Revised Regulations of Anguilla: S13-5

SECURITIES ACT (R.S.A. c. S13)

CONTINUING DISCLOSURE OBLIGATIONS OF ISSUERS REGULATIONS

Note: These Regulations are enabled under sections 174 and 95 of the Securities Act, R.S.A. c. S13.
(Am. in L.R. 15/12/2006)

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PART 1

PRELIMINARY

Application

1. (1) These Regulations apply to issuers of securities, which are shares, warrants or corporate debt securities and which are publicly offered or publicly traded.

(2) For the purpose of these Regulations, securities are "publicly offered" if the issuer has issued the securities pursuant to a prospectus approved by the Commission under the Act.

(3) For the purpose of these Regulations, securities are "publicly traded", irrespective of when issued, if—

(a) the securities are listed or otherwise admitted to dealing on a securities exchange; or

(b) the Commission so determines, and notifies the issuer in writing to this effect, having regard to the frequency or volume of trading in the issuer's securities wherever and however the trading takes place.

Interpretation

2. In these Regulations—

"associate", in relation to any director or chief executive, means—

(a) the spouse;

(b) any son, daughter, step son or step daughter under the age of 18 years of the director or chief executive, or of the spouse of such director or chief executive; or

(c) any company of which the director or chief executive is a substantial shareholder, and the holding company or subsidiary of the company of which the director or chief executive is a substantial shareholder;

"chief executive" means a person employed by an issuer who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the issuer;

"director" includes any person who occupies the position of a director, by whatever name called;

"financial year" means the period in respect of which any profit and loss account of an issuer laid before its members in a general meeting is made up, whether that period is a year or not;

"principal activity", in relation to an issuer and its subsidiaries, means an activity which in the financial year contributes more than 10% of—

(a) the aggregate turnover; or

(b) the aggregate results of all activities that—

(i) showed profits, or

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(ii) showed losses;

"prospectus" means a prospectus or draft prospectus approved by the Commission under the Act;

"securities exchange" means a securities exchange licensed by the Commission under the Act;

"substantial shareholder", in relation to an issuer, means a person entitled to exercise, or control the exercise of, 5% or more of the voting power at any general meeting of the issuer; and

"transaction" includes two or more related transactions.

PART 2

DISCLOSURE OBLIGATIONS

General obligation

3. (1) Generally and apart from compliance with all the specific requirements of these Regulations, an issuer shall notify—

(a) the securities exchange on which its securities are listed or otherwise admitted to dealing;

(b) the Commission;

(c) its members; and

(d) other holders of its securities;

without delay of any material information that has not been previously disclosed by the issuer and which information—

(e) is necessary to enable them and the public to appraise the financial position of the issuer and its subsidiaries;

(f) is necessary to avoid the establishment of a false market in its securities; or

(g) would be likely to bring about a material change in the price of its securities.

(2) Subsection (1) shall not apply—

(a) with regard to information about impending developments or matters in the course of negotiation, provided that if the issuer has reason to believe that a leak has occurred or is likely to occur and, in either case, the development or matter in question is such that knowledge of it would be likely to lead to a substantial movement in the price of its securities, the issuer must without delay notify the securities exchange and at least give a warning announcement to the effect that the issuer expects shortly to release information which may lead to such a movement; or

(b) if the securities exchange is satisfied by the issuer that disclosure to the public of information under subsection (1) might prejudice the issuer's legitimate interests and the securities exchange grants a dispensation from the requirement of subsection (1).

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Delivery of accounts

4. The issuer shall send to—

(a) the securities exchange;

(b) the Commission;

(c) every member of the issuer; and

(d) every holder of securities (not being bearer securities) issued by the issuer;

a copy of the issuer's annual accounts, auditor's report and directors' report for the previous financial year of the issuer, not less than 21 days before the date of the issuer's annual general meeting nor more than 3 months after the end of that financial year.

