

**The text below is an internet version of the Rules made by the Financial Services Commission under section 93 of the Financial Services Act and section 155 of the Securities Act and is for information purpose only. Whilst reasonable care has been taken to ensure its accuracy, the authoritative version is the one published in the *Government Gazette* of Mauritius (GN No 108 of 2017) read together with subsequent amendments in the *Government Gazette* of Mauritius.**

## **Securities Act 2005**

**FSC Rules made by the Financial Services Commission under Section 93 of the Financial Services Act and Sections 70 and 155 of the Securities Act.**

*(Consolidated version with amendments as at 16 October 2023)*

### **1. Short title**

These Rules may be cited as the Securities (Preferential Offer) Rules 2017.

### **2. Interpretation**

In these Rules –

“Act” means the Securities Act 2005;

“debt security” includes debentures, debenture stock, loan stock, bonds, convertible bonds or other similar instruments;

“issuer” means –

- (a) any issuer that issues debt securities;
- (b) any issuer that issues securities other than debt securities to 25 investors in Mauritius or above; or
- (c) any reporting issuer;

“preferential offer” means-

- (a) an offer or issue of securities that is a private placement;
- (b) an offer or issue of securities that is made only to sophisticated investors; or
- (c) an offer or issue of securities only to related corporations of the issuer of the securities;

“professional collective investment scheme” means a collective investment scheme offering its shares by way of private placement as referred to in regulation 75(1)(b) of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008.

**Amended by [GN No. 79 of 2021], [GN 152 of 2023]**

### **3. Application of Rules**

- (1) Unless otherwise provided in these Rules, these Rules shall not apply to an offer of securities by a collective investment scheme or a closed-end fund, nor shall they apply to the Permitted CIS Activities.
- (2) Unless otherwise provided in these Rules, these Rules shall not apply to, nor shall they be applicable as a result of, an offer of securities by an issuer incorporated or established outside Mauritius or an issuer who exclusively offers its securities to persons resident outside Mauritius.
- (3) These Rules shall not apply to an issue of debt securities to subscribers under a privately negotiated agreement without any solicitation.
- (4) These Rules shall not apply to a public offer of securities governed under Securities (Public Offers) Rules 2007.

**Amended by [GN No. 79 of 2021], [GN No. 224 of 2021], [GN 152 of 2023]**

### **4. Conditions to be fulfilled**

- (1) Any preferential offer of securities, whether listed or not, made by an issuer, shall be in compliance with the Act, Regulations and FSC Rules made thereunder and rules of the relevant securities exchange, where applicable.
- (2) Any preferential offer of securities, whether listed or not, by an issuer shall be made in accordance with its constitution.
- (3) (a) A preferential offer for debt securities under these Rules shall be approved according to the requirements of issuer's constitutional documents.  
  
(b) A preferential offer for equity securities under these Rules shall be approved by shareholders and the issuer shall annex to the notice of the shareholders' meeting such information as may be relevant for the shareholders to take an informed decision.

**Amended by [GN No. 79 of 2021]**

- (4) The information referred to in paragraph (3) shall at least include –
  - (a) the objectives of the issue;
  - (b) the total number of securities to be issued;
  - (c) the price at which or the price band within which the allotment is proposed;

- (d) the basis on which the price has been arrived at;
  - (e) the class or classes of persons to whom the allotment is proposed to be made;
  - (f) the proposed time within which the allotment shall be completed;
  - (g) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them, wherever applicable;
  - (h) any change in control in the issuer subsequent to the preferential offer;
  - (i) the number of persons to whom allotment on a preferential offer basis have already been made during the year and the corresponding number of securities as well as the price of each security;
  - (j) the justification for the allotment to be made for consideration other than cash; and
  - (k) the shareholding pattern prior to and after the issue of securities.
- (5) For the purposes of this Rule, “price” means a price which is fair to the existing shareholders of the issuer.

## **5. Allotment of securities**

The allotment of securities by way of preferential offer shall be completed within a period of 12 months from the date of a shareholder’s approval referred to in Rule 4(3).

**Amended by [GN No. 79 of 2021]**

## **6. Notification to the Commission**

- (1) The issuer shall, not later than 10 days after the preferential offer is made, notify the Commission of that offer.
- (2) The notification under paragraph (1) shall be accompanied by –
  - (a) the preferential offer document prepared in accordance with rule 7;
  - (b) the information annexed to the notice of the shareholders’ meeting referred to under Rule 4(3)(b); and
  - (d) minutes of the shareholders’ meeting in respect of the preferential offer Rule 4(3)(b).

**Amended by [GN No. 79 of 2021]**

- (3) Each page of the copy of the documents submitted to the Commission pursuant to paragraph (1), shall be certified by at least one director of the issuer.
- (4) The director referred to in paragraph (3) shall accept full responsibility for the contents of the documents submitted to the Commission.
- (5) Rule 6 shall not apply to an issue of debt securities.

