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Capital Market Supervision Policy Statement No: 5

MINIMUM REQUIREMENTS FOR CAPITAL RAISING THROUGH THE OFFER OF SHARES

**NOTICE TO ISSUERS INTENDING TO CONDUCT OFFERS OF SHARES UNDER THE
COMPANIES ACT 2015**

**Reserve Bank of Fiji
March 2022**

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PART I: PRELIMINARY

1.0 Introduction

- 1.1 This policy is issued pursuant to Section 3(1)(a) of the Reserve Bank of Fiji (Capital Markets and Securities Industry) Regulations 2015 (“**RBF Regulations**”)¹ and section 13 of the Companies Act 2015 (“**Act**”).
- 1.2 The policy is applicable to issuers that intend to make an offer of shares to the public, and to public companies that intend to make an offer of shares to its existing members under the Act.
- 1.3 This policy supersedes the Capital Markets Supervision Policy Statement No. 5 on *Minimum Requirements for Capital Raising through issue of Equity Securities*, issued in 2011 under the Capital Markets Decree 2009 (“**the Decree**”).
- 1.4 The requirements in this Policy have been aligned to international standards, including the International Organization of Securities Commissions (“**IOSCO**”) Objectives and Principles of Securities Regulations, and best practices.

2.0 Background

- 2.1 The RBF Regulations stipulate that the Reserve Bank is responsible for regulating and overseeing the issue and subsequent trading of securities in the primary and secondary markets in Fiji.
- 2.2 The Act sets the framework for the regulation of offers of securities, whether for issue or for sale. It adopts a **disclosure-based regulatory approach**, a shift from the merit-based approach under the Decree.
- 2.3 The merit-based approach for offers of securities ensures investor protection by way of the regulator assessing the suitability of a particular security before investors are allowed to make an investment in that security.
- 2.4 In the disclosure-based approach, the regulator ensures investor protection by mandating the type and quality of information which should be disclosed by an issuer to enable investors to make informed investment decisions.
- 2.5 Under Part 26 of the Act:
 - (i) an offer of securities to the public may only be made under a Prospectus, except if it is otherwise permitted by the Act; and
 - (ii) an offer of securities to existing members of a public company may be made under an Offer Document.

The Act also outlines the minimum information that is required to be disclosed under these documents. The Prospectus or Offer Document must be registered by the Reserve Bank.

¹ The RBF Regulations were issued in accordance with section 9(2)(c) of the Reserve Bank of Fiji Act (Cap. 210)

- 2.6 The purpose of a Prospectus or an Offer Document is to assist investors in assessing the risks and returns associated with an offer of securities in order to make informed investment decisions.

3.0 Objectives of the Policy

- 3.1 The objectives of this policy are to:

- (a) provide investor protection;
- (b) promote the maintenance of investor confidence; and
- (c) protect the reputation and integrity of Fiji's securities industry, through the following:
 - (i) ensuring that investors are provided with all information that are reasonably necessary for assessing an offer under a Prospectus or an Offer Document by providing guidance to issuers on:
 - the Reserve Bank's interpretation of Part 26 of the Act, including the minimum content requirements for a Prospectus and an Offer Document;
 - the preparation of a Prospectus or an Offer Document; and
 - the Reserve Bank's role, expectations, and procedure for:
 - the registration of a Prospectus or an Offer Document; and
 - providing exemptions from a minimum content requirement, where appropriate.
 - (ii) promoting some level of accountability by unlisted companies that conduct an offer of shares under Part 26 of the Act, by outlining appropriate on-going disclosure obligations for such companies.

PART II: GENERAL GUIDANCE

4.0 Offer of Shares to the Public

- 4.1 An offer of shares to the public can be made either for issue or for sale. Private companies are prohibited from making an offer of securities for issue to the public.

[Note: An offer of shares for issue involves the creation of new shares upon the acceptance of the offer, while an offer of shares for sale relates to the sale of shares that are already in existence at the date of the offer.]

- 4.2 An offer of shares to the public may only be made under a Prospectus. Sections 283(3), 283 (4) and 283 (5) of the Act specify the circumstances under which an offer may be made without a Prospectus, which include:
- (i) where the offer is a personal offer which does not result in shares being issued or sold to more than 20 investors with an aggregate issue or aggregate sale amount of more than FJ\$1,000,000 in a 12 month period;

[Note: An offer is generally considered a personal offer if it is made to those who may be familiar with the business affairs of the company, and it may only be accepted by the person to whom the offer is made.];

- (ii) the minimum amount payable for the shares on acceptance of the offer by a person to whom the offer is made is at least FJ\$200,000;

[Note: The offer is generally considered an offer to sophisticated investors. Sophisticated investors are presumed to have more investment knowledge compared to retail investors, thus are able to assume greater investment risks relative to their wealth or asset levels.]

