

COMPANIES ACT 2015
(ACT No. 3 OF 2015)

Companies (Transitional) Regulations 2015

IN exercise of the powers conferred upon me under section 713 of the Companies Act 2015, I hereby make these Regulations—

Short title and commencement

- 1.—(1) These Regulations may be cited as the Companies (Transitional) Regulations 2015.
- (2) These Regulations shall come into force on 1 January 2016.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
 - “Act” means the Companies Act 2015; and
 - “Decree” means the Capital Markets Decree 2009.
- (2) In these Regulations, words and phrases have the same meaning as under the Act unless the context otherwise requires.

Definitions

3. For the purposes of the Act, unless the context otherwise requires—
 - “contributory” means every person liable to contribute to the assets of a company in the event of the company being wound up and, for the purposes of all proceedings for determining, and all proceedings prior to the final

determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory;

“Dealer” means a person who carries on the business of buying, selling, dealing, trading, underwriting or retailing of Securities whether or not the person carries on any other business;

“Investor Compensation Fund” means the fund established under the Decree for the purposes of granting compensation to investors who suffer pecuniary loss as referred to in regulation 7;

“Relation-Back Day” means—

- (a) in respect of a winding up made by an order of the Court, the date that the application for winding up was filed; and
- (b) in any other case, the date that the resolution for winding up was passed.

Limitation of Liability

4. Neither the Reserve Bank, the Registrar, the Official Receiver nor any person acting under their authority, shall be liable to any action, suit or proceeding for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers conferred on them by or under the provisions of the Act or any other law.

Right to inspect and get copies

5.—(1) A Foreign Company must allow anyone to inspect a register kept under Part 6 of the Act.

(2) If the register is not kept on a computer, the person inspects the register itself.

(3) If the register is kept on a computer, the person inspects a hard copy of the information on the register.

(4) The requirement in subregulation (3) to allow the person to inspect a hard copy of the information on the register does not apply in relation to a register that is kept on a computer if the person and the Foreign Company agree that the person can access the information by computer.

(5) A member of a Foreign Company or a registered Debenture Holder may inspect a register kept under Part 6 of the Act without charge.

(6) Other people may inspect the register only on payment of a fee, up to the Prescribed Amount, required by the Foreign Company.

(7) The Foreign Company must give a person a copy of the register, or a part of the register, within 7 days if the person—

- (a) asks for the copy; and
- (b) pays any fee, up to the Prescribed Amount, required by the Foreign Company.

(8) The Registrar may allow a longer period to comply with the request.

(9) If the register is kept on a computer and the person asks for the data on a computer disk, the Foreign Company must give the data to the person on computer disk.

(10) The data must be readable but the computer disk need not be formatted for the person's preferred operating system.

(11) The Foreign Company is not required under subregulation (1), (2), (3) or (5) to allow a person to see, or to give a person a copy of the register that contains, share certificate numbers.

(12) The Registrar may grant a Foreign Company an exemption from complying with subregulation (1), (2), (3) or (5) in relation to information in a register of Debenture Holders about Debentures that are not convertible into Shares on such conditions, if any, as the Registrar must determine in the Registrar's absolute discretion.

(13) On application by the Registrar, the Court may order a person who contravenes a condition of the exemption to comply with the condition.

Levies

6.—(1) In the case of every purchase and sale of Securities recorded on a Securities Exchange or notified to it under its rules, the purchaser and the seller shall each of them be liable to pay to the Reserve Bank a levy at such rate as may be specified by order of the Minister to be published in the Gazette as a percentage of the consideration for such purchase and sale; and different rates may be specified in respect of different classes of Securities.

(2) The Securities Exchange shall collect and account to the Reserve Bank for the levy referred to in subregulation (1).

(3) The amount of any levy payable under this regulation shall be recoverable as a civil debt due to the Reserve Bank.

(4) The Minister may make rules providing for—

- (a) the payment of the levies under this regulation; and
- (b) the keeping, examination and audit of the accounts of a Securities Exchange relating to the collection of such levies.

(5) For the purposes of subregulation (1), the rate of percentage that applied under the Decree immediately before the commencement date is taken to be the rate of percentage that applies from the commencement date unless specified by order of the Minister published in the Gazette.

Investor Compensation Fund

7.—(1) The Investor Compensation Fund established under the Decree shall continue for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a holder of a Securities Industry Licence to meet its contractual obligations.

