

THE CAPITAL MARKETS AND SECURITIES (CAPITALISATION AND RIGHTS ISSUE) REGULATIONS

G.N. No. 288 of 2000

1. Citation

These Regulations may be cited as the Capital Markets and Securities (Capitalisation and Rights Issue) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires:

"acquisition" means one company taking over controlling interest in another company;

"applicant" means a company applying to the Authority for approval of capitalization or rights issue;

"authority" means the Capital Markets and Securities Authority established by section 6 of the Act;

"bonus shares" means shares allotted to existing members in a company in proportion to their current holdings where no additional funds from outside the company are raised instead shares are paid up by the company applying either profits or reserves;

"capitalization" means applying profits in wholly or partly paying for unissued shares in company to be allotted to members in proportion to their present holdings as fully paid or partly paid bonus shares or transferring profits to capital redemption reserves;

"rights issue" means issue of shares where existing shareholders are given prior right to buy a new issue of shares at a subscription price lower than the market value of the outstanding shares;

"subsidiary company" means a company in which the majority of its shares are owned by another company.;

3. Approval of capitalization or rights issue

(1) No listed company shall issue or authorize its Registrar to issue or register by way of capitalization or rights issue, additional shares of the listed class unless it has applied for approval of such issue to the Authority and the company has been notified by the Authority that the issue has been approved.

(2) Subject to subregulation (1) and the provisions of the Companies Act ^{i*} relating to the authorization of issue of new shares, the applicant shall furnish certified copies of resolution or resolutions passed by its shareholders authorizing the issue of new shares.

(3) An application made under subregulation (1) shall be lodged with the Authority at least three weeks prior to the date of books closure.

(4) In approving the application, the Authority may impose such conditions as it may deem necessary for the protection of the existing shareholders and potential investors.

(5) An application made under subregulation (1) shall state:

- (a) the full name of the applicant;
- (b) the Exchange at which the applicant's securities are listed;
- (c) the number of additional shares to be listed;
- (d) the effective date on which the additional shares shall fully qualify for admission to trading;
- (e) the names of persons who shall be responsible for the report made pursuant to Regulation 4.

(6) The application shall be endorsed with the declaration set out below which shall be signed by two directors or one director and the secretary of the applicant:

"The directors of (name of applicant) whose names appear in the manner specified under Regulation 4(a)(ii) collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of our knowledge and belief there are no other facts the omission of which would make any statement false or misleading, that we have made all reasonable inquiries to ascertain such facts and that the application contains all information required by law."

(7) No person shall make any public announcement of capitalization or rights issue prior to receiving notification of approval of its application by the Authority.

4. Matters to be stated in the application

(1) Any application made under these Regulations shall be submitted in triplicate and shall be accompanied by a report stating the following particulars:

- (a) title page—
 - (i) the applicant's full name, date, place and number of incorporation;
 - (ii) the full names of the applicant's directors and their business experience during the preceding five years;
 - (iii) the full title or designation of security proposed for listing and the number of shares, par value and whether fully paid;
 - (iv) purpose of issuance;
- (b) the capitalization of the applicant in tabular form indicating—
 - (i) designation or title of each class of security;
 - (ii) per value;
 - (iii) number of shares authorized by the Memorandum and Articles of Association, number of shares issued and number of shares to be issued under the application;
 - (iv) where applicable, the number of unissued shares of each class of security reserved for issuance for any purpose, and the purpose for which they are reserved;
 - (v) a description of the rights attached to the shares with regard to voting, dividends, liquidation proceeds, pre-emption in future capital increase or any other special circumstances; and
 - (vi) the date with effect from which the additional shares will qualify for dividend, whether such dividend will be paid in full and the circumstances relating to limitation of time on the right to dividend.

(2) For each issue or series of funded or long term debt of the applicant and any of its subsidiary companies, the applicant shall state the following particulars in tabular form:

- (a) full title (including interest rate and maturity date);
- (b) amount authorized by the debt instrument;
- (c) amount already issued at the time of making the application;
- (d) amount redeemed;
- (e) amount outstanding;
- (f) issue price;
- (g) date of payment of interest; and
- (h) date and terms of redemption.

(3) The applicant shall state the date or dates of meetings of shareholders authorizing the issuance of securities applied for and, if there were any proceedings of a court of law involved, the date and outcome of such proceedings.

