

Guidance on the Minimum Content Requirements for a Disclosure Document

This guidance must be read in conjunction with Part A of Schedule 3 and Part A of Schedule 4 of the Companies Act 2015 (the Act), attached as Appendix 1 and Appendix 2 of this Policy.

It explains the Reserve Bank's interpretation of and expectations for the minimum content requirements for a Disclosure Document outlined under Part A of Schedule 3 and Part A of Schedule 4 of the Act to assist issuers in ensuring that the Disclosure Document satisfactorily contains all information that are reasonably necessary for investors to understand the nature and the terms of the offer.

Section 290(3)(a) of the Companies Act 2015 (the Act) states that the Reserve Bank must not register a Disclosure Document if it is of the opinion that the Disclosure Document does not contain all information that are reasonably necessary for investors to understand the nature and the terms of the offer.

❖ Company Details

1. The Disclosure Document should also state the:
 - telephone number of the company's registered office;
 - address and telephone number of the company's principal place of business if it is different from its registered office; and
 - company's website address, if any.
2. In outlining the names of the top twenty shareholders of the company at a date less than 21 days before the issue date, the Disclosure Document should also disclose the ultimate beneficial owners where shares are held indirectly in the company.
3. The following should also be outlined in terms of stating a brief background and history of the company:
 - a brief outline of its principal activities;
 - where the company belongs to a group of companies ("the group"), a brief description of the group and the company's position in it;
 - where applicable, the name of the securities exchange where the shares of the company are already listed or a listing is being sought;
 - the important events in the history and development of the company and its business such as a merger of the company or any significant subsidiaries; material changes in the way of conducting the business; material changes in the types of products produced or services offered by the company; name changes; or the nature and results of any bankruptcy, receivership or similar proceedings relating to the company or its significant subsidiaries.

❖ Details of the Offer

- ***Number and type of shares to be offered***
4. To ensure that investors understand the company's capital structure before and after the offer, the Disclosure Document should outline the:
 - number of shares on issue as at the issue date of the Disclosure Document;
 - details of other securities on issue such as convertible securities and options; and
 - share capital after the offer.
 5. The company should also disclose:

- the class which the shares on offer belong to;
- whether the offer is for the issue of new shares or the sale of existing shares. Where existing shares are on offer, the following information about the selling shareholders should be disclosed:
 - (i) the name and address of the person making the offer, any material relationship that the seller has had with the company within the last three years, such as Director, Company Secretary, Senior Management or any other position regarded as the position of an Officer of the company;
 - (ii) the number and class of shares being offered by each seller, and the percentage of the existing share capital of the company; and
 - (iii) the number and percentage of the shares beneficially held by the seller:
 - (a) as at a date less than 21 days before the issue date of the Disclosure Document; and
 - (b) immediately after the offer.
- whether the company will be listed on a securities exchange or be quoted and traded on a relevant financial market;
- whether any exemptions from the requirements of the Reserve Bank or waivers from the listing rules of a securities exchange have been obtained or are being relied upon.

○ **The manner in which entitlements or allotments will be determined**

6. The Disclosure Document should also include:

- any intention of the existing major shareholders, directors or members of the senior management or an Officer to subscribe to the offer (where it is known to the company): and
- any allocation of shares to underwriters.

7. The company should also explain how priorities between applicants will be determined where the offer is oversubscribed and who will make those decisions. The allocation must be made on a fair and equitable manner.

○ **Issue price for each share**

8. The following details about the issue price for each share should be included in the Disclosure Document:

- (a) the issue price per share offered to each class of investors; and
- (b) the basis for determining the issue price.

9. Where the issue price will be payable in instalments, the Disclosure Document should clearly outline the repayment terms, including:

- (a) the schedule for the payment of instalments and the amount of each instalment; and
- (b) the company's rights if the investor defaults on an instalment.

○ **The Total amount to be raised, Minimum subscription amount and other conditions applicable to the offer**

10. The total amount to be raised, the minimum subscription amount, and the use of proceeds are closely connected and are important considerations for investors.

11. The minimum subscription amount is the amount that will enable the company to satisfy the objectives of the offer. The basis for determining the minimum subscription amount must be explained.