**Amended by [GN 152 of 2023]**

## **7. Contents of the preferential offer document**

The preferential offer document shall include the –

- (a) date of the preferential offer document;
- (b) amount of preferential offer, including the number, par value and issue price of each share or security;
- (c) risk factors, and management plans for reduction of such risks;
- (d) date and time of opening and closing of the subscription;
- (e) purposes of raising fund through preferential offer, specifying clearly the amount of fund utilisation, and identifying various proposed projects with the amount of expenditure for each project and also a description of such projects;
- (f) latest audited financial statements of the issuer;
- (g) -
- (h) -
- (i) -
- (j) length of time during which the issuer has carried on business;
- (k) implementation schedule for completion of each segment of the project along with the proposed dates of trial and commercial operation of the proposed project;
- (l) -
- (m) name, address, description and occupation of officers of the issuer;
- (n) name of the public listed companies under common management of the issuer, if any.
- (o) a statement signed by all the directors of the issuer to the effect that they accept responsibility for the contents of the preferential offer document and that, to the best of their knowledge and belief, and after making reasonable inquiries, the preferential offer document complies with the Act, any regulations made under the Act or any FSC rules; and

- (p) a statement to the effect that the Commission takes no responsibility for the contents of the preferential offer document.

**Amended by [GN No. 79 of 2021]**

## **8. Listing on a Securities Exchange**

For an issuer of debt securities who is targeting 25 investors in Mauritius or more, that issuer shall –

- (a) seek a listing on a securities exchange; or
- (b) be rated by a credit rating agency licensed by an authority which is identified in Appendix A of the International Organisation of Securities Organisation Multilateral Memorandum of Understanding (IOSCO MMoU) as a signatory to the IOSCO MMoU.

**Amended by [GN No. 79 of 2021] [GN No. 224 of 2021]**

## **9. Minimum cost of subscription for a private placement**

(1) For the purposes of section 2 of the Act, an offer of securities shall amount to a private placement where-

- (a) the total cost of subscription or purchase for each person to whom the offer is made is for an amount of at least 1 million rupees; and
- (b) each person subscribes or purchases for his own account and no publicity is made by the person making the offer.

(2) Notwithstanding paragraph (1), for the purposes of the Act, an offer of securities by a professional collective investment scheme shall amount to a private placement where-

- (a) the total cost of subscription or purchase for each person to whom the offer is made is for an amount of at least 200,000 United States dollars; and .
- (b) each person subscribes or purchases for his own account and no publicity is made by the person making the offer.

## **9A. Registration**

(1) Any issuer of debt securities shall register any offer of debt securities with the Commission prior to each issuance of debt securities, in the form and manner specified in paragraph (2).

- (2) Any application for registration shall be made at least 14 days prior to the issuance of the debt securities with respect to every offer of debt securities and accompanied with the information specified in the First Schedule.

**Amended by [GN 152 of 2023]**

#### **9B. Past issuance of debt securities**

- (1) Any issuer who has issued debt securities during the period of 31 August 2016 to 31 October 2023, shall within 30 days from the commencement of these Rules submit to the Commission the information, in such form and manner, as specified in the Second Schedule.
- (2) For the purposes of paragraph (1), ‘debt securities’ means debt securities that are still outstanding as at 31 October 2023.

**Amended by [GN 152 of 2023]**

#### **10. Commencement**

These Rules shall be come into operation on 1 July 2017.

Made by the Financial Services Commission on 1 June 2017.

**FIRST SCHEDULE**  
(Rule 9A)

1. the objectives of the issue;
2. the total number of securities to be issued;
3. the price at which or the price band within which the issue is proposed;
4. the basis on which the price has been arrived at;
5. the class or classes of persons to whom the issue is proposed to be made;
6. the proposed time within which the issue shall be completed;
7. the names of the proposed investors and the percentage of post preferential offer of debt securities that may be held by them, wherever applicable;
8. the number of persons to whom issue on a preferential offer basis have already been made during the year and the corresponding number of securities as well as the price of each security;
9. a statement signed by all the directors of the issuer acknowledging that the Commission takes no responsibility for the contents of any offer document and shall not be liable to any action in damages suffered as a result of any offer registered by the Commission;
10. the justification for the issue to be made for consideration other than cash; and
11. a statement signed by all the directors of the issuer to the effect that they accept responsibility for the contents of the preferential offer document and that, to the best of their knowledge and belief, and after making reasonable inquiries, the preferential offer document complies with the Securities Act, any applicable regulations made under the Securities Act, any applicable FSC Rules and, if applicable, the Guidelines for Issue of Corporate and Green Bonds.

**Amended by [GN 152 of 2023]**

\_\_\_\_\_

**SECOND SCHEDULE**  
(Rule 9B)

<b>Name of issuer</b>	
<b>Date of the Preferential Offer Document</b>	
<b>Date of issues/tranches</b>	
<b>Type of security (Bond/Debentures)</b>	
<b>Amount of preferential offer, including the number, par value and issue price of each share or security</b>	
<b>Number of investors</b>	
<b>Name(s) of substantial investor(s) (5% or more)</b>	
<b>Purpose</b>	
<b>Green Project (Yes/No)</b>	

Amended by [GN 152 of 2023]

\_\_\_\_\_