

SECURITIES COMMISSION ACT 1993

SECURITIES COMMISSION (SHELF REGISTRATION SCHEME FOR DEBENTURES) REGULATIONS 2000

IN exercise of the powers conferred by section 49 of the Securities Commission Act 1993 [Act 498] the Securities Commission, with the approval of the Minister, makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the Securities Commission (Shelf Registration Scheme for Debentures) Regulations 2000.

(2) These Regulations shall come into operation on 1 July 2000.

Interpretation

2. In these Regulations, unless the context otherwise requires -

"investment grade" means a rating which signifies such investment grade as may be given by a rating agency that is recognised by the Commission;

"issuer" means the corporation whose debentures are being issued, offered for subscription or purchase, or in respect of which an invitation to subscribe or purchase has been made;

"subsidiary" shall have the same meaning as in section 5 of the Companies Act 1965 [Act 125] and refers to a subsidiary which contributes a level of profit or net tangible assets which is equivalent to fifty per cent or more of the total after tax profits or net tangible assets of the issuer based on the latest audited annual accounts of the issuer.

Eligibility of issuers

3. Unless otherwise allowed in writing by the Commission, an issuer is eligible to issue, offer for subscription or purchase, or issue an invitation to subscribe for or purchase, debentures in accordance with a shelf registration scheme where all of the following conditions are met:

- (a)
 - (i) no prosecution has been commenced against either the issuer or any of its subsidiaries in respect of any breach of any securities or banking laws or the Companies Act 1965;
 - (ii) in the case of a listed corporation, no action has been taken against the listed corporation by the relevant stock exchange in respect of any breach of the listing requirements of that stock exchange; and
 - (iii) neither the issuer nor any of its subsidiaries has breached any terms and conditions in respect of borrowed monies which has resulted in the occurrence of an event of default and an immediate recall of such borrowed monies,

during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus and during the effective period of the shelf prospectus in accordance with regulation 5; and

- (b) the issuer must have obtained the approval of the Commission under its Guidelines on the Offerings of Private Debt Securities in respect of the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures.

Transaction requirements

4. An issue of, offer for subscription or purchase of, or an invitation to subscribe for or purchase, debentures may be made under a shelf registration scheme where -

- (a) the proposed total size of the issue of, offer for subscription or purchase of, or invitation to subscribe or purchase, debentures under the shelf registration scheme is no less than RM 100 million; and
- (b) such proposed issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures is, and any subsequent issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures under the shelf registration scheme are, rated in a category which signifies investment grade.

Requirement for shelf prospectus and supplementary shelf prospectus

5. (1) Subject to regulation 9, a person may issue, offer for subscription or purchase, or make an invitation to subscribe for or purchase, debentures under a shelf registration scheme where at the time of the issue, offer or invitation there is in force a shelf prospectus as updated by a supplementary shelf prospectus, both of which have been registered by the Commission.

(2) A shelf prospectus shall be effective for a period of two years from the date of its issue or such longer period as may be allowed in writing by the Commission.

Contents of shelf prospectus and supplementary shelf prospectus

6. (1) A shelf prospectus shall -
- (a) be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the shelf prospectus;
 - (b) state that the shelf prospectus has been registered by the Commission and that a copy of the shelf prospectus has been lodged with the Registrar;

- (c) state that the registration of the shelf prospectus and supplementary shelf prospectus shall not be taken to indicate that the Commission recommends the debentures or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the shelf prospectus and supplementary shelf prospectus;
- (d) contain a statement that no debentures will be allotted or issued on the basis of the shelf prospectus read together with the supplementary shelf prospectus, later than two years after the date of the issue of the shelf prospectus;
- (e) if it contains any statement made by an expert or contains what purports to be a copy of or an extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the shelf prospectus;
- (f) not contain the name of any person named in the shelf prospectus or supplementary shelf prospectus as having made a statement -
 - (i) that is included in the shelf prospectus or the supplementary shelf prospectus; or
 - (ii) on which a statement made in the shelf prospectus or supplementary shelf prospectus is based,

unless the requirements of section 53 of the Act are satisfied;

- (g) contain the relevant disclosures to state that no prosecution has been commenced against either the issuer or any of its subsidiaries, during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus, in respect of any breach or contravention of any securities or banking laws or the Companies Act 1965 or the listing requirements of the relevant stock exchange (if applicable);

- (h) contain the relevant disclosures to state that neither the issuer nor any of its subsidiaries has, during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus, breached any terms and conditions in respect of borrowed monies which has resulted in the occurrence of an event of default and an immediate recall of such borrowed monies; and
- (i) set out such other information as may be specified by the Commission.