(2) The Investor Compensation Fund shall consist of—

- (a) such moneys as are required to be paid into the Investor Compensation Fund by a holder of a Securities Industry Licence;
- (b) such sums of money as are paid in respect of an order of the Court in respect of a contravention of Part 42 or Division 3 of Part 43 of the Act;
- (c) such sums of money as accrue from interest and profits from monies placed in the Investor Compensation Fund;

- (d) such sums of money recovered by or on behalf of the Reserve Bank from entities whose failure to meet their obligations to investors result in payments from the Investor Compensation Fund; and
- (e) such sums of money as are received for the purposes of the Investor Compensation Fund from any other source approved by the Minister.

(3) Moneys which have accumulated in the Investor Compensation Fund may be invested by the Reserve Bank in such manner as may be determined by the Reserve Bank.

Who can be a Director

8. If a person is a director or secretary of an Existing Company immediately before the commencement date and that person is not entitled to be appointed as a Director or secretary under section 93 of Act, the person may —

- (a) continue to act as a director or secretary of the Company for up to 3 months after the commencement date; and
- (b) must resign within 3 months after the commencement date.

Notice of meetings

9. For the purposes of section 145(1) of the Act, a Company is not required to provide copies of Financial Statements with a notice of meeting if the Financial Statements for the last Financial Year are not available at the time the notice is given.

Licences required

10. No person must carry on a business as a Dealer or representative of a Dealer, or hold themselves out as carrying on such a business unless the person is a holder of a Securities Industry Licence issued under the Act.

Prospectus or Offer Document validity

11. Upon registration of a Prospectus or Offer Document by the Reserve Bank, the Reserve Bank may endorse the validity of the Registered Prospectus or Registered Offer Document for a period of more or less than 12 months on such conditions as the Reserve Bank considers necessary.

Supplementary information to Registered Prospectus or Registered Offer Document

12. Supplementary information may be annexed to a Registered Prospectus or Registered Offer Document if the document containing the supplementary information is approved by the Reserve Bank, on such conditions as the Reserve Bank considers necessary.

Medium Private Company - Financial Statements

13.—(1) A Medium Private Company must prepare—

- (a) Proforma Financial Statements; and
- (b) Financial Statements if it is directed to do so by Members with at least 10% of the votes under subregulation (2).

(2) The Registrar or Members with at least 10% of the votes in a Medium Private Company may give the Company a direction to—

- (a) prepare Financial Statements for a Financial Year; and
- (b) send them to all Members.

(3) Sections 389(2) and 389(3) of the Act apply to the direction given under subregulation (2).

Proforma Financial Statements

14. For the purposes of section 391(2) of the Act, “true and correct” is taken to mean “true and fair”.

Appointment of auditors

15.—(1) Subject to subregulation (3), for the purposes of Part 34 of the Act, an Individual Auditor or Individual Auditors, a firm or firms, or an Individual Auditor or Individual Auditors and a firm or firms may be appointed as an auditor or auditors of a Company or Managed Investment Scheme.

(2) A Company, the Directors of a Company or the Manager of a Managed Investment Scheme must not appoint an Individual Auditor or a firm as the auditor of the Company or Managed Investment Scheme unless that Individual Auditor or firm has—

- (a) before the appointment, consented in writing to the Company or the Manager of a Managed Investment Scheme, before the appointment, to act as auditor; and
- (b) not withdrawn that consent before the appointment is made.

(3) A firm may only be appointed as an auditor of a Company or a Managed Investment Scheme if—

- (a) at least one member of the firm is registered as an Auditor under the Act;
- (b) a member of the firm, who is registered as an Auditor under the Act, is nominated to sign all documents lodged with the Registrar arising from the appointment as auditor of the Company or Managed Investment Scheme; and
- (c) details of the Auditor referred to in paragraph (b) are given to the Registrar in writing.

(4) Any change to the details of the firm or the Auditor nominated under regulation (3) must be given to the Registrar within 14 days of the change.

Information as to pending liquidations

16.—(1) For the purposes of section 505 of the Act, if, where a Company is being wound up, the winding up is not concluded within one year after its commencement, the liquidator must, within 3 months from the end of the year beginning on the day on which the Company was wound up and each succeeding year, prepare a report which complies with subregulation (2).

(2) The report referred to in subregulation (1) must set out—

- (a) an account of the liquidator’s acts and dealings and of the conduct of the winding up during the preceding year;
- (b) a description of the acts and dealings that remain to be carried out by the liquidator in order to complete the winding up; and
- (c) an estimate of when the winding up is likely to be completed.

(3) The liquidator must, no later than 7 days after the end of the 3 month period referred to in subregulation (1), lodge the report with the Registrar.