12. The Disclosure Document should clearly state other conditions applicable to the offer, such as:
 - where the shares will not be issued or transferred unless the issuer receives applications for a minimum number of shares or raises a minimum amount.
13. In circumstances where it is reasonably expected that the purpose of the offer cannot be undertaken if the minimum subscription amount is not raised, for example, the acquisition of a property or business where it is going to be fully funded or significantly funded by the capital raising, the application monies should be refunded if the minimum amount is not met.
14. Where the minimum subscription amount is less than the total amount to be raised, or where the capital raising is not fully underwritten, the Disclosure Document should explain any effect it may have on the company's financial position (for example, whether it will affect the company's ability to continue as a going concern, or significantly impact the management of the company's debt levels).
15. Where the offer is not underwritten, the disclosure document should outline how the funds raised will be used if it is less than the targeted amount to be raised. For example:
 - whether some or all of the stated amounts for the purposes of the offer will be scaled back, and how it will be done. If such an explanation could not be provided, the disclosure document should explain the reason why the company cannot provide the explanation, and disclose the factors that would influence the company's decision about which purpose is to be scaled back. **In this regard, stating that the activities will be scaled back 'as appropriate' or 'as the directors determine' is not sufficient;** and
 - whether the funds will be allocated to the stated purposes in any particular priority, or whether they will be allocated pro rata, or a combination of these approaches.
- **Estimated Net Cash Proceeds**
16. This refers to the expected proceeds after the deduction of the expenses of the offer. The expenses of the offer should be clearly listed and the Disclosure Document should state:
 - (i) the amount or the estimated amount for each category of expense in absolute terms and as a percentage of the total amount on offer;
 - (ii) the party that will pay for the expenses, if it is not the issuer; and
 - (iii) for offers of shares for sale, any expenses to be paid by, or on behalf of, the selling shareholders.
- **Intended Use of the Proceeds and timeframe for full utilisation**
17. The Disclosure Document should outline how the company will use the funds raised and the timeframe for the utilisation of funds.
18. Where funds raised are intended to be used for a number of purposes, the purposes must be clearly outlined, with a breakdown of how much will be applied to each purpose in absolute terms and as a percentage of the total funds raised.
19. If a significant portion of the proceeds will be used for working capital, the Disclosure Document should outline the working capital items.
20. Where a material portion of the proceeds will be used to discharge, reduce or retire the company's debts, the Disclosure Document should:
 - describe the interest rate and maturity of such debts;
 - outline how the proceeds of debts were used (for debts incurred within the last 12

months from the date of the Disclosure Document).

21. Where the proceeds will be used to acquire assets, other than in the company's ordinary course of business, the Disclosure Document should briefly describe the assets and the associated costs.
22. Where the proceeds will be used to finance the acquisition of other businesses, the Disclosure Document should provide a brief description of such businesses and the status of the acquisition.
 - **Opening and closing dates of the offer, date for allotment of Securities, and the date for the despatch of new Securities certificates**
23. The offer period should be reasonable and must be consistent with any relevant provision of the Articles of Association or a similar governing document of the company.
24. The Disclosure Document should also outline the method of informing the public of:
 - any change to the above dates; and
 - the results of the allotment of shares.
 - **Whether the Directors reserve the right to extend the closing date**
25. Where the directors reserve the right to extend the closing date, the Disclosure Document should state the:
 - (i) duration of possible extensions; and
 - (ii) method of informing the public if the closing date is extended.
 - **Refund of Monies**
26. The company must refund monies to applicants under the following circumstances:
 - where the disclosure document states that the shares will not be issued or transferred unless the issuer receives applications for a minimum number of securities or raises a minimum amount; and
 - where it is reasonably expected that the purpose of the offer cannot be undertaken if the minimum amount is not raised, for example, the acquisition of a property or business.
27. The arrangements for the return of application monies, including the date for the refund of monies should be disclosed. The refund date must be in line with the timelines specified under section 288 of the Act.
28. Refer to section 20 of the Policy for further guidance.
29. Where an offer is underwritten, the amount agreed to be underwritten is also included in the minimum subscription amount.
 - **Instructions and Procedures on How to apply for Shares**
30. The instructions should also inform investors about the accepted arrangements for payment for the shares on offer.
 - **Risks of participating in the offer and Steps to Mitigate the Risks Identified**
31. The disclosure on risks should not be vague or generic. It should be specific in terms of the relevance of the risk to the company and its industry, and the shares on offer. Thus it is not

sufficient to copy risk disclosure from another Disclosure Document although the company may be subject to similar risks.

