

THE CAPITAL MARKETS AUTHORITY ACT.

Statutory Instrument 84—2.

The Capital Markets Authority (Prospectus Requirements) Regulations.

Arrangement of Regulations.

Regulation

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THE CAPITAL MARKETS AUTHORITY ACT.

Statutory Instrument 84—2.

The Capital Markets Authority (Prospectus Requirements) Regulations.

(Under section 101 of the Act.)

PART I—PRELIMINARY.

1. Citation.

These Regulations may be cited as the Capital Markets Authority (Prospectus Requirements) Regulations.

2. Application.

These Regulations shall not apply to debt securities issued by the Government, a parastatal body or a local authority.

3. Interpretation.

- (1) In these Regulations, unless the context otherwise requires—
 - (a) “Act” means the Capital Markets Authority Act;
 - (b) “parastatal body” means a body in which the Government has a controlling interest directly or indirectly;
 - (c) “prescribed authority” means in the case of a prospectus which relates to shares or debentures dealt in or to be dealt in on an approved stock exchange or interim stock trading facility, the stock exchange or the interim stock trading facility, and in any other case, the Capital Markets Authority.

(2) In these Regulations, any term defined in the Act shall have the meaning assigned to it by the Act.

PART II—REQUIREMENTS OF PROSPECTUSES.

4. Information to be contained in prospectus.

Every prospectus submitted to a prescribed authority for approval shall

contain the information specified in Parts I and II of the Schedule to these Regulations.

5. Prospectus to comply with directions by prescribed authority.

(1) The prescribed authority may require the applicant to furnish such further documents and information as the prescribed authority may direct in any particular case or class of cases.

(2) The prescribed authority may, after consultation with a person who intends to issue a prospectus, direct that the prospectus be amended.

(3) No prospectus shall be published without compliance with any amendment directed by the prescribed authority under subregulation (2) of this regulation unless the direction has been withdrawn by the prescribed authority.

6. Information to accompany prospectus.

A prospectus submitted to the prescribed authority for approval shall be accompanied by the information specified in Part III of the Schedule to these Regulations.

7. Declaration by applicant.

An application for approval of a prospectus shall include a declaration, stating it to be to the best of the applicant's knowledge, information and belief that—

- (a) all information required to be included in the prospectus under the Regulations is so included; and
- (b) there are no other facts bearing on the application which, in the applicant's opinion, should be disclosed to the prescribed authority.

8. Scrutiny of prospectus by interim stock trading facility.

Where the prescribed authority is an interim stock trading facility—

- (a) the prospectus shall also be submitted to the authority for scrutiny; and
- (b) no approval of any prospectus shall be given by the interim stock trading facility except after the prospectus has been scrutinised

and approved by the authority and the authority has notified its approval to the interim stock trading facility.

9. Lodgement fees.

(1) A prospectus submitted to the prescribed authority for approval shall be accompanied by the fees prescribed in Part IV of the Schedule to these Regulations.

(2) The prescribed authority shall not receive a prospectus for approval if it is not accompanied by the prescribed fees.

- (3) Fees paid under this regulation are not refundable if—
- (a) the prescribed authority does not approve the prospectus;
 - (b) the prescribed authority issues directions for the amendment of the prospectus; or
 - (c) the applicant withdraws the prospectus.

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Schedule.

regs. 4, 6 and 9.

Requirements of prospectuses and fees.

Part I.

Matters to be stated on first page of prospectus.

1. A prospectus submitted to the prescribed authority for approval shall state in clearly legible and prominent letters on its first page, a section headed “CAUTION” and with the following words—

“A copy of this prospectus has been delivered to the [stock exchange/interim stock trading facility/Capital Markets Authority] for approval and to the registrar of companies for registration.

The securities offered have not been approved or disapproved by the [stock exchange/interim stock trading facility/Capital Markets Authority].

Prospective investors should carefully consider the matters

set forth under the caption ‘risk factors’”.

Part II.

Information to be stated in prospectus.