Information to accompany directors' report

5. The issuer shall include in or with the annual directors' report—

(a) a description of the principal activities of the issuer and its subsidiaries and, where two or more activities are so described, a statement giving in respect of each activity the turnover and contribution to operating profit;

(b) a geographical analysis of consolidated turnover and contribution to trading results of trading operations carried on by the issuer and its subsidiaries outside Anguilla;

(c) an audited consolidated financial statement;

(d) a statement showing—

(i) the name of every subsidiary, its principal country of operation, its country of incorporation and its main business, and

(ii) particulars of the issued share capital and debt securities of every subsidiary,

provided that if, in the opinion of the directors of the issuer, the number of subsidiaries is such that compliance with this paragraph would result in particulars of excessive length being given, compliance shall not be required except in the case of subsidiaries carrying on a business the results of which, in the opinion of the directors, materially affected the amount of the profit or loss of the issuer or the amount of the assets of the issuer;

(e) a statement as at the end of the relevant financial year showing—

(i) the interests of each director and chief executive of the issuer in the equity or debt securities of the issuer or any subsidiary, and of the associates of the director and chief executive in so far as is known or may be ascertained by reasonable enquiry, and

(ii) the details of any right to subscribe for equity or debt securities of the issuer granted to any director or chief executive of the issuer, and of the associates of such director and chief executive in so far as is known or may be ascertained by reasonable enquiry, and of the exercise of any such right;

(f) the statement required by paragraph (d) must—

(i) distinguish between beneficial and non-beneficial interests, and

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(ii) specify the company in which securities are held, the class to which those securities belong and the number of such securities held;

(g) in the event of operating results shown by the accounts for the period under review differing materially from any published forecast made by the issuer, an explanation for the difference;

(h) a statement by the directors as to the reasons for any significant departure from applicable standard accounting practices in Anguilla;

(i) a statement as at the end of the financial year showing as regards first bank loans and overdrafts and, secondly, other borrowings of the issuer and its subsidiaries, the aggregate amounts repayable—

(i) on demand or within a period not exceeding one year,

(ii) within a period of more than one year but not exceeding 2 years,

(iii) within a period of more than 2 years but not exceeding 3 years, and

(iv) within a period of more than 3 years;

(j) in respect of the financial year, a statement of the amount of interest capitalised by the issuer and its subsidiaries during the year;

(k) a statement as to the period unexpired of any service contract, which is not determinable by the employer within one year without payment of compensation (other than any statutory compensation), of any director proposed for election at the forthcoming annual general meeting or, if there are no service contracts, a statement of that fact;

(l) summary particulars of any contract of significance subsisting during or at the end of the financial year in which a director of the issuer is or was materially interested, either directly or indirectly, or if there has been no such contract, a statement of that fact;

(m) summary particulars of any contract of significance between the issuer, or one of its subsidiary companies, and a controlling shareholder or any of its subsidiaries;

(n) summary particulars of any contract of significance for the provision of services to the issuer and its subsidiaries by a controlling shareholder or any of its subsidiaries;

(o) a summary, in the form of a comparative table, of the results and of the assets and liabilities of the issuer and its subsidiaries, for the last 5 financial years, with any necessary explanations or adjustments for changes in capital to make the figures fully comparable one year with another; and

(p) any other material information.

Interim reports

6. (1) The issuer shall prepare in respect of the first 3 months of each financial year of the issuer, unless that financial year is of 6 months or less, an interim report containing the information required by subsection (2) and, not later than 30 days after the end of that period of 3 months, the issuer shall—

(a) publish in a newspaper, having a national circulation, an announcement containing the information required by subsection (2) to be contained in the interim report, the day after approval by or on behalf of the board;

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(b) supply the Commission immediately on publication with the names of the relevant newspaper and the date of the publication; and

(c) as soon as reasonably practicable after such publication, send to the securities exchange and to every member and holder of its securities a copy of the interim report.

(2) Each interim report referred to in subsection (1) shall contain at least the following information stated in respect of the issuer and its subsidiaries—

(a) turnover;

(b) profit (or loss) before taxation and extraordinary items with separate disclosure of any items included which are exceptional because of size or incidence;

(c) taxation on profits and the basis of computation;

(d) profit attributable to minority interests;

(e) profit attributable to shareholders before extraordinary items;

(f) extraordinary items (net of taxation);

(g) profit attributable to shareholders;

(h) amount of dividend paid or proposed on each class of shares (with particulars of each such class) and the amounts absorbed thereby (or an appropriate negative statement);

(i) transfers to and from reserves;

(j) earnings per share calculated on the basis of profits before extraordinary items;

(k) comparative figures of the matters specified in paragraphs (a) to (j) inclusive for the corresponding previous period;

(l) a statement as at the end of the 6 monthly period showing the interests of each director and chief executive of the issuer, and of their associates in so far as is known or may be ascertained after reasonable enquiry, in the share capital of the issuer and its subsidiaries; the statement shall distinguish between beneficial and non-beneficial interests, and specify the company in which shares are held and the number of such shares.