32. In addition to risks identified under Schedule 3 and Schedule 4 of the Act, other risks that could also materially affect the prospects of the Company and the industry in which it operates are counterparty risk, climate change risks, and environmental risks.
33. Amongst others, the following factors should be considered when deciding the type of risks that should be included in the Disclosure Document:
 - (a) inherent risks relating to the company's business model;
 - (b) any existing risk management processes of the company;
 - (c) any risks identified during the due diligence process for the Disclosure Document;
 - (d) expert and market reports.
34. The explanation on risks should be such that the investor can understand the nature of the risk and the circumstances that give rise to the risk. The likely impact of an identified risk on the company or the offer should also be explained at least at a high level basis, without the assumption that investors have a lot of knowledge about the consequences of a particular risk.
35. The disclosure should place more prominence on key specific risks rather than risks that are considered to be of less importance, and general risks. It is advisable that the disclosure be outlined logically by explaining the risks specific to the company first, then the risks to the industry and then the risks to the shares on offer and any other relevant risk.
36. The mitigating factors outlined in the Disclosure Document should not cause confusion on the nature of the risk or its materiality.
37. The risk disclosure in the Disclosure Document should be consistent with disclosures made by the company through other means, such as its website.
38. The purpose of the risk disclosures is to provide meaningful cautionary statement to investors. Therefore, any disclaimer on the risk factors should not be so wide so as to prevent the risk disclosures from having this effect.

❖ **Information about Directors**

39. "Director" in this section also encompasses proposed directors.
 - **Directors' and Senior Management's Profile**
40. In outlining the "*title of the Director's position*", the Disclosure Document should state whether the director is the:
 - (i) the Chair or an executive or non-executive director; and
 - (ii) independent or non-independent. For non-independent directors, the Disclosure Document should also explain whether the director is a nominee or representative of a shareholder.
41. The Disclosure Document should also explain the director's duties in the company and any sub-committees of the company's Board that they serve on.
42. When stating the "*technical or other qualifications*" and the "*profile including business and*

management experience” of each director, it is important to outline the director’s details that are relevant to his/her role in the company.

43. In disclosing a director’s directorships in all other Public Companies for the past 2 years, the Disclosure Document should also outline whether or not any such role affects his/her contribution to the company.
 44. The Disclosure Document should also outline information about existing and proposed members of the company’s senior management. The following should be provided about each member of senior management:
 - name, designation and technical or other qualifications;
 - a profile including his/her business and management experience;
 - the date of expiration of the current term of office, where applicable, and the period for which the person has served in that office;
 - their shareholding, both direct and indirect, in the Company, and the ultimate beneficial ownership of any shares held under a nominee, Company or trustee arrangements; and
 - the member’s interests in the success of the offer.
 45. The following should also be disclosed:
 - the name, professional qualifications and address of the company’s secretary; and
 - the company’s management reporting structure.
- **Fit and Proper Requirements and Related Disclosures**
46. In disclosing “*whether or not a Director or a member of senior management meets the fit and proper requirements as determined by the Reserve Bank*”, the issuer must refer to relevant provisions of the Capital Markets Supervision Policy Guideline No. 6 on *Fit & Proper Requirements for Licensed Intermediaries and Issuers* in terms of the criteria that the company must use to assess the fitness and propriety status of a Director or member of senior management.
 47. Investors’ right to be informed about the background of directors and senior management should take precedence over other matters such as potential embarrassment. The company should therefore consider including relevant information about a director or senior management’s background along with appropriate explanations of the context of the information, which should allow an investor to make an assessment of the weight that he/she chooses to place on the information disclosed about a director or senior management.
 - **The interests of the Directors in the Success of the Offer**
 48. The nature of the interest should be clearly explained, and quantified in terms of the amount of cash, the number of shares or other forms of interest.
 49. The interest should also include indirect interest. For example, a director who has an interest in another company that will enter into a transaction with the issuer upon the completion of the transaction.
 50. In explaining the interest, the Disclosure Document should also state any interests that may conflict with investors’ interests, and why the board is of the opinion that these conflicts of interests are acceptable.

- **Existing or Proposed Service Agreements between the Company and its Directors**

51. These refer to any existing or proposed service agreements or contracts between the company and its directors and senior management that provides for benefits upon termination of employment. Key details of such agreements/ contracts should be disclosed.

❖ **Auditors, experts and advisers**

○ **Addresses**

52. The address of the Company's auditors, accountants, brokers, investment adviser and solicitor should also be provided.

○ **Underwriting Details**

53. Where the offer is underwritten, the following should also be specified apart from the name and address of the underwriter:

- (a) the underwriting arrangements, including the basis of such arrangements;
- (b) the number of shares underwritten;
- (c) the underwriting fees;
- (d) the potential effects of the underwriting arrangements on control; and
- (e) terms which may allow the underwriters to withdraw from their obligations under the agreement.