2. A prospectus submitted to the prescribed authority for approval in accordance with regulation 4 of these Regulations shall contain the following information—

- (a) rights of holders—
the rights applicable to holders of the shares as regards dividends, capital, preemptive rights to subscribe to new issues of shares, redemption (where applicable), voting rights and the creation or issue of further shares of equal priority with the shares;
- (b) information on bankers—
the name(s) and business address(es) of the major bank(s) providing services to the issuer as lender, provider of credit facilities, or guarantor of any indebtedness and the name and business address of any registrar appointed by the issuer to provide services with respect to the issue;
- (c) a statement on legal status and affairs of the issuer—
 - (i) a brief history of the initial organisation of the business, including the form and name under which the initial organisation took place;
 - (ii) the nature and results of any bankruptcy, receivership or similar proceedings with respect to the issuer;
 - (iii) the nature and results of any other material reclassification, merger or consolidation of the issuer or any of its significant subsidiaries;
 - (iv) the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business and any material changes in the mode of conducting the business;
 - (v) a summary of the material provisions of the articles of association with respect to annual general meetings of shareholders, voting rights of shareholders, the election and removal of directors and the rights of directors to vote on proposals in which they have a personal interest;
 - (vi) a legal opinion including, but not limited to, the following—
- (A) whether all licences and consents required to perform the business or proposed business of the issuer have been duly

- obtained;
- (B) the validity of evidence of ownership of land, plant and equipment and other important and relevant assets of the issuer;
 - (C) any agreements or contracts with respect to the proposed issue of securities including, where applicable, but not limited to underwriting contracts, agreements or contracts with any securities exchange, registrar and trustees of bonds, debentures or other credit securities;
 - (D) any material litigation, prosecution or other civil or criminal legal action in which the issuer or any of its directors is involved;
 - (E) whether the existing capital of the issuer and any proposed changes to it is in conformity with applicable laws and has received all necessary authorisations; and
 - (F) any other material items with regard to the legal status of the issuer and the proposed issue;
 - (d) information relating to directors—
 - (i) a brief account of the business experience during the preceding five years of each director or person nominated to be a director, including his or her principal occupation in any company in which he or she was employed;
 - (ii) whether any director, executive officer, person nominated to become a director or executive officer is or has been involved in any of the following events—
 - (A) that person or any partnership in which he or she was a partner or any company of which he or she was an executive officer is or has been the subject of a filing of a petition under any bankruptcy law;
 - (B) that person has been convicted in a criminal proceeding or is a named subject of a ruling of a court of competent jurisdiction or any governmental body, that permanently or temporarily prohibited him or her from acting as an investment adviser or as a director or employee of a broker or dealer, director or employee of any financial institution or engaging in any type of business practice or activity;
 - (iii) the number of each class of shares of the issuer held by each director;
 - (iv) whether any director has the intention to sell any holdings in the same class of securities to be issued by the issuer in the public distribution within one year after the conclusion of the public distribution;
 - (v) details of any material acquisitions or disposals of share

- capital of the issuer by each director within a one-year period prior to the public distribution;
- (vi) material details of all options to purchase securities of the issuer or any subsidiary or holding company of the issuer, granted to be purchased or exercised by each director within one year prior to the public distribution;
 - (vii) details of any existing contracts between the directors and the issuer;
- (e) capital of issuer—
- (i) the authorised share capital, the amount issued, the amount paid-up and the description and nominal value of the shares;
 - (ii) particulars of any capital of the issuer's subsidiaries which has, within the two years immediately preceding the public distribution, been issued and fully or partly paid-up otherwise than in cash and the consideration, if any, for which that capital has been issued;
 - (iii) particulars of any capital of the issuer or of any of its subsidiaries which has, within the two years immediately preceding the publication of the prospectus, been issued for cash and the price and terms upon which that capital has been issued and, if not already fully paid, the dates when any installments are payable with any amounts of installments in arrears;
 - (iv) any other material alterations in the share capital of the issuer within the two years immediately preceding the public distribution;
 - (v) all substantial shareholders of the issue, together with particulars of their respective holdings of share capital;
 - (vi) the number of shares to be listed upon the first listing date (if applicable) following the public distribution, indicating whether the issuer or any substantial shareholder has the intention to cause additional shares to be listed within a twelve-month period after the initial listing;
- (f) debt of issuer—
- in relation to the issuer and its subsidiaries, any material outstanding indebtedness, including bank loans, overdrafts, debentures, hire purchase agreements, mortgages, bank acceptance credits and financial guarantees by the issuer and other contingent liabilities shall be indicated in the prospectus; and the particulars shall include the date, maturity and character