Provisions as to applications for winding up

17. For the purposes of section 522(1)(c) of the Act, the Court must not make a winding up order in relation to an application for the winding up of a Foreign Company unless it is satisfied that the liquidator or provisional liquidator of the Foreign Company has requested, in writing, that an application be made to the Court for the winding up of the Foreign Company.

Lodging documents

18. For the purposes of the Act, a person must Lodge a document in the form and manner prescribed by regulations.

Licence applications

19. An application for a licence, registration or approval made under a Repealed Act prior to the commencement date is taken to be an application in relation to the same matter for an equivalent licence, registration or approval under the Act.

Managed Investment Schemes

20. A unit trust established under the Unit Trusts Act (Cap. 228) immediately before the commencement date is taken to have complied with the provisions of the Act in relation to Managed Investment Schemes until 6 months after the commencement date.

Prospectus requirements

21.—(1) Subject to regulation 23, every Prospectus must meet the requirements set out in the Act and the minimum content requirements set out in Schedule 1.

(2) The Reserve Bank may grant an exemption from any requirement of subregulation (1) on a case by case basis as it thinks fit.

Offer Document requirements

22.—(1) Subject to regulation 23, every Offer Document must meet the requirements set out in the Act and the minimum content requirements set out in Schedule 2.

(2) The Reserve Bank may grant an exemption from any requirement of subregulation (1) on a case by case basis as it thinks fit.

Managed Investment Scheme requirements

23.—(1) Every Prospectus or Offer Document in relation to a Managed Investment Scheme must meet the minimum content requirements set out in the policy issued by the Reserve Bank from time to time.

(2) The Reserve Bank may grant an exemption from any requirement of subregulation (1) on a case by case basis as it thinks fit.

Made this 24th day of December 2015.

A. SAYED-KHAIYUM
Attorney-General and Minister for Finance,
Public Enterprises, Public Service and Communications

SCHEDULE 1
(Regulation 21)

REQUIREMENTS FOR A PROSPECTUS

1. The following must be included in a Prospectus:
 - (a) a brief background/summary of the history of the business since inception of the Company;
 - (b) the timeframe for utilisation of the proceeds from the offer;
 - (c) an explanation of the risks of the industry in which the Company operates;
 - (d) an explanation of any proposed steps by the Company to mitigate or manage any identified risks;
 - (e) the occupation of each Director of the Company (if any);
 - (f) a statement that the Directors and senior management meet the fit and proper requirements as set out in the policy issued by the Reserve Bank;
 - (g) the most recent 3 years of Financial Statements which have been audited for a Financial Year which has ended within 6 months of the issue date of the Prospectus and in relation to those Financial Statements; and
 - (h) if the issue date of the Prospectus is more than 6 months since the end of the last Financial Year, the interim financial reports in the same form as the Financial Reports.

 2. An expert report that forms part of the Prospectus must be signed and dated by the expert.
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SCHEDULE 2
(Regulation 22)

REQUIREMENTS FOR AN OFFER DOCUMENT

1. The following must be included in an Offer Document:
 - (a) a brief background/summary of the history of the business since inception of the Company;
 - (b) the timeframe for utilisation of the proceeds from the offer;
 - (c) an explanation of the risks of the industry in which the Company operates;
 - (d) an explanation of any proposed steps by the Company to mitigate or manage any identified risks;
 - (e) the occupation of each Director of the Company (if any);
 - (f) whether or not any Director, is or has been—
 - (i) involved in an application under any bankruptcy or Insolvency laws that was filed and not struck out against such person or any partnership in which he or she was a partner or any company of which he or she was a Director;
 - (ii) convicted in a criminal proceeding or is a named subject of a pending criminal proceeding; or
 - (iii) the subject of any order, judgment or ruling of any court of competent jurisdiction or the Reserve Bank temporarily enjoining him or her from acting as an Investment Adviser, Dealer, Director or employee of a Financial Institution and engaging in any type of business practice or activity;
 - (g) a statement that the Directors and senior management meet the fit and proper requirements as set out in the policy issued by the Reserve Bank;
 - (h) the most recent 3 years of Financial Statements which have been audited for a Financial Year which has ended within 6 months of the issue date of the Offer Document and in relation to those Financial Statements; and
 - (i) if the issue date of the Offer Document is more than 6 months since the end of the last Financial Year, the interim financial reports in the same form as the Financial Reports.
2. An expert report that forms part of the Offer Document must be signed and dated by the expert.