

SECURITIES ACT 2007

SECURITIES (ADVERTISEMENTS) REGULATIONS 2008

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Restrictions on advertising
4. Exceptions from restrictions on advertising
5. Advertisements to comply with Schedule
6. Advertisement directions
7. Advertisements to be copied to the Authority
8. Contravention

SCHEDULE

S.I. 47 OF 2008

SECURITIES ACT, 2007

(Act No. 8 of 2007)

SECURITIES (ADVERTISEMENTS) REGULATIONS, 2008

In exercise of the powers conferred by section 133 of the Securities Act, the Minister of Finance, on the recommendation of the Securities Authority, makes the following Regulations.

- | | | |
|-------|---|---|
| 1. | These Regulations may be cited as the Securities (Advertisements) Regulations, 2008. | Citation |
| 2.(1) | <p>In these Regulations –</p> <p>“advertisement” includes every form of advertising, whether in a publication, or by the display of notices, signs, labels or showcards by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by internet or other computer or digital means, or in any other manner, and “advertising” shall be construed accordingly;</p> <p>“Authority” means the Securities Authority;</p> <p>“authorised person” means a person specifically authorised in writing by the Securities Authority in respect of securities business or promoting securities business;</p> <p>“securities advertisement” means any advertisement for or in connection with securities investment or securities business.</p> | Interpretation |
| 2. | Subject to regulation 3, only persons who are licensed by the Authority in respect of securities business, or an authorised person, shall issue or cause to be issued a securities advertisement in Seychelles. | Restrictions on advertising |
| 3. | <p>Regulation 2 does not apply to –</p> <p>(a) a securities advertisement issued or caused to be issued by, and relating only to securities issued by –</p> | Exceptions from restrictions on advertising |

- (i) the Government of Seychelles or the government of any country or territory outside Seychelles; or
 - (ii) the central bank of any country or territory; or
- (b) an advertisement which is a prospectus approved by the Authority.

Advertisements to comply with Schedule

4. No licensee or authorised person, shall issue or cause to be issued, whether in Seychelles or elsewhere, a securities advertisement unless the requirements of the Schedule under these Regulations are complied with in relation to that advertisement.

Directions in respect of advertisement

5.(1) If the Authority considers that a securities advertisement issued, caused to be issued or proposed to be issued by a licensee or authorised person is misleading, the Authority may by notice in writing give the licensee or authorised person a direction under this regulation.

(2) A direction under this regulation may contain all or any of the following prohibitions or requirements -

- (a) a prohibition on the issue of advertisements of a specified kind;
- (b) a requirement that advertisements of a particular description must be modified in a specified manner;
- (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued or is proposed to be issued and which is identified in the direction;
- (d) a requirement to take all practical steps to withdraw from display in any place or from circulation any advertisement or any advertisements of a particular description specified in the direction;
- (e) a requirement, in respect of a particular advertisement, that a correction be published in the manner and form specified by the Authority.

6.(1) A licensee or an authorised person shall, fourteen days prior to the date of first use, forward to the Authority a copy of every securities advertisement issued or caused to be issued by a licensee or an authorised person together with, if so prescribed, the applicable advertisement filing fee.

Advertisements to be copied to the Authority

(2) If on receipt, the Authority is not satisfied that the advertisement is in accordance with these Regulations, the Authority shall before the date of first use require the licensee or the authorised person to make amendments as proposed by the Authority.

7. A person who issues or causes to be issued in Seychelles a securities advertisement that is a prohibited issue under regulation 3, or does not comply with regulation 5, commits an offence and is liable on conviction to a fine not exceeding \$50,000.

Contravention

SCHEDULE (regulation 4)

1.(1) The content of a securities advertisement and the manner of its presentation shall appear in a context that is not likely to be misunderstood.

Advertisements to be clear and not misleading

(2) A securities advertisement shall not contain any statement, promise or forecast unless the person issuing it has taken all reasonable steps to ensure that each statement, promise or forecast is not misleading in the form or context in which it appears.

