
Government Notice No. 108 of 2017

SECURITIES ACT 2005

**FSC Rules made by the Financial Services Commission under
Section 93 of the Financial Services Act 2007 and Sections 70
and 155 of the Securities Act 2005.**

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 securities to 25 investors or above; or
- (b) 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.

3. Application of Rules

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.

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 preferential offer 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.
- (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;

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- (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 approval referred to in Rule 4(3).

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); and
 - (d) minutes of the shareholders' meeting in respect of the preferential offer.
- (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.

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;

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- (g) the unaudited financial statements of the previous quarter and the projected cash flow statements, profit and loss accounts and balance sheet statements for the prospective three years, where the first set of audited financial statements of the issuer are not required to be prepared under the Companies Act as at the date of the offer;
 - (h) the group financial statements where the issuer forms part of a group/holding structure;
 - (i) summarised cash flow statement, profit and loss account and balance sheet, and dividend declared and paid for each of the three years immediately preceding the date of the preferential offer document or such shorter period during which the issuer was in commercial operation, together with the auditors' report;
 - (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) number of shares held by each director and persons who hold 15% or more of the paid-up share capital of the issuer on the date of the preferential offer document;
 - (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.

8. Listing on a Securities Exchange

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

- (a) seek a listing on a securities exchange; or
- (b) be rated by a credit rating agency licensed under the Financial Services Act.

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.

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- (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.

10. Commencement

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

Made by the Financial Services Commission on 1 June 2017.