

STATUTORY INSTRUMENTS.

2004 No. 43.

THE CAPITAL MARKETS (CROSS BORDER INTRODUCTIONS) REGULATIONS,
2004.

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STATUTORY INSTRUMENTS.

2004 No. 43.

The Capital Markets (Cross Border Introductions) Regulations, 2004

(Under section 101 of the Capital Markets Authority Act, Cap. 84)

IN EXERCISE of the powers conferred on the Capital Markets Authority by section 101 of the Capital Markets Authority Act, these Regulations are made this 13th day of May, 2004.

1. Citation

These Regulations may be cited as the Capital Markets (Cross Border Introductions) Regulations, 2004.

2. Interpretation

(1) In these Regulations, unless the context otherwise requires—

“Act” means the Capital Markets Authority Act, Cap. 84;

“eligible applicant” means a body corporate, which satisfies the criteria for eligibility specified in the First Schedule;

“Information Memorandum” means a document accompanying an application for approval of an Introduction, and containing the information outlined in the Second Schedule;

“Introduction” means the listing of securities, which are already listed and trading on a stock exchange in another jurisdiction;

“primary exchange” means the stock exchange in the jurisdiction where the applicant’s shares were first listed;

“primary jurisdiction” means the jurisdiction in which the applicant first listed its securities on a stock exchange;

“primary regulator” means the securities regulator in the primary jurisdiction.

(2) Any word, term or expression used in these Regulations, and which has been defined in the Act, has the meaning assigned to it by the Act.

3. Application for approval of an Introduction

(1) An eligible applicant may apply to the Authority for the approval of an Introduction.

(2) An application under subregulation (1) shall be accompanied by—

(a) an Information Memorandum;

- (b) a letter of “No Objection” from the applicant’s primary regulator;
- (c) a letter of “No Objection” from the applicant’s primary exchange;
- (d) in the case where the applicant is a bank or an insurance company or any other regulated corporate body, a letter of “No Objection” from the relevant regulatory authority; and
- (e) the fees specified in the Third Schedule.

4. Contents of Information Memorandum

(1) An Information Memorandum submitted to the Authority for approval of an Introduction shall contain the information specified in the Second Schedule.

(2) The Authority may, in its discretion, waive, modify or dispense with any criterion specified in the First Schedule or any requirement to disclose any of the information specified in the Second Schedule.

(3) The Authority may require an applicant to furnish such further information or documentation, as the Authority may deem necessary for purposes of the application for an Introduction.

(4) An Information Memorandum shall not be published or distributed without compliance with any amendments, directions made or issued by the Authority, unless any such amendments or directions have been withdrawn in writing by the Authority.

(5) An Information Memorandum shall include a declaration by the applicant stating that to the best of the applicant’s knowledge and belief—

- (a) all the information required to be included in the Information Memorandum under these Regulations or by an amendment or directive made or issued by the Authority has been so included; and
- (b) there are no other facts bearing on the application, which in the applicant’s knowledge and belief should be disclosed to the Authority.

5. Fees not refundable

(1) The Authority shall not receive an application for approval of an Information Memorandum unless it is accompanied by the prescribed fees.

(2) Any fees paid under these Regulations are non refundable notwithstanding that—

- (a) the Authority does not approve the Information Memorandum; or

(b) the applicant withdraws the Information Memorandum before it is approved.

6. Repeal of S. I. No.17 of 2001

The Capital Markets (Prospectus Requirements) (Amendment) Regulations, 2001, is repealed.

FIRST SCHEDULE

ELIGIBILITY CRITERIA FOR APPLICANTS

Regulation 2, 3(1)

An applicant for the approval of an Introduction shall meet the following criteria—

1. The applicant must either be—
 - (a) a company limited by shares and registered as a public company under the companies law of its primary jurisdiction; or
 - (b) a foreign company registered as operating in Uganda in accordance with the Companies Act, Cap 110.
2. The applicant must have—
 - (a) a minimum authorized, issued and fully paid up capital of not less than Uganda Shillings One Billion upon currency conversion at the prevailing exchange rate;
 - (b) net assets of not less than Uganda Shillings Two Billion upon currency conversion at the prevailing exchange rate; and
 - (c) at least one hundred thousand shareholders comprising at least 20% of the total shareholding.
3. The applicant's shares must be freely transferable and not subject to any restrictions on marketability of pre-emption rights.
4. (1) The applicant must have published audited financial statements complying with International Financial Reporting Standards for an accounting period of at least five years ending on a date not longer than three months prior to the proposed introduction.
 - (2) If more than three months have elapsed since the end of the applicant's last accounting period for which financial statements have been prepared, the applicant must prepare unaudited interim financial statements from the end of the last accounting period.
 - (3) The period covered by the unaudited interim financial statements should not exceed six months.

(4) The applicant must have prepared audited financial statements for the latest accounting period on a going concern basis and the accompanying audit report must not contain any emphasis of matter or qualifications.

(5) At the date of the application, the applicant must not be in breach of any loan covenants (if it has any).

