

GUYANA

No. 9 of 2002

REGULATIONS

Made Under

The Securities Industry Act 1998
(No. 21 of 1998)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation.
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SCHEDULE - Content of prospectus

IN EXERCISE OF THE POWERS CONFERRED ON HIM BY SECTION 126 (1) AND (7) READ WITH SECTION 64(1) OF THE SECURITIES INDUSTRY ACT 1998, THE MINISTER OF FINANCE HEREBY MAKES THE FOLLOWING REGULATIONS:-

- Citation.** 1. These Regulations may be cited as the Securities Industry (Prospectus) Regulations 2002.
- Interpretation.** 2. (1) In these Regulations –
- (a) “director” includes any person who occupies the position of a director, by whatever name called;
 - (b) “securities exchange” means a securities exchange registered by the Council on which the securities the subject of the prospectus are listed or admitted to dealing.
- (2) For the purpose of these Regulations reference to a “prospectus” shall be deemed to include reference to a “block distribution circular” and these Regulations shall apply to such a circular.
- Content of prospectus.** 3. (1) A prospectus shall contain all such information as investors and their professional advisors would reasonably require, and reasonably expect to be contained therein, 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 attached to those securities.

(6) For the purpose of paragraph (5), a “full prospectus” is one which contains the information specified in the Schedule (other than information the omission of which is authorised by the Council by or under paragraph (4) or regulation 4).

(7) The format of a prospectus shall be as required by the Council.

Exceptions.

4. (1) The Council may, upon application made by the issuer or offeror, authorise the omission from a prospectus of information the inclusion of which would otherwise be required by these Regulations if the Council is satisfied that –

(a) 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) disclosure of that information would be seriously detrimental to the issuer.

(2) An offeror may omit from a prospectus information with respect to an issuer the inclusion of which would otherwise be required by these Regulations if -

(a) he is neither the issuer, nor acting in pursuance of an agreement with the issuer;

(b) the information is not available to him because he is not the issuer; and

(c) he has been unable, despite making

such efforts as are reasonable, to obtain the information.

Advertisements in connection with public offer.

5. An advertisement announcing a public offer of securities for which a prospectus is required under these Regulations shall not be issued to the public in Guyana by the person proposing to make the offer, unless the advertisement states that-

(a) the Council has approved the prospectus relating to the public offer; and

(b) the prospectus is or will be published, as the case may be, and gives an address in Guyana where such prospectus can be obtained or will be obtainable.

SCHEDULE**reg. 3****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 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 a copy of the prospectus has been delivered to the Council for approval in accordance with the these Regulations.
6. A statement that the prospectus has been drawn up in accordance with these Regulations.
7. The following words, "If you are in any doubt about the contents of this document you should consult a person licensed under the Act who specialises in advising on the acquisition of shares and other securities", or words to the like effect.

PART II**THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS**

8. The names, addresses (home or business), occupation and functions of those persons responsible for the prospectus or any part of the prospectus, specifying such part.
9. A declaration by the directors of the issuer (or, if the offeror is not the issuer, by the directors of the offeror) that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus does not omit any information which is likely to affect the import of such information.

PART III**THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER**

10. 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 -
 - (i) voting;
 - (ii) dividends;
 - (iii) return of capital 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 -
 - (i) interest payable;
 - (ii) repayment of principal.

- (c) any conversion rights or option warrants.

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

12. The date(s) (if any) on which entitlement to dividends arises.

13. The date(s) (if any) on which entitlement to 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 have been listed or admitted to dealing on a securities exchange; or
 - (b) an application for such admission has been made.
 - (2) Where no such application for listing or dealing 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, together with details as to the use of the proceeds of the issue and in particular their use for capital expenditure, debt reduction, acquisitions, working or other capital.
17. The number of securities being issued and offered and, in the case of shares, earnings per share, net asset value per share and net tangible assets per share.
18. The authority for the issue and offer of the securities.
19. The total proceeds which it is expected will be raised 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, including a statement as to any commission payable by the issuer to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for such securities.
20. Where the prospectus relates to securities which 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 securities 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 and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any securities of the issuer;

(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.

21. The names of persons underwriting or guaranteeing the offer.
22. The name and address of any paying, transfer or registration agent.
23. The period during which the offer of the securities is open.
24. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.
25. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.
26. 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

27. The date and place of incorporation of the issuer. In the case of an issuer not incorporated in Guyana, the address of its principal place of business in Guyana.
28. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.
29. A summary of the issuer's aims and objectives.
30. The amount of the issuer's authorised share capital and any limit on the duration of the authorisation to issue such share capital.
31. The amount of the issuer's issued share capital and, in the case of a debt issue, any borrowing limits prescribed by the issuer's by-laws.

