



CORPORATE

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PROPOSED SECURITIES LAW CHANGES RELEASED - THREE WEEKS TO HAVE A SAY



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Changes to make it easier for businesses to raise capital are a step closer with the release yesterday of a discussion document on proposed changes to securities regulation.

The Ministry of Economic Development (MED) is now seeking submissions on the proposed changes, with an 8 May deadline.

The discussion document, which highlights proposals to improve flexibility for issuers, is a response to the recommendations of the Government-appointed Capital Market Development Taskforce (CMD Taskforce). As well as tackling headline issues aimed at making securities disclosure more meaningful, the Taskforce has recommended an urgent implementation of the Securities Commission's modernisation study and resulting recommendations dating back to 1999-2000. The discussion document also addresses these matters.

Key changes

The major amendments proposed in the discussion document are:

- **Financial statements.** That the Securities Regulations be changed to require financial statements used in prospectuses for offers of equity, debt or participatory securities to be prepared in accordance with GAAP, which is the

requirement under the Financial Reporting Act 1993. Currently the content requirement prescribed by the Securities Regulations for financial statements that are to be contained in a prospectus differ from those under the Financial Reporting Act and this can lead to issuers having to prepare two different sets of financial statements. The change should be welcomed and reduce compliance costs.

- **Definition of borrowing group.** In the context of an offer of debt securities, the Securities Regulations currently require disclosures in relation to the borrowing group – being the issuer of the debt securities and any guaranteeing subsidiaries. However, many issues of debt securities include guarantees by parent and sister entities which do not presently fall within the meaning of the “borrowing group”. Consequently, a change is proposed to the Securities Regulations to include disclosure about guaranteeing parent and sister entities to ensure proper disclosure about all entities that are guaranteeing the issuer's obligations.
- **Prospective financial information.** The Securities Regulations currently require prospectuses for initial offerings of equity securities to contain a prospective statement of cashflows

for the next 12 months rather than full prospective financial statements. This requirement has been heavily criticised on a variety of levels, including that it does not provide meaningful information. A recommendation has been made to require full prospective financial statements.

- **Disclosure of interests.** A proposed change to ensure that the disclosure of directors', promoters' and managers' interests is consistent across all types of securities offerings (including equity debt, unit trusts, life insurance policies and superannuation schemes). At present differing disclosure obligations for different kinds of issuers contributes to a lack of uniformity and allegations that it hampers meaningful comparison between different investment products.
- **Consideration for securities.** A change is recommended to provide for the Securities Regulations to enable the price/consideration payable for securities to be determined by a formula, so long as the formula is set out in full and clearly explained. The absence of such flexibility is an example of the need to bring the content requirements up to date as the disclosure of price/consideration payable routinely leads to requests for exemptions by the Securities Commission.
- **Flexibility in advertisements.** The Securities Regulations also prescribe the content requirements for promotional material concerning securities offers. Among the proposals are measures designed to provide more flexibility about the financial information that may be contained in advertisements. First, it is proposed to relax the current restriction that only allows securities advertisements to contain prospective information that is

included in the relevant prospectus for the securities, including by allowing references to commentary or analysis of prospective financial information. Secondly, a proposal to allow advertisements to include information from interim or unaudited financial statements regarding the net assets and liabilities of the issuer. This development is to address the difficulties encountered where the audited (annual) financial statements are not the most recently published financial information available.

- **Modernisation.** Measures to address a number of known problems with the Securities Regulations including by closing a loophole over distribution of advertisements via the internet. Other changes are proposed by way of a limited rewrite of the Securities Regulations to rid them of outdated terminology, unclear definitions and otherwise undertake a modernisation exercise. The rewrite will not change the substantive effect of the Securities Regulations.

Simplified disclosure - prospectus regulations awaited

The discussion paper does not include the draft regulations that are required to implement the simplified disclosure prospectus which features in amendments to the Securities Act 1978 and contained in the Securities Disclosure and Financial Advisers Amendment Bill now before Parliament. Instead, it simply asks a question about the scope for use of a simplified disclosure prospectus. The discussion document asks for views on whether the use of a simplified disclosure prospectus should be restricted to "non-complex" products such as shares, preference shares, securities that convert

into ordinary shares of the same issuer and debt securities.

Bell Gully understands that MED is working on the draft regulations specifying the contents of a simplified disclosure prospectus, with a view to consultation early to mid May.

Much welcomed change

A number of the proposals contained in the discussion document represent a much-welcomed update to detailed content requirements which are out-of-date and/or unwieldy. Bell Gully supports these improvements.

While the closing date for submissions is 8 May 2009, there is no indication yet as to when MED is likely to implement the proposals. The discussion document and the consequential changes to the Securities Regulations are very much a stop-gap measure pending a more thorough review of the Securities Act which, we understand, is scheduled for later this year. That review will no doubt look at a number of the headline issues presently affecting securities offering disclosure such as a need to move away from a prescriptive disclosure regime to that of full and fair disclosure and (hopefully) the removal of the duplication of disclosure as a result of the need to prepare both investment statement and prospectus.

For a copy of the discussion document visit:
http://www.med.govt.nz/upload/67526/changes_to_the_securities_regulations.pdf

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