(3) If the accounting information given in an interim report has not been audited that fact must be stated and if the issuer's auditor has audited the accounting information contained in an interim report, that report including any qualifications shall be set out in the interim report.

(4) Any preliminary announcement of results for the full year shall also contain the information required by subsection (2).

Acquisition or disposal of assets

7. (1) In the case of—

(a) an acquisition or disposal of assets by the issuer or any of its subsidiaries where—

(i) the assets being acquired or disposed of represent an amount in excess of 15% of the value of the issuer's assets or consolidated assets, as the case may be, as disclosed in the last audited accounts,

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(ii) the assets are acquired from or disposed of to any of the issuer's or its subsidiaries' directors or chief executive, or any associate of such director or chief executive, or

(iii) the assets being acquired or disposed of are an interest in any company of which a substantial shareholder is a director or chief executive of the issuer or any subsidiary, or any associate of the director or chief executive; or

(b) any disposal of assets by the issuer or any of its subsidiaries where the net profit before taxation earned by the assets which are the subject of the disposal is in excess of 15% of the issuer's consolidated pre-tax profit disclosed in the last audited accounts;

the issuer shall comply with the disclosure requirements of subsection (2).

(2) Where subsection (1) applies, the issuer shall notify the securities exchange, the Commission and every member and holder of its securities without delay of the transaction including the following details—

(a) the date of the transaction and the parties;

(b) a general description of the nature of the assets and, if these are shares in whole or part, the name and general description of the activities of the company in which the shares are or were held;

(c) the total consideration and other material terms;

(d) in the case of a transaction referred to in subparagraph (1)(a)(i) or paragraph (1)(b)—

(i) the basis of the valuation placed on the assets at the time of acquisition or disposal, and

(ii) in the case of a disposal, the excess or deficit of the proceeds over or under the book value;

(e) in the case of a transaction referred to in subparagraph (1)(a)(ii) or (iii), the name of the director, or chief executive or associate concerned and—

(i) in the case of a director or chief executive, the office held,

(ii) in the case of an associate of a director or the chief executive, the nature of the relationship and the name of that director or chief executive and the office held.

Transactions with related companies where the issuer is a subsidiary

8. (1) Where a transaction specified in subsection (2) takes place between—

(a) the issuer and its holding company;

(b) the issuer and any subsidiary of its holding company other than a subsidiary of the issuer;

(c) a subsidiary of the issuer, and the holding company of the issuer; or

(d) a subsidiary of the issuer and any subsidiary of its holding company other than the issuer or any of its subsidiaries;

the issuer shall comply with the disclosure requirements of subsection (3).

(2) For the purpose of this section, "transaction" means—

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(a) an arrangement or agreement where the issuer directly or indirectly grants a loan or gives other financial assistance;

(b) an arrangement or agreement where the issuer provides security, whether by guarantee or otherwise, for the discharge of an obligation; or

(c) a transaction other than in the ordinary course of business.

(3) Where subsection (1) applies, the issuer shall notify the securities exchange, the Commission and every member and holder of its securities without delay of the transaction including the following details—

(a) the date of the transaction and the parties;

(b) the general nature of the transaction and, where the transaction involves the making of a loan, the giving of financial assistance or the giving of any security, its amount or value.

Prescribed information to shareholders

9. An issuer shall ensure that all the necessary facilities and information are available to enable holders of its listed securities to exercise their rights and, in particular, shall—

(a) publish, in a newspaper having a national circulation, notice of every general meeting;

(b) inform holders of securities of the holding of meetings which they are entitled to attend;

(c) enable them to exercise their right to vote, where applicable; and

(d) publish notices or distribute circulars giving information on—

(i) the allocation and payment of dividends and interest,

(ii) the issue of new securities, including arrangements for the allotment, subscription, renunciation, conversion or exchange of the securities, and

(iii) redemption or repayment of the securities.

Board meetings

10. The date fixed for a board meeting at which decisions on dividends, the annual results or the half-yearly report are expected to be made or at which any announcement of such matters is to be approved shall be notified to the securities exchange at least 10 days in advance.