32. The number and particulars of any listed and unlisted securities issued by the issuer not representing share capital.
33. The number of shares of each class making up each of the authorised and issued share capital, the issue price of such shares and, in the case of the issued share capital, the amount paid up on the shares.
34. 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 company, the name of its controlling company.
35. In so far as the offeror 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

36. A description of the issuer's principal activities and of any exceptional factors which have influenced its activities.
37. 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.
38. With regard to risk factors, list in order of importance 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 inexperience, 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.
39. Information regarding capital expenditure items in progress or authorised by the directors where they are significant.
40. Information on any legal or arbitration proceedings, 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**

41. Subject to paragraph 43, the issuer's annual accounts (balance sheet and profit and loss account) for the last three years together with -
- (a) a statement by the directors of the issuer that the accounts have been prepared in accordance with the Act, and that they accept responsibility for them, or a statement why they are unable to make such a statement;
 - (b) the name and address of the auditors of the accounts;
 - (c) a copy of the auditors' reports on the account; 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.
42. (1) Where more than nine 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 41, there shall also be included in the prospectus a report by a person qualified to act as an auditor, covering the period referred to in subparagraph (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 that he or she consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why he or she is unable to make such a statement.
- (2) The period to be covered by the report is 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 41 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.

43. If an issuer has not been in existence for the whole of the last three years, the prospectus shall contain a report by a person qualified to act as an auditor 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 person responsible for the report that in the opinion of that person it gives a true and fair view of the state of affairs and profit or loss of the issuer and that he or she consents to the inclusion of his or her report in the prospectus and accepts responsibility for it; or a statement why he is unable to make such a statement.
44. If the issuer is a parent company, the requirements of paragraphs 41 and 43 shall apply to each of its subsidiaries.

PART VII

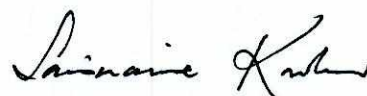
RECENT DEVELOPMENTS IN THE ISSUER'S BUSINESS AND PROSPECTS

45. The significant recent trends concerning the development of the issuer's business since the end of the last completed financial year of the issuer.
46. Information on the issuer's financial and trading prospects for at least the current financial year of the issuer.
47. The dates of and parties to all current material contracts (not being contracts entered into in the ordinary course of business) entered into by the issuer and its subsidiaries together with a summary of the principal contents of such contracts.
48. 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**

49. 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.
50. The aggregate remuneration paid and benefits in kind granted to the directors of the issuer during the last completed financial year of the issuer, together with an estimate of the aggregate amount payable and benefits in kind to be granted to the directors, and proposed directors, for the current financial year under the arrangements in force at the date on which the offer is first made.
51. The interests of each director of the issuer in the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.
52. 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.
53. (1) A description (being his or her qualification or area of expertise or responsibility) of every director or proposed director (or any other person who performs an important administrative, management or supervisory 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 five years.
- (3) The nature of any family relationship between the persons mentioned in subparagraph (1).
- (4) Indicate any other directorships held by each director or proposed director.

Made this 22nd day of July, 2002



Saisnarine Kowlessar

Minister of Finance

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations are made by the Minister of Finance in exercise of the powers conferred on him by section 126(1) and (7) read with section 64(1) of the Securities Industry Act 1998 (“the Act”).
2. The Act requires that no person shall offer to sell or otherwise distribute securities unless a prospectus has been filed and a receipt issued by the Securities Council (section 61 of the Act). The Act further requires that a prospectus shall contain such information and comply with such other requirements as the Securities Council may prescribe by Regulations (section 64 of the Act). The purpose of these Regulations is to specify such information and requirements.
3. On the making of these Regulations, and the bringing into operation of Part IV and section 145 of the Act, the provisions of the Companies Act 1991 presently governing prospectuses will cease to apply and will be replaced by the Act and these Regulations.
4. Regulation 1 makes provision for the citation of the Regulations and regulation 2 contains interpretation provisions.
5. Regulation 3 specifies the overriding general obligation of disclosure required in a prospectus, and additionally requires the offeror to include information specified in the Schedule to the Regulations.
6. Regulation 4 authorises the Securities Council to make exceptions to the specified content requirements of the prospectus in certain defined circumstances.
7. Regulation 5 prohibits any advertisement in connection with a public offer of securities unless the advertisement states that the Securities Council has approved the prospectus, and the prospectus is obtainable from a specified address.

8. Contravention of the Regulations is an offence punishable on summary conviction. Section 126 (6) of the Act enables Regulations to create offences and impose penalties.
9. The Schedule provides further and better particulars of the content requirements of a prospectus. For convenience the specific requirements are grouped into the following categories: of general requirements, persons responsible for the prospectus and advisers, the securities to which the prospectus relates and the offer, general information concerning the issuer and its capital, the issuer's principal activities, the issuer's financial position, recent developments in the issuer's business and prospects, and the issuer's administration and management.