

STOCK EXCHANGE (INVESTMENT BY FOREIGN INVESTORS) RULES 1994

Rules made by the Stock Exchange Commission under section 56 (f) of the Stock Exchange Act 1988

1. These rules may be cited as the Stock Exchange (Investment by Foreign Investors) Rules 1994.
2. In these rules -

“Commission” means the Financial services Commission established under the Financial services development Act 2001;
[Amended by the Financial Services Development Act 2001]

“exempt foreign investor” means a foreign investor which is a body corporate (whether open-ended or close-ended), a unit trust or any other collective investment vehicle incorporated or otherwise established with the objective of spreading investment risk and managing assets for the benefit of shareholders and participants and which has been designated as exempt by the Commission under rule 5;

“foreign investor” means a non-citizen or an entity which is not resident in Mauritius;

“group” means corporation, its parent, subsidiaries and fellow subsidiaries and their associated companies (and for this purpose, ownership of 20% or more of the voting capital of a company is regarded as the test of associated company status);

“investment” includes the acquisition by a foreign investor of any interest in a Mauritian company (including either equity or debt securities) or any increase in the percentage of its interest in a Mauritian company as a result of a rights, bonus or similar issue or as a result of a capital reconstruction.

Investor includes foreign investor and exempt foreign investor;

“licensed stockbroking company” means a stockbroking company licensed under section 23 of the Stock Exchange Act 1988;

“Mauritian company” means a company, partnership, société or any other body corporate or unincorporated association which is quoted on the Official List of the SEM or admitted to any Second Market which may be established under the Stock Exchange Act 1988 other than -

- (a) any such entity which is designated as an approved investment institution under section 50(A) of the Stock Exchange Act 1988; and
- (b) any other such entity as the Commission may from time to time designate;

“Mauritian Sugar Company” means a Mauritian company whose principal activity involves either the cultivation of sugar cane in Mauritius or the production or marketing of sugar and related products or a combination of any other activities;

“non-citizen” has the same meaning as in the Non-Citizens (Property Restriction) Act.

3. (1) No foreign investor shall, without the prior written consent of the Commission, make any investment in securities -

(a) for the purpose of or resulting in, the exercise of legal or management control of a Mauritian company;

(b) where as a result, 15 per cent or more of the voting capital (including any capital having an element of equity) of a Mauritian sugar company would be held by foreign investors.

(2) (a) No licensed stockbroking company shall implement any investment transaction if, to its knowledge, having made all reasonable enquiries, it would result in a breach of any restriction specified in paragraph (1).

(b) Licensed stockbroking companies shall take all reasonable steps to determine whether a proposed investment transaction is to be made by or on behalf of a foreign investor.

(3) The restrictions specified in paragraph (1) (b), shall not apply to exempt foreign investors.

4. (1) Any sale or purchase by or on behalf of an investor of securities in Mauritius companies listed on the Official List or admitted to any Second Market operated by the SEM shall be carried out through a licensed stockbroking company.

(2) (a) The investor shall appoint a licensed stockbroking company or such other custodian resident in Mauritius which is acceptable to the Commission to be responsible for the safe custody of documents of title relating to the investor’s investments in Mauritius companies and for arranging for the settlement of purchases and sales of such investments.

(b) The licensed stockbroking company or such other custodian shall report to the SEM (in the format from time to time approved by the Commission) on each purchase and sale of an investment in a Mauritian company made by or on behalf of an investor not later than the business day following the purchase or sale.

- (3) The SEM shall post at a conspicuous place on the trading floor after each trading day all transactions undertaken by foreign investors in each security listed on the Official List and the Second Market.
- (4) (a) Where the SEM becomes aware that **10 per cent** or more of the voting capital of a Mauritian sugar company is held by foreign investors, other than exempt foreign investors, notification of this fact shall be made to the Commission and all licensed stockbroking companies, naming the company concerned.
- (b) Where notification is made under this paragraph (and before its withdrawal), no investment may be made by any foreign investor other than an exempt foreign investor in the company concerned, and no licensed stockbroking company shall permit any such investment to be made, without the prior consent of the Commission.
- (5) Companies listed on the Official List and on the Second Market shall file with the Commission and the SEM each month a list of the foreign investors holding investments in them so far as the companies are aware.
5. (1) The Commission may designate certain foreign investors as exempt foreign investors in accordance with the provisions of this rule.

An application for the designation of a foreign investor as an exempt foreign investor shall be made to the Commission and shall be accompanied by -

- (a) the Memorandum and Articles of Association or other equivalent constitutional documents of the applicant;
- (b) a statement of the current investment policy and a copy of the current prospectus or equivalent offering document of the applicant;
- (c) a statement of the investment restrictions applicable to the applicant where this has not already been provided in the documents submitted under subparagraphs 9a) and (b);
- (d) particulars of the regulatory regime governing the applicant;

(e) details of the procedure whereby an applicant may alter its investment policy and restrictions; and

(2) any further information that the Commission considers necessary in order to consider the application.

(3) No foreign investor shall be designated by the Commission as an exempt foreign

investor unless the Commission is satisfied that -

(a) the applicant is an entity of the nature outlined in the definition of exempt foreign investor in these rules;

(b) the applicant's investment policy and restrictions are such that it is passive investor and does not exercise or seek to exercise control over any entity in which it invests, including any Mauritian company;

(c) the regulatory regime governing the applicant is at least as rigorous as that imposed upon an approved investment institution in Mauritius; and

(d) the applicant is suitable to be accorded the privilege of exempt foreign investor status.

(4) Any designation by the Commission of a foreign investor as an exempt foreign investor may be subject to conditions, and these conditions may include -

(a) restrictions as to the percentage of voting capital (including any capital having an element of equity) of any Mauritius company which an exempt foreign investor may hold;

(b) the requirement that the Commission be given prior notification of any proposed amendments to the investment policy or restrictions of the exempt foreign investor; and

(c) further restrictions which the Commission considers necessary in order to provide for the smooth and orderly operation of the Stock Exchange.

(5) The Commission may cancel the designation of an exempt foreign investor -

(a) fails to comply with the conditions of its designation as specified by the Commission; or

(b) ceases to be regulated by an appropriate regulatory authority; or

(c) is no longer considered suitable by the Commission to be accorded the

privilege of exempt foreign investor status.

- (6) Where the designation of an exempt foreign investor is cancelled, the foreign investor in question shall have a reasonable time within which to reduce its holdings in Mauritian companies in order to comply with the conditions regarding investments specified in paragraph (2).

Made by the Commission on 6th September 1994 and approved by the Minister on 14th September 1994.

Amended by Stock Exchange (Investment by Foreign Investors) (Amendment) Rules 1994.

Amended by The Financial Services Development Act 2001.