(2) A supplementary shelf prospectus shall -

- (a) be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the supplementary shelf prospectus;
- (b) state such information as may be specified in the Commission's Guidelines on Contents of Prospectus for Debentures;
- (c) state the offer period which should be no longer than one month from the date of the issue of the supplementary prospectus or such longer period as may be allowed in writing by the Commission;
- (d) disclose such information where a matter has arisen and information in respect of that matter would have been required by –
 - (i) subregulation 6(l) or regulation 7;
 - (ii) any requirement under the Act;
 - (iii) any guidelines issued by the Commission; or
 - (iv) any listing requirement of a stock exchange, if applicable,

to be disclosed in the prospectus if the matter had arisen at the time the shelf prospectus was prepared;

- (e) disclose such information where there has been a significant change affecting a matter disclosed in the shelf prospectus;
- (f) disclose such information where the shelf prospectus contains a material statement or information that is false or misleading;
- (g) disclose such information where the shelf prospectus contains a statement or information from which there is a material omission;
- (h) contain the relevant disclosures to state that no prosecution has been commenced against either the issuer or any of its subsidiaries during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus and during the effective period of the shelf prospectus, in respect of any breach or contravention of any securities or banking laws or the Companies Act 1965 or the listing requirements of the relevant stock exchange (if applicable);
- (i) contain the relevant disclosures to state that neither the issuer nor any of its subsidiaries has, during the twelve calendar months immediately preceding the date of application to the Commission for registration of the shelf prospectus and during the effective period of the shelf prospectus, breached any terms and conditions in respect of borrowed monies which has resulted in the occurrence of an event of default and an immediate recall of such borrowed monies;
- (j) state that the supplementary shelf prospectus has been registered by the Commission and that a copy has been lodged with the Registrar.

(3) Notwithstanding the provisions of subregulation (1) and (2), the Commission may, either on the written application of any person referred to in subregulation 5(l) or of its own accord, make an order relieving such person from or approving any variation of the requirements of these Regulations relating to the form and content of a shelf prospectus or a supplementary shelf prospectus.

(4) In making an order under subregulation (3), the Commission may impose such terms and conditions as it deems fit.

(5) The Commission shall not make an order under subregulation (3) unless it is satisfied that -

- (a) compliance with the requirements of these Regulations is unnecessary for the protection of persons who may normally be expected to deal in debentures, being persons who would reasonably be expected to understand the risks involved; or
- (b) compliance with the requirements of these Regulations would impose an unreasonable burden on the issuer.

(6) A shelf prospectus or supplementary shelf prospectus shall be deemed to have complied with all the requirements of these Regulations relating to the form and content of a shelf prospectus or supplementary shelf prospectus, as the case may be, if it is issued in compliance with an order made under subregulation 3.

General duty of disclosure in shelf prospectus and supplementary shelf prospectus

7. (1) For the purpose of determining whether a shelf prospectus or supplementary shelf prospectus contains any statement or information which is false or misleading or from which there is a material omission under subsection 55(l) or subsection 57(l) of the Act, regard shall be had to whether the shelf prospectus and supplementary shelf prospectus contains all such information that investors and their professional advisers would reasonably require, and reasonably expect to find in the shelf and supplementary shelf prospectus, for the purpose of making an informed assessment of -

- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer;
- (b) the rights attaching to the debentures; and
- (c) the merits of investing in the debentures and the extent of the risk involved in doing so.

(2) The information that investors and their professional advisers would reasonably require and reasonably expect to find in the shelf prospectus and supplementary shelf prospectus under subregulation (1) is information -

- (a) which is known to all or any of the following persons:
 - (i) a person who was a director of the issuer at the time of issue of the shelf prospectus and the supplementary shelf prospectus;
 - (ii) a person who has consented or caused himself to be named and is named in the shelf prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
 - (iii) a promoter;
 - (iv) the principal adviser in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures;
 - (v) a person named in the shelf prospectus, with his consent, as having made a statement that is included in the shelf prospectus or supplementary shelf prospectus or on which a statement made in the shelf prospectus or supplementary shelf prospectus is based;
 - (vi) a person named in the shelf prospectus with his consent, as a stockbroker, sharebroker or underwriter, as the case may be, in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures;
 - (vii) a person named in the shelf prospectus, with his consent, as an auditor, banker or advocate in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures;

(viii) a person named in the shelf prospectus, with his consent, as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (iv), (v), (vi) or (vii) in relation to an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures; or

(b) which any of the persons referred to in paragraph (2)(a) would have been able to obtain by making such enquiries as were reasonable in the circumstances.

(3) Without prejudice to the generality of subregulation 6(1) or 6(2), in determining the information that is required to be included in a shelf prospectus and supplementary shelf prospectus under this regulation, regard shall be had to -

(a) the nature of -

(i) the debentures;

(ii) the business of the issuer of the debentures;

(b) the persons likely to consider acquiring such debentures;

(c) the fact that certain matters may reasonably be expected to be known to any professional adviser whom investors referred to in subregulation 6(1) may reasonably be expected to consult; and

(d) whether the persons to whom an issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, debentures is to be made are the holders of securities in the corporation, and if they are, to what extent (if any) relevant information has previously been given to them by the issuer under any law, any requirement of the rules or listing requirements of a stock exchange, if applicable, or otherwise.

Requirement to lodge copy of shelf prospectus and supplementary shelf prospectus

8. An issuer shall cause a copy of the shelf prospectus and supplementary shelf prospectus registered by the Commission under this Act and a copy of the form of application accompanying such shelf prospectus to be lodged with the Registrar before the date of issue of the shelf prospectus or the supplementary shelf prospectus, as the case may be.

Issuing of shelf prospectus

9. Upon the registration of the shelf prospectus by the Commission, the issuer is allowed to issue the shelf prospectus, provided that -

- (a) debentures are only to be issued upon the registration of a supplementary shelf prospectus by the Commission; and
- (b) the form of application which would facilitate the issue of, offer for subscription or purchase of, or the making of an invitation to subscribe for or purchase, debentures on the basis of the shelf registration scheme is attached to the supplementary shelf prospectus and not the shelf prospectus.