54. If the underwriter is a related party of the issuer or is (or may possibly become) a shareholder with substantial interest in the issuer, the Disclosure Document should clearly disclose this and the underwriter's capacity to fulfil its obligations under the agreement.

55. If the offer is not underwritten, a statement regarding this fact and the justifications should be clearly outlined.

❖ **Overview of the Company**

56. The Disclosure Document should explain how the components of the company's business model relate to each other and the company's ability to generate income rather than just providing a description of each element.

○ **Group structure**

57. The Group structure should be accompanied by a description, which should include the identities of the shareholders of each non-wholly owned subsidiary, joint venture and associated company.

○ **Business Activities of the Company**

58. When disclosing the business activities of the company, the following information should also be explained:

- the flow of income within the group where the company depends on income from subsidiaries in the form of dividend or management fees;
- how the company finances its operations (this includes the financing of the company's start up, cash flow and ongoing operations) and the rate of its dependence on equity, debt and other form of finances;
- where there is significant reliance on debt financing, the Disclosure Document should include key information that would impact an investor's investment decision, such as:
 - the debt level and debt to equity ratio;

- the company's ability to meet interest payments;
 - key terms or conditions of the debt;
 - any existing or possible significant breaches of debt obligations and the related consequences of such a breach; and
 - any material breaches during the previous two years.
- **Products Manufactured or Services Provided**
59. The Disclosure Document should explain significant products or services introduced by the company, and, where information has already been made public, the stage of development of new products or services.
- **Availability of raw materials and supplies**
60. The sources of raw materials, the key suppliers and volatility of prices of principal raw materials should be disclosed.
- **Modes of marketing, distributions and sales**
61. The Disclosure Document should also describe the customer base of the company.
- **Material Contracts**
62. Material contracts are contracts that are key to the company's ability to generate income or to meet its objectives, or contracts that contain material restrictions on the company's ability to achieve its objectives. For example, a key customer contract or a key licence agreement.
63. In providing a summary of all material contracts to which the Company is a party, the Disclosure Document should explain:
- how the contract is related to the generation of revenue or the achievement of the company's objectives;
 - the key terms of the contract, such as its length, and whether or not the contract is legally binding; and
 - whether the contact constitutes of a related party agreement.
- **Rights attached to the securities and other material provisions of Articles of Association (AoA) of the Company**
64. The explanation on rights attached to the shares and other material provisions of the AoA should be made in simple language, highlighting its meaning in practice, instead of repeating the provisions of the AoA, as the AoA would normally have technical terms.
65. Other material provisions of the AOA include provisions for pre-emptive rights. The Disclosure Document should include the procedure for the exercise of any right of pre-emption attached to the shares.
- **Current acquisitions of Property, businesses or entities**
66. Apart from "*current acquisitions of Property, businesses or entities*", information relating to other current material capital expenditure items should be disclosed.
- **Prospects of the Company**
67. The Disclosure Document should provide an overview of the company's business strategies, and the time frame to realise these strategies.

○ **Any restrictions on the ability of any Subsidiary of the Company to distribute profits**

68. Such restrictions also include any governmental regulation or other regulatory requirements that may affect the repatriation of capital and the remittance of profit to and from the company.
69. The Disclosure Document should explain the impact of any identified restriction on the availability of cash to be used by the company, and the remittance of dividends to members of the company.

❖ **Overview of the industry**

70. The explanation provided should be specific to the company's business and its industry, and only to the extent it affects the company's business model and investors' investment decision.
71. Industry information should be presented in a fair and balanced manner, and only the most up-to-date market information should be disclosed.

❖ **Historical Financial Information**

72. The financial statements of the company for the required period must be prepared and audited in line with Part 32 of the Act. At a minimum, the following audited financial information should be provided in the Disclosure Document:
- the Statement of Comprehensive Income showing the company's major revenue and expense items, and profit or loss including gross profit and net profit before and after tax;
 - the Statement of Financial Position showing the company's asset and liability classes, and the shareholders' equity;
 - the Statement of Cash Flow, showing the cash flow from operating activities, cash flow from investing activities and the cash flow from financing activities;
 - the auditor's opinion in relation to the financial statements, including any modified opinion such as an emphasis of matter on going concern or qualified opinion;
 - any other information in the financial statements, notes to the financial statements or attachment to the audited financial report that is material.
73. The following should also be disclosed in the Disclosure Document:
- events subsequent to the date of the recent financial statements (or the date of the recent interim financial statements, if applicable) which have had a material impact on the company's financial position and results. If there are no such events, the Disclosure Document should provide an appropriate negative statement.
74. Where a modified opinion has been issued, the Reserve Bank will consider whether or not the nature of the modification affects the reliability of information disclosed in the Disclosure Document.
75. If the company was incorporated but has not commenced business operation for at least two-and-a-half years, the Disclosure Document must include audited financial information from the period in which the business commenced operation.
76. Where the company has not commenced operation or is a start-up company, the Disclosure Document must include the most recent audited statement of financial position for the company. The Disclosure Document must also disclose a pro-forma statement of financial position that

shows the effect of the offer.