(4) In the case of acquisitions, the applicant shall in addition state—

- (a) whether the securities applied for are to be issued as a total or part of the consideration for the acquisition of—

- (i) controlling interest in, or the major part of the business and assets of, another company; or
- (ii) specific assets or properties;
- (b) full names of all parties involved in the acquisition and the date of any contract entered into for that purpose;
- (c) the nature of the transaction, and the assets or business to be acquired in sufficient detail to indicate its relative value in relation to the consideration to be paid;
- (d) the principles followed and factors considered in determining the consideration to be paid for the acquisition, and the persons making the determination and their relationship to the applicant;
- (e) reasons for which the Management of the applicant perceives the acquisition to be favourable; and
- (f) whether or not any officer, director or major shareholder of the applicant (or any of the applicant's affiliates) has any direct or indirect beneficial interest in the assets to be acquired or the consideration to be paid and, the description of such interest if it exists.

(5) Where the controlling interest in or the major part of the business and assets of another company is being acquired, the applicant shall state briefly the history and business of that other company and furnish sufficient financial statements of that other company as is prescribed under Regulation 5 and such other information as the Authority may require.

(6) Where any engineering, geological or appraisal reports were obtained in connection with the proposed acquisition, the applicant shall furnish such excerpts as shall adequately disclose the contents of the appraisal reports.

(7) Where the securities in relation to which the application is made are in respect of bonus shares capitalized from reserves, the applicant shall—

- (a) identify the reserves from which the bonus shares are to be capitalized;
- (b) show a schedule of the movement in the relevant reserve accounts for the preceding three years;
- (c) where any of the reserves were created following a revaluation of the assets of the applicant, submit a copy of the relevant appraisal report and a certificate from the applicant's auditors that the reserves are sufficient to cover the capitalization of the bonus issue.

(8) In the case of a rights issue, the applicant shall in addition—

- (a) submit a timetable in respect of the following events:
 - (i) books closure date to determine rights entitlement;
 - (ii) last day for splitting;
 - (iii) last day for exercise of rights;
 - (iv) last day for renunciation of rights;
 - (v) last day of application for additional shares;
- (b) state—
 - (i) the recommended price when existing shareholders exercise their right;
 - (ii) the recommended price of the right;
 - (iii) the expected net proceeds and the application of such proceeds;
 - (iv) whether an underwriting agreement exists, and if such an agreement exists the applicant shall submit a copy of the agreement to the Authority;
 - (v) the names and addresses of the auditors who have audited the accounts of the applicant during the preceding three years;
 - (vi) the names and addresses of the brokers sponsoring the application for

admission to listing.

(9) In all cases referred to in these Regulations, the applicant shall—

- (a) make a declaration that the annual accounts have been audited; and
- (b) furnish a statement from the applicant's auditors certifying that all circumstances regarding the additional listing known to the auditors and which could influence the evaluation by investors of the applicant's assets, liabilities, financial position, results and prospects have been included in the report.

5. Additional information to be admitted with the application for a rights issue

An application for approval of a rights issue shall in addition be accompanied by the following:

- (a) a brief account of the business experience during the preceding five years of each member of the management of the applicant;
- (b) a statement concerning any important development affecting the applicant or its business since the latest annual report of the applicant;
- (c) where the applicant is being considered or has been considered for suspension or delisting by any exchange, the details thereof;
- (d) where the securities to be listed are to a controlling interest in, or of all the assets subject to a liability of another company, the latest balance sheet of such company and its profit and loss account to the date of the last balance sheet supplemented by the last quarterly report;
- (e) one copy of each contract, plan or agreement pursuant to which the securities applied for are to be issued;
- (f) where the securities applied for are to be issued for the acquisition of a stock interest in another company or properties or other assets, one copy of any engineering, geological or appraisal report which may have been obtained in connection with the proposed acquisition;
- (g) one copy of each letter of approval issued by the relevant Government authorities; and
- (h) a statement of estimate of the cost involved in the application indicating:
 - (i) brokerage expenses;
 - (ii) approval fees;
 - (iii) printing;
 - (iv) advertising;
 - (v) the requisite professional fees;
 - (vi) other costs.

6. Exclusion of employee share ownership schemes

The procedure prescribed under these Regulations shall not apply to listing of additional securities to be subscribed for, solely by the employees or former employees of the applicant and the applicant shall, in such event, submit to the Authority for approval the subscription form together with such other documents which shall contain such information as the Authority may require for the approval of the shares for admission to listing.