Revised Regulations of Anguilla: S13-8

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

PROSPECTUS REGULATIONS

Note: These Regulations are enabled under sections 174 and 93 of the Securities Act, R.S.A. c. S13.

(Am. in L.R. 15/12/2006)

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SCHEDULE: Form and Content of Prospectus

Interpretation

1. In these Regulations—

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

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

"securities exchange" means a securities exchange licensed by the Commission.

Exemptions

2. (1) A public offer of securities shall not be required to be the subject of a prospectus if any one of the conditions specified in subsection (2) is satisfied in relation to the offer.

(2) The following are the conditions specified—

(a) the securities offered are not generally advertised to the public;

(b) the securities are offered in connection with a *bona fide* invitation to enter into an underwriting agreement with respect to them;

(c) the securities are offered by the issuer to—

(i) members or employees of the issuer,

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(ii) members of the families of any such members or employees, or

(iii) holders of debentures of the issuer;

(d) the total consideration payable for the securities cannot exceed $25,000 even in the case where the offering is made pursuant to paragraph (c);

(e) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer.

(3) If a class of shares has been admitted to dealings on a securities exchange, the Commission may authorise the making of an offer without a prospectus, provided that—

(a) the number or estimated market value of the shares amounts to less than 10% of the number or of the corresponding market value of shares of the same class already admitted to dealings; and

(b) up-to-date information equivalent to that required by this section is available as a result of the requirements of that exchange.

Form and content of prospectus

3. (1) A prospectus must contain all information that investors and their professional advisers would reasonably require and expect to find there for the purpose of making an informed assessment of—

(a) the assets and liabilities, financial position, profits and losses, purpose or use of proceeds, risk of offering and prospects of the issuer of the securities; and

(b) the rights attaching to those securities.

(2) In particular a prospectus must contain, subject to section 5 and to subsections (4) and (5), the information specified in the Schedule.

(3) The information in a prospectus shall be presented in as easily analysable and comprehensible a form as possible.

(4) If, on the occasion of their admission to dealings on a securities exchange, shares are offered on a pre-emptive basis to some or all of the existing shareholders, the Commission may authorise the omission from a prospectus of specified information provided that up-to-date information equivalent to that which would otherwise be required by this section is available as a result of the requirements of that exchange.

(5) Where a person—

(a) makes an offer to the public in Anguilla of securities which the person proposes to issue; and

(b) has, within the 12 months preceding the date on which the offer is first made, published a full prospectus relating to a different class of securities which the person has issued, or to an earlier issue of the same class of securities;

the person may publish, instead of a full prospectus, a prospectus which contains only the differences which have arisen since the publication of that full prospectus and which are likely to influence the value of the securities, provided that the prospectus is accompanied by that previously published full prospectus.

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(6) For the purposes of subsection (5), a "full prospectus" is one that contains the information specified in the Schedule (other than information whose omission is authorised by the Commission by or under subsection (4) or section 5).

Exceptions

4. The Commission may authorise the omission from a prospectus of information whose inclusion would otherwise be required by these Regulations if the Commission is satisfied that—

(a) disclosure of that information would be contrary to the public interest;

(b) the information is of minor importance only, and is not likely to influence assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects; or

(c) disclosure of that information would be seriously detrimental to the issuer and its omission would not be likely to mislead investors with regard to facts and circumstances necessary for an informed assessment of the securities.

Advertisements in connection with public offer

5. No advertisement shall be issued to the public in Anguilla announcing a public offer of securities for which a prospectus is required under these Regulations by the person proposing to make the offer unless the advertisement states that—

(a) the Commission has approved the prospectus relating to the public offer; and

(b) a prospectus is or will be published, as the case may be, and gives an address in Anguilla from which it can be obtained or will be obtainable.

Citation

6. These Regulations may be cited as the Prospectus Regulations, Revised Regulations of Anguilla, S13-8.

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SCHEDULE

(Section 3)

FORM AND CONTENT OF PROSPECTUS

PART 1

GENERAL REQUIREMENTS

1. The name of the issuer, the address of its registered office and the date and location of incorporation.

2. The names and functions of the directors of the issuer.

3. The date of publication of the prospectus.

4. A statement that a copy of the prospectus has been delivered to the Commission for approval in accordance with these Regulations.

