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Government Notice No of 2009

THE INVESTMENT PROMOTION ACT

Regulations made by the Minister under section 28 of the Investment Promotion Act

1. These regulations may be cited as the Investment Promotion (Real Estate Development Scheme) (Amendment No. 2) Regulations 2009.

2. In these regulations –

"principal regulations" means the Investment Promotion (Real Estate Development Scheme) Regulations 2007.

3. Regulation 2 of the principal regulations is amended by inserting, in the appropriate alphabetical order, the following new definitions, the full stop in the definition of “trust” being deleted and replaced by a semicolon –

“hotel” has the same meaning as in the Tourism Authority Act;

“IHS” means the Invest Hotel Scheme;

“IHS Company” –

(a) means a company whose IHS project has been approved by the Board; and

(b) includes a company holding an IHS certificate;

“Outline Planning Permission” has the same meaning as in section 6A of the Town and Country Planning Act;

“serviced land” means land on which all infrastructural works, including roads, walls, drains, landscaping and utility services, have been completed;

“unit” means a room, an apartment, a villa or a suite forming part of a hotel;

“unit owner” means any person who acquires a unit under the IHS.

4. Regulation 3 of the principal regulations is amended –
 - (a) in paragraph (a), by deleting the word “and”;
 - (b) in paragraph (b), by deleting the full stop and replacing it by the words “; and”;
 - (c) by adding, after paragraph (b), the following new paragraph –
 - (c) the Invest Hotel Scheme.
5. Regulation 4 of the principal regulations is amended –
 - (a) by deleting the definitions of “Empowerment Programme”, “social needs” and “Steering Committee”;
 - (b) by inserting, in the appropriate alphabetical order, the following new definitions –

“National Empowerment Foundation” means the National Empowerment Foundation incorporated under the Companies Act;

“NEF” means the National Empowerment Foundation;
6. Regulation 5 of the principal regulations is amended by revoking paragraph (c) and replacing it by the following paragraph –
 - (c) make provision for an IRS Social Contribution in accordance with regulation 6.
7. Regulation 6 of the principal regulations is amended –
 - (a) in paragraph (1), by deleting the words “residential properties at the rate of 200,000 rupees per residential property” and replacing them by the words “residential properties or plots of serviced land at the rate of 200,000 rupees per residential property or per plot, as the case may be”;
 - (b) by revoking paragraph (2) and replacing it by the following paragraph –
 - (2) Every IRS Company shall, in respect of the contribution referred to in paragraph (1) and after deducting therefrom any value of land referred to in regulation 7 –
 - (a) set up an IRS Social Contribution Fund to implement an approved programme or to finance an approved NGO; or

- (b) remit to the NEF, within one month after the end of every quarter, its contribution equivalent to the number of residential properties or plots of serviced land sold during that quarter, after taking into account the contribution, if any, under paragraph (a).
 - (c) by inserting, after paragraph (2), the following new paragraphs –
 - (2A) For the purposes of paragraph (2)(a), a programme or an NGO shall be deemed to be an approved programme or an approved NGO, as the case may be, where it falls within the guidelines issued under section 50L of the Income Tax Act.
 - (2B) The NEF shall –
 - (a) determine the use of the contribution remitted under paragraph (2)(b);
 - (b) be guided by the assessment submitted by the IRS Company under regulation 8(3)(b); and
 - (c) implement or cause to be implemented the approved programmes referred to in paragraph (2A).
- 8.** Regulation 7(3) of the principal regulations is amended by deleting the words “projects relating to social needs” and replacing them by the words “approved programmes referred to in regulation 6”.
- 9.** Regulation 8(3) of the principal regulations is amended by revoking subparagraph (c).
- 10.** Regulation 10 of the principal regulations is amended –
- (a) in paragraph (1), by revoking subparagraph (c);
 - (b) by revoking paragraphs (2) and (3).
- 11.** Regulation 11 of the principal regulations is amended –
- (a) in paragraph (2), by revoking subparagraphs (c) and (d)(ii);
 - (b) by revoking paragraph (4).