5. As at the date of the application and for a period of at least two years prior to the date of the application, none of the directors of the applicant should have—

(a) any petition under bankruptcy laws filed against him or her (for individual directors) or any winding up petition pending (for corporate directors);

(b) any criminal proceedings in which he or she has been convicted of fraud or any felony;

(c) been a subject of any ruling of a court of competent jurisdiction or any governmental body, the effect of which is to permanently or temporarily prohibit him or her from acting as a fund manager, director, broker, dealer or employee of any financial institution or engaging in any business practice or activity.

6. The applicant must have declared profits after tax attributable to shareholders in at least three of the last five completed accounting periods prior to the proposed date of the introduction.

7. The applicant must not be insolvent.

SECOND SCHEDULE

Regulation 2, 4(1), 4 (2)

CONTENTS OF INFORMATION MEMORANDUM.

1. Caution statement

An Information Memorandum shall contain, on its first page, a caution statement to the effect that—

(a) the Information Memorandum has been delivered to the Capital Market Authority for approval, but that the securities that are the subject of the Information Memorandum have neither been approved nor disapproved by the Authority;

(b) the information Memorandum has been delivered to the Registrar of Companies for registration;

- (c) permission has been granted by the Authority to introduce the securities which are the subject of the Information Memorandum, through the listing on an approved stock exchange;
- (d) approval of the Information Memorandum by the Authority is not an indication of the merits of the Company nor its shares;
- (e) the directors of the applicant have taken reasonable care to ensure that the information contained in the Information Memorandum is in accordance with the Regulations issued by the Authority and that there are no other facts bearing on the application, which, in the directors' knowledge and belief, should be included in the Information Memorandum; and that the directors take responsibility for the information in the Information Memorandum;
- (f) that the Information Memorandum does not constitute an offer or invitation to any person to subscribe for or purchase any new shares in the applicant;
- (g) that the Information Memorandum is not marketing any new shares held by the applicant;
- (h) that prospective investors must pay due attention to the risk factors outlined in the Information Memorandum.

2. Executive summary

An Information Memorandum must contain an accurate executive summary of all its key contents and information.

3. Key information

An Information Memorandum must contain key information pertaining to the applicant's share and capital structure including—

- (a) the authorised share capital;
- (b) the extent to which the authorised share capital is fully paid up;
- (c) the registered number of shareholders in the primary market;
- (d) the par value and classes of the shares;
- (e) the form in which the shares are evidenced, whether by bearer certificate or otherwise.

4. Business of the applicant

An Information Memorandum must contain a clear summary of the applicant's business, its corporate structure, details of its key products and services and those of its subsidiaries if any, as well as alliances and joint ventures.

5. Risk factors

An Information Memorandum must contain all the risks pertaining to the business of the applicant and to any of its subsidiaries.

6. Rights and obligations of shareholders

(1) An Information Memorandum must contain a summary of the rights attaching to the shares of the applicant, and in particular—

(a) the extent of voting rights, entitlement to share in profits of the applicant, and, in the event of liquidation, rights to surpluses and other special rights as well as any shareholder obligations;

(b) any material limitation or qualifications on the rights of the applicant's shares and details of such limitation or qualification;

(c) in the event of more than one class of shares, information required under paragraph 3 shall be given for each class.

7. Mergers and acquisitions

(1) An Information Memorandum must include details of any mergers and acquisitions agreed upon but not concluded or not reflected in the accounts of the issuer.

(2) In the case of subparagraph (1), the applicant shall include the following details—

(a) the date of the acquisition or agreement;

(b) the consideration and payment terms;

(c) any outstanding payments;

(d) details of the value of the property and valuation methods employed;

(e) any goodwill paid and how the goodwill was accounted for;

(f) the nature and title of interest acquired or to be acquired; and

(g) details of the vendors.

8. Information on bankers and other advisers.

An Information Memorandum must include details of the bankers of the applicant and the names of advisors of the applicant.

9. Information on service providers

An Information Memorandum must include details of custodians, registrars and paying agents in the jurisdiction of primary listing, in Uganda and in any other jurisdiction where the applicant is seeking admission on a stock exchange.

10. Legal opinion

An Information Memorandum must include a legal opinion on the status and operations of the applicant, including—

(a) any bankruptcies, receiverships or similar proceedings in the preceding three years;

(b) the nature and results of any mergers and acquisitions in the preceding three years;

(c) a summary of the relevant provisions of the memorandum and articles of association;

(d) an opinion on major licenses and consents;

- (e) an opinion on the validity of ownership of any land, plant and equipment;
- (f) any material litigation within and outside Uganda;

11. Trading and settlement procedures

An Information Memorandum must include details of the modalities and procedures of trading and settlement of the applicant's shares in the Ugandan market.

12. Information relating to directors and senior management

An Information Memorandum must include details of all the applicant's directors and members of senior management, including their qualifications, business experience, expertise and number of shares held in the applicant.

13. Capital of the applicant

An Information Memorandum must include details of the applicant's authorised capital, including a statement of opinion by its directors on whether the capital is adequate for the purposes of the business of the applicant and its subsidiaries, any extent of inadequacy and the proposed manner in which those inadequacies are to be financed.