Board decisions

11. The issuer shall inform the securities exchange and the Commission immediately after approval by or on behalf of the board of—

(a) a decision to declare, recommend or pay any dividend or to make any other distribution on its securities, and the rate and amount of the dividend or other distribution;

(b) a decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;

(c) a preliminary announcement of profits or losses for any year, half-year or other period;

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(d) a proposed change in the capital structure, including any redemption of its convertible securities; and

(e) a decision to change the general character or nature of the business of the issuer or its subsidiaries.

Securities exchange and Commission to be notified of certain decisions

12. The issuer shall inform the securities exchange and the Commission immediately of any decisions made in regard to—

(a) an alteration to the issuer's constitution;

(b) a proposed change in its capital structure including the structure of its listed debt securities;

(c) a change in the rights attaching to any class of securities and a change in the rights attaching to any shares into which debt securities are convertible or exchangeable;

(d) any tender offers;

(e) a change in its directorate, auditor or chief executive; and

(f) bankruptcy or receivership.

Basis of allotment

13. The issuer shall inform the securities exchange and the Commission of the basis of allotment of securities offered to the public for subscription or sale and of the results of any rights issue and, if applicable, of the basis of acceptance of excess applications, not later than the morning of the next business day after the allotment letters or other relevant documents of title are posted.

Winding-up and liquidation

14. (1) The issuer shall inform the securities exchange and the Commission on the happening of any of the following events as soon as it comes to the attention of the issuer—

(a) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator in respect of the issuer, its holding company or any major subsidiary;

(b) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound up by way of members' or creditors' voluntary winding-up;

(c) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group;

(d) the making of any judgment, declaration or order by a court or tribunal of competent jurisdiction whether on appeal or at first instance, which may adversely affect the issuer's enjoyment of a portion of its assets which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group.

(2) For the purposes of subsection (1), a "major subsidiary" means a subsidiary representing 15% or more of the consolidated net tangible assets or pre-tax trading profits of the group.

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Commission may require information

15. (1) The Commission may, at any time, require an issuer—

(a) to provide to it information in the form and within the time limit required by the Commission; and

(b) to publish that information in the form and within the time the Commission considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.

(2) If an issuer fails to comply with a requirement to publish information, the Commission may itself publish the information and may treat the non-compliance in any manner it deems fit.

PART 3

SANCTIONS

Action against an issuer

16. (1) If the Commission considers that an issuer has contravened any of these Regulations, the Commission may do one or more of the following—

(a) fine the issuer a sum not exceeding $100,000;

(b) censure the issuer;

(c) publish the fact that the issuer has been fined or censured for contravening these Regulations;

(d) suspend trading in or discontinue the admission to dealing of the issuer's securities.

(2) In the event of an issuer being fined under paragraph (1)(a), the issuer must disclose details of the fine in its audited accounts relating to the period in which the fine is imposed.

(3) The Commission may, at any time, require an issuer—

(a) to provide to it information in the form and within the time limit required by the Commission; and

(b) to publish that information in the form and within the time the Commission considers appropriate for the purpose of protecting investors or maintaining a fair and orderly market in its securities.

(4) If an issuer fails to comply with a requirement to publish information, the Commission may itself publish the information.

Action against a director

17. If the Commission considers that a contravention of these Regulations by an issuer is due to a failure by all or any of its directors to discharge their responsibilities, the Commission may, in addition to any action it may take against an issuer under section 16, do one or more of the following—

(a) fine the relevant directors a sum not exceeding $50,000;

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(b) censure the relevant directors;

(c) publish the fact that these directors have been fined or censured;

(d) in the case of wilful or persistent failure by a director to discharge his responsibilities, state publicly that in its opinion the retention of office by the director is prejudicial to the interests of investors;

(e) if the director remains in office following a public censure by the Commission under paragraph (d), suspend trading in or discontinue the admission to dealing of the issuer's securities.

Notification of sanction

18. If the Commission proposes to take any of the steps described in section 16 or 17, unless the Commission considers that maintenance of an orderly market or the protection of investors otherwise requires, the Commission shall, in relation to the party concerned—

(a) give advance notice of the Commission's proposed action;

(b) invite the making of representations to the Commission either in writing or in person;

(c) advise of the decision as soon as practicable after it is made; and

(d) advise in writing of the reasons for any decision that is unfavourable.

PART 4

CITATION

Citation

19. These Regulations may be cited as the Continuing Disclosure Obligations of Issuers Regulations, Revised Regulations of Anguilla, S13-5.

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