If the issuer is a parent company, the requirements of paragraphs 43 and 45 shall apply to each of its subsidiaries.

PART VII
RECENT DEVELOPMENTS IN THE ISSUER'S BUSINESS AND PROSPECTS

47. The significant recent trends concerning the development of the issuer's business since the end of the last 3 financial years of the issuer.
48. Information on the issuer's financial and trading prospects for at least the current financial year of the issuer.
49. The dates of and parties to all material contracts (not being contracts entered into in the ordinary course of business) entered into by the issuer and its subsidiaries within the 2 years immediately preceding the issue of the prospectus together with a summary of the principal contents of such contracts.
50. Where a profit forecast appears in the prospectus, the principal assumptions, including commercial assumptions, upon which it is based must be stated.

PART VIII
THE ISSUER'S ADMINISTRATION AND MANAGEMENT

51. A concise description of the directors' existing or proposed service contracts with the issuer or any subsidiary of the issuer, excluding contracts expiring, or determinable by the employing company without payment of compensation within one year, or an appropriate negative statement.
52. The remuneration paid and benefits in kind granted to the directors of the issuer during the last financial year of the issuer, together with an estimate of the aggregate amount payable and benefits in kind to be granted to the directors, for the current financial year under the arrangements in force at the date on which the offer is first made.
53. The interests of each director of the issuer in the stated unimpaired capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.
54. Full particulars of any contract or arrangement existing at the date of the prospectus in which a director of the issuer is materially interested, or an appropriate negative statement.
55.
 - (1) A description (being his qualifications or area of expertise or responsibility) of every director (or any other person who performs an important administrative or management function) and particulars of the principal functions performed by each.
 - (2) A brief account of the business experience of each of these persons during the last 3 years.
 - (3) The nature of any relationship between the persons mentioned in subparagraph (1).
 - (4) Indicate any other directorship held by each director.