- of the indebtedness, rate of interest, basic repayment provisions and any provisions which allow for the conversion of the debt into another class of securities of the issuer;
- (g) land and fixed assets of issuer and subsidiaries—
 - (i) particulars of the location, area or tenure (including in the case of leaseholds the rent and unexpired term) of the factories and main buildings;
 - (ii) particulars about the primary plant and equipment, including cost, age, model and vendor, indicating whether the plant and equipment is expected to be replaced within two years after the conclusion of the public distribution;
 - (h) valuation report—

a valuation report with respect to the estimated value of the land and property and equipment mentioned in subparagraph (g) of this paragraph shall be provided if required to the prescribed authority;
 - (i) material contracts—

the dates of and parties to all material contracts (not being contracts entered into in the ordinary course of business) entered into within the two years immediately preceding the publication of the prospectus, together with a summary of the principal contents of each contract, including particulars of any consideration passing to or from the issuer or any subsidiary, shall be indicated in every prospectus;
 - (j) risk factors—

in relation to the business of the issuer, information shall be presented on any new venture risks, construction risks, licensing risks, potential increased competition, regulation, dependence on key personality, taxation, level of indebtedness, dilution, unexpectedness of dividend;
 - (k) use of proceeds of the issue—

a statement on the intended use of the net proceeds of the issue including transient use of the proceeds;
 - (l) summary—

a statement containing a summary of the matters specified in subparagraphs (a) to (k) of this paragraph.

Part III.

Information to accompany prospectus to be submitted to prescribed authority.

3. A prospectus submitted to the prescribed authority shall be accompanied by a statement showing the financial performance of the issuer and its subsidiaries during the preceding five financial years containing a breakdown between the more important business activities, together with an explanation of the reasoning for the breakdown, including but not limited to the following information—

- (a) the principal products produced or services rendered or to be rendered and the principal markets for and methods of distribution of the principal products and services;
- (b) a description of the status of the development of products or services (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary) and whether the development will require substantial investment; and the summary of research and development expenditures for the business shall also be provided;
- (c) in the case of a manufacturing enterprise, the sources and availability of raw materials and the extent of dependence on any single supplier;
- (d) the importance to the business activity and the duration and effect of all material patents, trademarks, licences, franchises and concessions held;
- (e) the extent of dependence of the business activity upon a single customer or group of customers;
- (f) the seasonality, if any, of the business activity;
- (g) a description of the current level of backlogged orders and assignments for the business activity, the development of those orders and assignments over the past year and prospects for the backlogged orders or assignments;
- (h) the number of persons employed by the issuer in the business activity; and
- (i) a breakdown of the revenues of the business activity into those that arise from domestic sales and those that arise from exports of products or services, and information on them.

4. The directors of the issuer shall furnish to the prescribed authority a statement analysing the financial statements included in the prospectus, and other statistical data, that serves to explain the present and prospective financial conditions of the issuer, and the analysis shall include—

- (a) any trends, demands, commitments, events or uncertainties known to the directors that shall result in or are likely to result in

- material increase or decrease in the issuer's liquidity;
- (b) the issuer's material commitments for capital expenditures which indicate the purpose of those commitments, the anticipated source of funds needed to fulfill the commitments, the currency in which the commitments are denominated and any measures that the issuer plans to take to hedge any resulting foreign currency exposure;
- (c) the extent to which the issuer's future operating results or financial condition are exposed to fluctuations in exchange rates or interest rates; information provided shall include information on all foreign currency borrowings or commitments denominated in a foreign currency, as well as indebtedness for which the interest rate payable is not fixed in advance;
- (d) material product developments, events, trends, competitive conditions expected and uncertainties known to the directors that may cause reported financial information not to be indicative of future operating results or of future financial conditions;
- (e) any unusual or infrequent events or transactions or any significant economic changes that have affected the amount of reported income for the audited financial statements that appear in the prospectus with emphasis on the latest financial statements included in them and a description of any other significant components of revenues or expenses that, in the issuer's judgment, should be described in order to understand the issuer's operational results;
- (f) to the extent that the financial statements appearing in the prospectus disclose material increases in net sales or revenues, an analysis of the extent to which those increases can be attributed to increases in prices or to increases in the volume or amount of goods or services sold or to the introduction of new products or services;
- (g) the impact of inflation and changing prices on the issuer's net sales and revenues and on operating income for the three most recent financial years of the issuer or for such shorter period in which the issuer has been in business; and
- (h) future prospects of the issuer with respect to cash flow and profits.

5. The issuer shall also provide the following items to the prescribed authority—

- (a) a copy of its memorandum and articles of association;

- (b) a copy of all required authorisations with respect to its memorandum and articles of association and to the changes in its structure;
- (c) where applicable, a copy of proposed underwriting agreements and contracts, proposed agreements with securities exchanges for the listing of the securities to be offered (where appropriate), proposed agreements or contracts with a registrar; and
- (d) with respect to the public distribution of debt securities, a copy of the proposed trustee agreement, and a proposed contract with a guarantor where applicable.

Part IV.

Fees.

Fee	Percentage
For the approval of a prospectus in the case of debt or fixed income security	0.1% of the value of the issue
For the approval of a prospectus in the case of an equity security	0.2% of the value of the issue

History: S.I. 53/1996; S.I. 30/1999.