5. A statement that the prospectus has been drawn up in accordance with these Regulations.

6. The following words, "If you are in any doubt about the contents of this document you should consult a person licensed under the Act who specialises in advising on the acquisition of shares and other securities", or words to the like effect.

PART 2

THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS

7. The names, addresses (home or business) and functions of those persons responsible for the prospectus or any part of the prospectus, specifying the part.

8. A declaration by the directors of the issuer (or, if the offeror is not the issuer, by the directors of the offeror) that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect the import of the information.

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PART 3

THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER

9. A description of the securities being offered, including the class to which they belong and a description of the rights attaching to them including (where applicable)—

(a) if the securities are shares, rights as regards—

(i) voting,

(ii) dividends,

(iii) return of capital on the winding up of the issuer,

(iv) redemption,

and a summary of the consents necessary for the variation of any of those rights;

(b) if the securities are debentures, rights as regards—

(i) interest payable,

(ii) repayment of principal.

10. The dividend policy of the issuer, and in particular whether it has paid dividends within the last 5 years (and, if so, how much and when), and whether the issuer expects to pay dividends over the next 2 years.

11. The date(s) (if any) on which entitlement to dividends or interest arises.

12. The procedure for the exercise of any right of pre-emption attaching to the securities.

13. Any restriction on the free transferability of the securities being offered.

14. (1) A statement as to whether—

(a) the securities being offered have been admitted to dealings on a licensed securities exchange; or

(b) an application for such admission has been made.

(2) If no application for dealings has been made, or an application has been made and refused, a statement as to whether or not there are, or are intended to be, any other arrangements for there to be dealings in the securities and, if there are, a brief description of the arrangements.

15. The purpose for which the securities are being issued.

16. The number of securities being issued.

17. The number of securities being offered.

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18. The total proceeds expected to be raised by the offer and the expected net proceeds, after deduction of the expenses, of the offer.

19. Details as to the use of the proceeds of the issue and in particular their use for capital expenditure, debt reduction, acquisitions, working capital or other.

20. Where the prospectus relates to shares which are offered for subscription, particulars as to—

(a) the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following—

(i) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue,

(ii) any preliminary expenses payable by the issuer and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the issuer,

(iii) the repayment of any money borrowed by the issuer in respect of any of the foregoing matters,

(iv) working capital; and

(b) the amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

21. The names of any persons underwriting or guaranteeing the offer.

22. The amount or the estimated amount of the expenses of the offer and by whom they are payable, including a statement as to any commission payable by the issuer to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for the securities.

23. The names and addresses of the paying agents (if any).

24. The period during which the offer of the securities is open.

25. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.

26. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.

27. The arrangements during the period prior to the delivery of the securities being offered relating to the monies received from applicants including the arrangements for the return of monies to applicants where their applications are not accepted in whole or in part and the timetable for the return of the monies.

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PART 4

GENERAL INFORMATION ABOUT THE ISSUER AND ITS CAPITAL

28. The date and place of incorporation of the issuer. In the case of an issuer not incorporated in Anguilla, the address of its principal place of business in Anguilla.

29. The legal form of the issuer, the legislation under which it was formed and (if different) the legislation now applicable to it.

30. A summary of the provisions in the issuer's constitution determining its objects.

31. The amount of the issuer's authorised share capital and any limit on the duration of the authorisation to issue share capital.

32. The amount of the issuer's issued share capital.

33. The number and particulars of any listed and unlisted securities issued by the issuer not representing share capital.

34. The number of shares of each class making up each of the authorised and issued share capital, the nominal value of the shares and, in the case of the issued share capital, the amount paid up on the shares.

35. If the issuer is a member of a group, a brief description of the group and of the issuer's position in it, stating, where the issuer is controlled by another company, the name of its controlling company.

36. In so far as the offeror has the information, an indication of the persons, who, directly or indirectly, jointly or severally, exercise or could exercise control over the issuer and particulars of the proportion of the issuer's voting capital held by such persons.

PART 5

THE ISSUER'S PRINCIPAL ACTIVITIES

37. A description of the issuer's principal activities and any exceptional factors that have influenced its activities.

38. A statement of any dependence of the issuer on patents or other intellectual property rights, licences or particular contracts, where any of these are of fundamental importance to the issuer's business.