(3) A securities advertisement shall not contain any statement purporting to be a statement of fact that the person issuing it does not reasonably believe at the time, on the basis of evidence of which it has a record in its possession, to be true.

(4) If the matter to which a securities advertisement relates is available -

- (a) in limited quantities;
- (b) for a limited period; or
- (c) on special terms for a limited period,

the advertisement may say so but, if that is not the case, the advertisement must not contain any statement or matter that implies it is so.

- Promotions to be genuine 2. No securities advertisement shall be issued with the intention of persuading persons who respond to the advertisement to enter into an agreement, or use business services, of a description not mentioned in the advertisement.
- Advertisements not to imply Government or Securities Authority approval 3. A securities advertisement must not contain any matter that states or implies that the securities investment or securities business that is the subject of the advertisement or any matter in the advertisement has the approval of a Government department or of the Authority.
- Advertisements giving an overview of investment securities to be fair 4. A securities advertisement that states only some of the rights and obligations of an investment in securities or only some of the terms and conditions of an agreement relating to securities investment must –
- (a) state a sufficient amount to give a fair view of the nature of the investment in securities, of the financial commitment undertaken by an investor in acquiring the investment in securities and of the risks involved; and
 - (b) state how a written statement of all of them can be obtained.
- Comparison with other investments or services 5. A securities advertisement must not compare or contrast one investment in securities with an alternative investment, or one securities service with an alternative securities service, unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated.
- Past performance 6. A securities advertisement must not contain information about the past performance of securities investments of any description unless –
- (a) it is relevant to the performance of the securities investment being advertised;
 - (b) the source of the information is stated;
 - (c) if the whole of the information is not set out –
 - (i) what is included is not unrepresentative, unfair or otherwise misleading; and
 - (ii) the exclusion of what is excluded does not have the effect of exaggerating the success or performance over the period to which the information that is included relates;

- (d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities or amounts have changed;
- (e) the period which is selected as illustrating past performance is a period of not less than 3 years which period must end no more than 3 months before the date of the issue of the advertisement; and
- (f) the advertisement contains a warning that the past is not necessarily a guide to the future.

7.(1) A securities advertisement must contain a statement in accordance with this clause warning of the risks involved in acquiring or holding the securities being advertised. Risk warnings

(2) The statement of an advertisement, relating to a security that can fluctuate in value in money terms, must draw attention to that fact and to the fact that the investor may not get back the amount invested.

(3) The statement of an advertisement, offering a security likely to yield a high income or as being suitable for an investor particularly seeking income from the investment, must draw attention to that fact and that income from the investment may fluctuate in value in money terms.

(4) The statement of an advertisement, which relates to a security denominated in a currency other than that of the country where the advertisement is issued, must draw attention to the fact that changes in rates of exchange between currencies may cause the value of the security to diminish or to increase.

(5) The statement of an advertisement, that contemplates the investor entering into a transaction the nature of which is such that the investor may not only lose what is paid at the outset but may incur a liability to pay unspecified additional amounts later, must draw attention to the fact that the investor may or, as the case may be, will have to pay more money later and that accordingly a transaction in that security can lose the investor more than the first payment.

8. A securities advertisement shall not describe a prospective investment return as being in any way guaranteed, secured, assured or promised, either expressly or impliedly, unless the advertisement has been approved in writing by the Authority prior to its issue. Guaranteed returns

Identification
of advertiser

9. (1) A securities advertisement shall identify the licensee or authorised person who issues or causes the advertisement to be issued, and shall identify the person on whose behalf the advertisement is issued if different from the licensee or authorised person.
- (2) Registered principals shall approve, initial and date each advertisement or item of sales literature before the date of first use of the material.

MADE this 8th day of July, 2008.

**DANNY FAURE
MINISTER FOR FINANCE**