12. The principal regulations are amended by inserting, after regulation 18, the following new Part –

PART IIA – INVEST HOTEL SCHEME

18A. Interpretation

In this Part –

“hotel development area” means the physical area of land, whether freehold or leasehold, of an extent of not less than 1 hectare covered by a project under the Invest Hotel Scheme;

18B. IHS Project

(1) Every project under an IHS shall –

- (a) consist of a hotel development area with clearly defined boundaries within which the development of the IHS shall be carried out;
- (b) provide within the hotel development area for the construction of a hotel;
- (c) provide that the construction of the hotel shall not be governed by the provisions of a *société d'attribution*;
- (d) provide that an IHS Company may, subject to paragraphs (2) and (3) and regulation 19, sell or transfer a unit or any other part of the hotel on the condition that –
 - (i) the contract is governed by the provisions of a *règlement de copropriété*; and
 - (ii) the IHS Company enters into a lease agreement with every unit owner to manage and operate the unit and that under the agreement, the unit may be used and occupied by the unit owner or on his behalf for a period not exceeding 45 days in the aggregate in any period of 12 months.

(2) The acquisition of a unit or any other part of the hotel may be made either on the basis of a plan, during the construction phase or when the construction is completed.

(3) Where the acquisition of a unit or any other part of the hotel is made on the basis of a plan or during the construction phase, the contract shall be governed by the provisions of a *vente à terme* or *vente en l'état futur d'achèvement*, as the case may be, in accordance with the provisions of Articles 1601-1 to 1601-45 of the Code Civil Mauricien.

18C. Application for IHS certificate

(1) No person shall make an application for an IHS certificate in respect of a project unless –

- (a) the person is a company incorporated under the Companies Act;
- (b) the person holds –
 - (i) a letter of intent from the Tourism Authority; and
 - (ii) a letter of reservation, a letter of intent or a lease agreement in respect of the hotel development area from the Ministry responsible for the subject of lands; or
 - (iii) a title deed in respect of the hotel development area.

(2) An application for an IHS certificate shall be made in writing in such form and manner as the Board of Investment may determine and shall be accompanied by –

- (a) a full and detailed account of the particulars of the IHS project as provided under regulation 18 B;
- (b) a copy of the letter of reservation, letter of intent or lease agreement referred to in paragraph (1)(b)(ii) or a copy of the title deed referred to in paragraph (1)(b)(iii);
- (c) an implementation plan relating to the project with full details including a time frame for its completion;
- (d) a specimen copy of the deed of sale or transfer of a unit or any other part of the hotel;
- (e) a specimen copy of the lease agreement referred to in regulation 18B(1)(d)(ii); and
- (f) any such other particulars or information as may be required in the application form.

(3) The company referred to in paragraph (1)(a) shall limit its purpose or object exclusively to the promotion, development and implementation of the project under the IHS.

18D. Approval of project under IHS

(1) On receipt of an application under regulation 18C, the Board shall examine the IHS project and –

- (a) upon being satisfied that the project meets the requirements of these regulations, shall approve the project on such terms and conditions as it may determine; or
- (b) may request the applicant to make such modifications as may be necessary for the purposes of the project.

(2) Where the project is approved under paragraph (1)(a), the Managing Director shall issue a letter of approval to the applicant.

18E. Issue of IHS certificate

Where the Board has approved an IHS project under regulation 18D(1)(a), an IHS certificate shall be issued under section 18 of the Act subject to –

- (a) the IHS company obtaining all the necessary permits and clearances including the Outline Planning Permission, if any, and the Building and Land Use Permit;
- (b) a bank guarantee of 25,000 rupees per unit being furnished to the Board of Investment.

18F. Implementation of IHS project

(1) Every IHS Company shall, at all times, be responsible for the execution of the whole IHS project and shall be answerable to the Board of Investment for its proper implementation in accordance with the IHS certificate.

- (2) The IHS Company shall –
 - (a) not make any alteration to the components of the IHS project without the prior approval of the Board;
 - (b) submit to the Managing Director, within one month after the end of every quarter, starting from the first quarter immediately following the date of issue of the IHS certificate, a progress report on the implementation of the IHS project.

(3) Where an IHS Company fails to start construction works within a period of 6 months of the date of issue of its Building and Land Use Permit, the Board of Investment may realise the bank guarantee referred to in regulation 18E(b).