39. With regard to risk factors—

(a) list in order of importance the factors which the issuer considers to be the most substantial risks to an investor in this offering amongst them the following—

(i) untested products,

(ii) cash-flow or liquidity problems,

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(iii) dependence upon a key supplier or customer,

(iv) management inexperience,

(v) nature of business,

(vi) absence of a trading market; and

(b) state which constitute the greatest threat that an investment may be lost in whole or part, or not provide an adequate return.

40. Information regarding investments in progress where they are significant.

41. Information on any legal or arbitration proceedings, active, pending or threatened against, or being brought by, the issuer or any member of its group which are having or may have a significant effect on the issuer's financial position.

PART 6

THE ISSUER'S FINANCIAL POSITION

42. Subject to section 44, the issuer's annual accounts (balance sheet and profit and loss account) for the last 3 years together with—

(a) a statement by the directors of the issuer that the accounts have been prepared in accordance with the Act, and that they accept responsibility for them, or a statement why they are unable to make that statement;

(b) the names and addresses of the auditors of the accounts;

(c) a copy of the auditor's reports on the account; and

(d) a statement by the auditors that they consent to the inclusion of their reports in the prospectus and accept responsibility for them, and have not become aware, since the date of any report, of any matter affecting the validity of that report at that date; or a statement why they are unable to make such a statement.

43. (1) If more than 9 months have elapsed at the date on which the offer is first made since the end of the last financial year in respect of which accounts are required to be included in the prospectus by section 42, there shall also be included in the prospectus—

(a) a report by a person qualified to act as an auditor, covering the period referred to in subsection (2), with respect to the state of affairs and profit or loss of the issuer together with the name and address of the person responsible for preparing the report; and

(b) a statement by the person preparing the report that the person consents to the inclusion of the report in the prospectus and accepts responsibility for it; or

(c) a statement why the person preparing the report is unable to make such a statement.

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(2) The period to be covered by the report is the period beginning at the end of the last financial year in respect of which accounts are required to be included in the prospectus by section 42 and ending on the latest practicable date before (but not in any event more than 3 months before) the date on which the offer is first made.

44. If an issuer has not been in existence for the whole of the last 3 years, the prospectus shall contain a report by a person qualified to act as an auditor which includes—

(a) details of the profit or loss of the issuer in respect of the period beginning with the date of its formation and ending on the latest practicable date before (but not in any event more than 3 months before) the date on which the offer is first made, and of its state of affairs at that latest practicable date; and

(b) a statement by the person responsible for the report that in that person's opinion it gives a true and fair view of the state of affairs and profit or loss of the issuer and that the person consents to the inclusion of the report in the prospectus and accepts responsibility for it; or a statement why the person is unable to make such a statement.

45. If the issuer is a parent company, the requirements of sections 42 and 44 shall apply to each of its subsidiaries.

PART 7

THE ISSUER'S ADMINISTRATION AND MANAGEMENT

46. A concise description of the directors' existing or proposed service contracts with the issuer or any subsidiary of the issuer, excluding contracts expiring, or determinable by the employing company without payment of compensation within 1 year, or an appropriate negative statement.

47. The aggregate remuneration paid and benefits in kind granted to the directors of the issuer during the last completed financial year of the issuer, together with an estimate of the aggregate amount payable and benefits in kind to be granted to the directors, and proposed directors, for the current financial year under the arrangements in force at the date on which the offer is first made.

48. The interests of each director of the issuer in the share capital of the issuer, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.

49. Full particulars of any contract or arrangement existing at the date of the prospectus in which a director of the issuer is materially interested, or an appropriate negative statement.

50. (1) A description (being the qualifications or area of expertise or responsibility) of every director or proposed director (or any other person who performs an important administrative, management or supervisory function) and particulars of the principal functions performed by each.

(2) A brief account of the business experience of each of these persons during the last 5 years.

(3) The nature of any family relationship between the persons mentioned in subsection (1).

(4) Indicate each director or proposed director that holds any other directorship.

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PART 8

RECENT DEVELOPMENTS IN
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51. The significant recent trends concerning the development of the issuer's business since the end of the last completed financial year of the issuer.

52. Information on the issuer's financial and trading prospects for at least the current financial year of the issuer.

53. The dates of and parties to all material contracts (not being contracts entered into in the ordinary course of business) entered into by the issuer and its subsidiaries within the 2 years immediately preceding the issue of the prospectus together with a summary of the principal contents of the contracts.

54. Where a profit forecast appears in the prospectus the principal assumptions, including commercial assumptions that the forecast is based on must be stated.

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