77. For (76) and (77) above, the auditor should provide a statement on whether or not in his opinion the audited report gives a true and fair view of the state of affairs of the company and that he has provided his consent to include the audited financial information in the Disclosure Document.
78. Where the company's business has changed significantly since the last balance date, the Disclosure Document should also include updated financial statements that have been audited.
79. If the Disclosure Document includes the most recent interim financial reports, comparative figures for the prior year should also be included.
80. Where financial ratios are included, they should be accompanied by appropriate explanations.
81. Where the company is also seeking to list on a securities exchange, the company will also need to comply with the financial information disclosure requirements of the relevant securities exchange.
82. For a Rights Issue by companies listed on the South Pacific Stock Exchange (SPX), the company may only disclose:
 - (i) a summary of its most recent 3 years of Financial Statements instead of detailed financial statements; and
 - (ii) interim Financial Reports in SPX's six-monthly report format instead of having it as the same form as Financial Reports for a full Financial Year.
83. The Reserve Bank is granting the exemptions in (83) above in line with section 286(2) of the Act. Rights Issues by companies listed on the SPX are regarded as a 'case' for the purpose of clause 5 of Part B of Schedule 4. The exemptions are granted in consideration of the ongoing reporting requirements of the SPX, in addition to the requirement of annual reporting to members under the Act.
 - o **Material sources of liquidity**
84. In describing the material sources of liquidity, the company should specifically identify the income, cash flow or financial position items that should be considered in assessing liquidity.
85. The Disclosure Document should also include a statement by the directors as to whether, in their opinion, the working capital available to the company will be sufficient for a period of 12 months from the issue date of the Disclosure Document. If not, additional information should be disclosed on how the company will obtain the necessary additional working capital.
 - o **Discussion of Trends**
86. Discussing "*any known trends, demands, commitments or events or uncertainties that have had or is expected to have a material impact on financial performance, position and operations of the company*" means to discuss the material effect of the mentioned matters (known and potential) on revenue, profitability, liquidity or capital resources, the prospects of the industry in which the company operates, and the company's plans and strategies.
 - o **Use of Financial Ratios (this also applies to Projected Financial Information)**
87. The Disclosure Document should only include financial ratios that will be useful and relevant for retail investors in with due consideration of the company and its business.

88. Any financial ratios included in the Disclosure Document should be accompanied by an explanation of how they are computed, and an explanation about what the ratio means. For example, retail investors may not understand that the Price/Earnings ratio provides a comparison between the company's share price and its earnings per share.

❖ **Projected Financial Information**

89. Projected financial statements should be supported by assumptions. The assumptions should:
- (i) draw investors' attention to uncertain factors that can materially affect the ultimate achievement of the projected financial information;
 - (ii) be specific rather than vague, avoiding generalisations;
 - (iii) be clearly stated. If different assumptions have been used for different parts of the years covered in the projected financial information for items such as revenue, expenses, inflation rates and other variables, these should be clearly highlighted; and
 - (iv) be reviewed for reasonableness by the directors of the company, who are ultimately responsible for the projected financial information and the assumptions.
90. In outlining the assumptions, the company must ensure that investors will be able to assess:
- (i) the validity of the assumptions for the projected financial information;
 - (ii) the likelihood of the actual occurrence of the assumptions; and
 - (iii) the effect on the projected financial information if there is any variation to the assumptions.
91. Any other forward looking statements included in the Disclosure Document apart from the projected financial information must also have a reasonable basis.
- **Dividends**
92. If the company does not have a fixed policy relating to dividend, the Disclosure Document should state so.
93. The Disclosure Document should also disclose:
- (i) the amount of dividends paid or declared for each financial year and interim period for where the financial information is provided in the Disclosure Document; and
 - (ii) whether it expects to pay dividends over the next financial year, and explain where the funds will come from. If the company intends to pay dividends other than out of profits, the Disclosure Document should make it clear.
94. The following should also be disclosed:
- if the company does not intend to pay a dividend, it should be clearly stated.
 - any dividend restriction. If there is none, an appropriate negative statement should be included.

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