13. Part III of the principal regulations is amended, in the heading, by inserting, after the word “**PROPERTY**”, the words “**OR UNIT OR OTHER PART OF A HOTEL**”.

14. Regulation 19 of the principal regulations is amended –

- (a) in the heading, by adding after the word “**property**”, the words “**or unit or any other part of a hotel**”;
- (b) by inserting, after the words “IRS or RES”, the words “or a unit or any other part of a hotel under the IHS”.

15. Regulation 20 of the principal regulations is amended –

- (a) in the heading, by adding, after the word “**property**”, the words “**or unit or any other part of a hotel**”;
- (b) in paragraph (1), by inserting, after the word “IRS”, the words “or a unit in so far as it is a standalone villa under the IHS”;
- (c) in paragraph (2) –
 - (i) by inserting, after the word “RES”, the words “or a unit or any other part of a hotel under the IHS”;
 - (ii) by deleting the word “hard” and replacing it by the word “freely”;
- (d) in paragraph (3), by deleting the word “hard” and replacing it by the word “freely”;
- (e) in paragraph (4), by revoking subparagraph (b) and replacing it by the following subparagraph –
 - (b) from loans contracted in Mauritius currency with a bank in Mauritius provided that –
 - (i) the first 500, 000 US dollars is paid to the IRS Company or RES Company or IHS Company in US dollars or its equivalent in any other freely convertible foreign currency; and
 - (ii) the repayment of the loan is effected in any freely convertible foreign currency.

16. Regulation 21 of the principal regulations is revoked and replaced by the following regulation –

21. Application to acquire residential property or unit

(1) Any person referred to in regulation 19 who intends to acquire a residential property under IRS or RES or a unit or any other part of a hotel under IHS shall, through the IRS Company, RES Company or IHS Company, as the case may be, make an application to the Managing Director in a form approved by the Managing Director.

(2) Where an application is made under paragraph (1), the IRS Company, the RES Company or the IHS Company, as the case may be, shall, at the time of the application, pay to the Board of Investment, a non-refundable processing fee of 10,000 rupees per residential property or unit or any other part of a hotel.

17. Regulation 22(1) of the principal regulations is amended by deleting the word “hard” and replacing it by the word “freely”.

18. Regulation 24 of the principal regulations is amended –

(a) in the heading, by adding, after the word “**property**”, the words “**or unit or any other part of a hotel**”;

(b) by adding, after paragraph (2), the following new paragraph –

(3) No sale or transfer of a unit or any other part of a hotel under the IHS shall be made unless the sale or transfer is made in conformity with the relevant provisions of these regulations.

19. Regulation 25 of the principal regulations is amended –

(a) by revoking paragraph (2) and replacing it by the following paragraph –

(2) An IRS Company may sell serviced land not exceeding 25 percent of its land area planned for the construction of residential properties on condition that –

(a) there is no material deviation in the land area allocated for the construction of residential properties as approved by the Board;

(b) the commercial facilities and leisure amenities referred to in regulation 5(b)(ii) and (iii) have been completed;

- (c) prior to the sale of any plot of the serviced land, at least 25 per cent of the residential properties under the IRS have been sold in accordance with regulation 20(5) and (6);
 - (d) the infrastructural works including roads, walls, drains, landscaping and utility services have been completed in respect of the area of the serviced land;
 - (e) each plot of serviced land for sale does not exceed 0.5276 hectare (1.25 arpent);
 - (f) the amount payable for the acquisition of a plot of the serviced land is not less than 500,000 US dollars or its equivalent in any other freely convertible foreign currency; and
 - (g) the purchaser constructs a residential property on the land within 5 years from the date of its acquisition in accordance with the architectural guidelines issued by the IRS company.
- (b) by adding, after paragraph (3), the following new paragraphs –

(4) No non-citizen who acquires a plot of serviced land shall be eligible to apply for a residence permit in accordance with regulation 22, unless the construction of a residential property has been completed on that plot.

(5) No plot of serviced land acquired pursuant to paragraph (2) shall be sold or transferred unless the construction of the residential property is completed on the plot.

20. Regulation 26(1) and (2) of the principal regulations is amended by deleting the word “hard” and replacing it by the word “freely”.

Made by the Minister on 31st August 2009.