

AMENDMENTS TO THE SECURITIES (PREFERENTIAL OFFER) RULES 2017 & PROPOSED BILL FOR THE INTRODUCTION OF THE VARIABLE CAPITAL COMPANY

1. Amendments to the Securities (Preferential Offer) Rules 2017

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.

As an integrated regulator in Mauritius for the financial services and global business sector, the Financial Services Commission ("FSC" or the "Commission") has always been on the forefront to ensure effective conduct and stability of the financial services system in Mauritius. Over the years, the FSC has developed as a pivotal pillar in the development, adoption and introduction of new rules and regulations based on intentional practice and standards to safeguard the status of Mauritius as a reliable capital market platform.

*With steady evolution in the capital market arena, the Commission constantly reviews all the existing rules to warrant consistency with the regulatory requirements and new legislations. In the same vein, the Securities (Preferential Offer) Rules 2017 ("**Preferential Offer Rules**") have recently been subject to certain amendments, as laid out below, and as reflected in the Securities (Preferential Offer) (Amendment) Rules 2021 (the "**Amendment Rules**").*

The objective of the recent amendments to the Preferential Offer Rules is to adjust to new developments and to promote the growth of the capital markets in Mauritius.

I. Extent of application of the Preferential Offer Rules

- Further to the Amendment Rules, the definition of 'issuer' under the Preferential Offer Rules has been amended and now includes:

- (i) any issuer that issues securities to 25 investors **in Mauritius** or above; or
- (ii) any reporting issuer.

Implication: *The Preferential Offer Rules will no longer apply to issuers that intend to offer and issue securities (by way of preferential offers, for e.g. private placements) exclusively to targeted investors resident outside Mauritius.*

- In addition to the above, Rule 3 of the Preferential Offer Rules has been replaced with the following:

"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.**"

Implication: *The Preferential Offer Rules, besides no longer being applicable to issuers that intend to offer and issue securities exclusively to targeted investors resident outside Mauritius, will also not apply to issuers incorporated or established outside Mauritius.*

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II. Requirements under the Preferential Offer Rules

Any preferential offer of securities, made by an issuer, whether listed or not, needs to be made in compliance with the Securities Act 2005, and other rules promulgated by the Commission.

With the advent of the recent amendments, the conditions to be fulfilled in terms of the Preferential Offer Rules have been relaxed for issuers of debt securities in order to facilitate and encourage the debt capital market in Mauritius. Going forward, **preferential offers involving debt securities would only need to be approved in accordance to the requirements contained in the issuer's constitutional documents.** Previously, shareholders' approval was required for any preferential offer of debt securities regardless of whether such requirement was provided in the issuer's constitutional documents.

As far as preferential offers of equity securities are concerned, the prerequisite to obtain shareholders' approval has been maintained.

The amended rules now read as follows:

"Rule 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."*

III. Requirement to be rated by a credit rating agency

The Preferential Offer Rules previously provided that *"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."*

The imposition of the above provisions following the coming into force of the Preferential Offer Rules in 2017, was viewed as being restrictive in the sense that the issuer of debt securities had to be rated by a credit rating agency licensed under the Financial Services Act.

The Amendment Rules now provide that the Issuer of debt securities may **henceforth be rated '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.**

As the apex regulator of the international securities market, the International Organisation of Securities Commissions ('IOSCO') shares the core objectives of protecting investors, maintaining fair, efficient and transparent markets and reducing systemic risk. The amendment thus provides issuers with more than a wider choice of credit rating agencies on the international level. More international rating agencies will be able to rate the debt securities issued by Mauritian issuers and this would potentially enhance the visibility of those securities in the international bond markets.

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IV. The Preferential Offer Document

Under Rule 6 of the Preferential Offer Rules, the issuer ought to notify the FSC of the issue of securities made, not later than 10 days after the said offer. This notification to the FSC needs to be accompanied by a Preferential Offer Document (prepared as per Rule 7 of the Preferential Offer Rules) along with the relevant annexures.

Further to the Amendment Rules, a few information as per Rule 7 is no longer required to be included in the Preferential Offer Document. This amendment would make the Preferential Offer Document more concise in terms of its content and in relation to its purpose. Information that has been removed under Rule 7 is as follows:

- *Unaudited financial statements of the previous quarter and the projected financials for the prospective three year, 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.*
- *The group financial statements where the issuer forms part of a group/holding structure.*
- *Summarised financial statements, dividend declared and paid for each of the three previous years before the Preferential Offer Document, together with the auditors' report.*
- *Disclosure of directors' interest in the share capital of the issuer.*

2. Proposed Bill for Introduction of the Variable Capital Company

I. Cabinet Decision

Further to the Cabinet meeting on 16 April 2021, the latter has agreed to the Ministry of Financial Services and Good Governance conveying drafting instructions to the Attorney General's Office for the preparation of the Variable Capital Companies Bill.

With a view to further enhancing the competitiveness of the Financial Services sector and diversifying the product base of the Mauritius International Financial Centre, a set of measures was announced in the Budget Speech 2020/21 in line with the recommendations of the 10-Year Blueprint for the sector which, inter alia, comprises the introduction of a new sphere of activity to be carried out by Variable Capital Companies in Mauritius.

The introduction of variable capital companies will indubitably add to the different varieties of fund structures available in Mauritius and making the country an attractive investment platform.

It is also noted from the Cabinet decision that a technical team has been constituted to ensure that the proposed Bill complies with the Anti Money Laundering/Combating the Financing of Terrorism requirements.

II. Proposed changes to the FSC rules to accommodate for the Variable Capital Company

The Cabinet also agreed to the Ministry of Financial Services and Good Governance conveying drafting instructions to the Attorney General's Office for the preparation of the Securities (Amendment) Bill. The proposed amendments to be brought to the Securities Act 2005 aim at:

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- (a) bringing in the concept of “retail investor” compared to “sophisticated investor” in the legislation;
- (b) enabling the licensing of other exchanges and depository institutions over and above the Stock Exchange of Mauritius and the Central Depository and Settlement Ltd;
- (c) recognising foreign funds whose securities are marketed to retail investors in or from Mauritius; and
- (d) waiving the requirement for foreign reporting issuers to be registered with the Financial Services Commission.

Further information about the salient features and other mechanisms of the Variable Capital Company will be communicated to our stakeholders once the relevant laws are passed.

About Perigeum Capital Ltd

Perigeum Capital Ltd is a Corporate Finance House geared towards providing businesses with the professional representation and insight they need to execute successful transactions within the precincts of their individual corporate objectives and beyond.

For more information about Perigeum Capital Ltd and a detailed list of the services we provide, please follow the link to our website <https://www.perigeumcapital.com/>

Disclaimer

The information contained in this Newsletter was prepared by Perigeum Capital Ltd to provide existing or potential clients with a broad overview of recent changes brought about by the Financial Services Commission to the Securities (Preferential Offer) Rules 2017 and the recent Cabinet’s decision relating to the preparation of a Variable Capital Companies Bill. While all reasonable care has been taken in the preparation of this Newsletter, Perigeum Capital Ltd accepts no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however caused, sustained by any person that relies on it. Readers are advised to consult with appropriate, qualified professional advisors before taking action.

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