14. Borrowing powers of the applicant

An Information Memorandum shall include details of the applicant's borrowing powers including—

- (a) the borrowing powers of its parent and that of its subsidiaries exercisable by its directors;
- (b) the manner in which such borrowing powers may be varied;
- (c) the circumstances under which the borrowing powers have been exceeded in the preceding three years, if applicable;
- (d) any exchange controls or other restrictions on the borrowing powers of the applicant or any of its subsidiaries.

15. Debt of the applicant

(1) The Information Memorandum must include the debt profile of the applicant including—

- (a) the total amount of loan capital outstanding in all members of the group;
- (b) that amount of loan capital created but unissued;
- (c) details of term loans distinguishing between guaranteed and unguaranteed, secured or unsecured loans;
- (d) all off-balance sheet financing by the applicant and any of its subsidiaries;
- (e) details of any bank overdrafts, liabilities under acceptances (other than normal trade bills) acceptance credits, hire purchase commitments and finance leases;
- (f) details of any loans made for the benefit of any of the applicant's directors, chief executive or senior management; and

(g) the details of all material loans extended by the applicant or any of its subsidiaries.

(2) In the case of the debt profile, the applicant must include—

(a) names of the lenders, not being debenture holders;

(b) amounts, terms and conditions of repayment or renewal;

(c) rates of interest payable on each item;

(d) details of security if any;

(e) details of conversion rights if any; and

(f) in the case of debts payable within twelve months, details of how payments will be financed.

(3) In the case of material loans, the applicant must include—

(a) the date of the loan;

(b) the borrower;

(c) the rate of interest payable;

(d) details of any interest in arrears;

(e) the period of the loan;

(f) any security held;

(g) if the loan is unsecured, the reasons why it is unsecured;

(h) the value of the security and valuation methods employed; and

(i) in the case where the loan is extended to another company, the details of the directors of that company.

(2) For the avoidance of doubt, where any of the details required in this paragraph do not apply to the applicant, an appropriate negative statement to that effect should be included in the Information Memorandum.

16. Land and fixed assets

(1) An Information Memorandum shall include details of any land, estates, plants, machinery and fixed assets owned by the applicant and the applicant must give details of any land, estates, plant, machinery and fixed assets disposed of by it or any of its subsidiaries during the last 5 years.

(2) In the case of disposals, the applicant must state—

(a) the consideration paid;

(b) any outstanding consideration payable;

(c) any goodwill paid and how it is to be accounted for;

(d) the valuation of the property and the valuation methods employed.

17. Material contracts

An Information Memorandum shall include details of any material contract entered into in the last preceding two years, not being a contract in the ordinary course of business.

18. Financial statement for the preceding five accounting periods

(1) An Information Memorandum shall include the audited financial statements five accounting periods preceding the proposed date of the Introduction.

(2) Where the financial statements are prepared in a currency other than the Uganda shilling, the applicant should give details of the exchange rate between the financial reporting currency and the Uganda shilling, as follows—

(a) the latest practicable rate;

(b) the high and low exchange rates for each month during the previous six months;

(c) for the five financial years and any subsequent interim accounting period, the average rates for each period calculated by using the average of the exchange rates on the last day of each month during the period.

19. Share performance

An Information Memorandum shall include details of the market price history of the applicants shares in the last five preceding years in all the exchanges in which it is listed at the time of the application, including—

(a) the annual high and low prices for each of the five years;

(b) the high and low market prices for each financial quarter of the most recent two years; and

(c) the high and low market prices for each of the most recent six months.

20. Dividend policy and modalities of payment

An Information Memorandum shall include details of the applicant's dividend policy, the modalities of payment, and the time limit after which entitlement to dividends lapses and any arrangements under which future dividends are waived or have been agreed to be waived.

21. Listing

An Information Memorandum shall include details of other stock exchanges where the applicant's shares are already listed, information on whether admission to list will or is being sought; including, if known, the date on which the shares will be admitted to the stock exchange and on which dealings will commence.

22. Governing law

An Information Memorandum shall state that the Laws of Uganda shall be applicable to the application for Introduction.

23. Tax policy

An Information Memorandum must include a statement of the tax payable on income from the transfer of shares, both in the primary jurisdiction and in Uganda, including whether the applicant assumes the responsibility for withholding of tax at source.

24. Accompanying documents

An Information Memorandum shall be accompanied by the following documents—

- (a) certified copies of the applicant's Certificate of Incorporation;
- (b) certified copies of the Memorandum and Articles of Association;
- (c) copies of material contracts if any; and
- (d) copies of all required authorisations from professional advisors.

25. Additional information required by the Authority

An Information Memorandum must contain any other additional information as may be required or directed to be included by the Authority, including any proposed amendments or clarifications.

THIRD SCHEDULE

FEES

Regulation 3 (e)

Amount

For the lodgement of an Information **U.Shs. 25,000,000**
Memorandum for an Introduction

LEO KIBIRANGO,
Chairman, Capital Markets Authority.