- (iii) the offer is made through the holder of a Securities Industry Licence (SIL) and the SIL holder is satisfied that the person to whom the offer is made has previous experience in investing in securities;

[Note: The offer is generally considered an offer to sophisticated investors.]

- (iv) the offer is made to a Related Body Corporate of the company in which shares are being offered;

- (v) the offer is made to an Officer of the company in which shares are being offered;

- (vi) the offer is made as consideration under a Registered Bidder's Statement;

[Note: The Bidder's Statement would have disclosures that are similar to the disclosures in a Prospectus.]

- (vii) the offer is made in the ordinary course of trading on a Securities Exchange; and

[Note: The trading of securities on a securities exchange is governed by the rules of the relevant exchange.]

- (viii) the offer is made by the Government, a Government Entity, the Reserve Bank or under regulations made under the Act.

4.3 An offer to the public of shares by way of sale is only required to be made under a Prospectus if:

- (i) the shares are offered for sale by a person who controls the entity in which shares are being offered; or

[Note: Control has the meaning given to it under section 9 of the Act. The shares on offer in this instance are either:

- not listed or quoted on a securities exchange; or
- although listed or quoted, they are not offered for sale in the ordinary course of trading of the relevant securities exchange.]

- (ii) the shares were issued to the offeror/seller within six months before the date of the offer, unless the offeror/seller establishes to the satisfaction of the Reserve Bank or the Court that the shares were not issued with the intention that it be resold.

[Note: Such an offer needs disclosure if:

- the issuer had issued the securities without disclosure to investors under the Act; and
- either:

- (i) the issuer issued the securities with the purpose of the person to whom they were issued (now the offeror) selling or transferring the shares; or

- (ii) the person to whom the securities were issued (now the offeror) acquired them with the purpose of selling or transferring the shares.
- and none of the exemptions under sections 283(3) and 283(4) of the Act apply.]

5.0 Offer of Shares to Existing Members of a Public Company

- 5.1 An offer of shares by a public company to its existing members may be made under an Offer Document.

[Note: This is considered to be applicable to Rights Issue only. An offer of shares to existing members of a public company under a dividend reinvestment plan or bonus share plan are deemed excluded where they are undertaken under a documented dividend reinvestment or bonus share plan.

Rights issue of shares refers to an offer for issue of a particular class of shares to every existing member of the company in proportion to their holding of shares in that class and the terms of the offer are the same for each member.]

6.0 Obligation of Issuers

- 6.1 While this Policy is designed to assist issuers in meeting their obligations under the Act, issuers are advised to obtain their own professional advice to determine how the Act applies to their specific circumstances.
- 6.2 Issuers are encouraged to consult the Reserve Bank on the application of this Policy. In consulting the Reserve Bank, sufficient information on the concerned matters must be provided to ensure a meaningful discussion.

PART III: REGULATORY REQUIREMENTS

A. Minimum Content Requirements of a Prospectus or an Offer Document

7.0 Minimum Content Requirements under the Act

- 7.1 A Prospectus must meet the minimum content requirements under Schedule 3 of the Act. [Refer to [Appendix 1](#) of this Policy]
- 7.2 An Offer Document must meet the minimum content requirements under Schedule 4 of the Act. [Refer to [Appendix 2](#) of this Policy]
- 7.3 A Prospectus or an Offer Document (hereafter referred to as a “**Disclosure Document**”) must be registered by the Reserve Bank.
- 7.4 In line with section 290(3) of the Act, the Reserve Bank will 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. Issuers must therefore consider the following when preparing a Disclosure Document:

- (i) the Reserve Bank's interpretation of and expectations for the minimum content requirements of a Disclosure Document outlined in [Appendix 3](#) of this Policy; and
- (ii) other guidance on the content and preparation of a Disclosure Document outlined in this policy.

7.5 A Disclosure Document must also include:

- (i) any consent to the issue of the Disclosure Document that is required by section 291 of the Act from any person as an expert;
- (ii) the written consent of each person who is named in the Disclosure Document as being a director or a proposed director of the company; and
- (iii) all documents, information, certificates, and other matters required to be endorsed or attached to the Disclosure Document by regulations made under the Act.

7.6 Every Disclosure Document must include or be accompanied by an application form. The application form must not contain any information that is contrary to the content of the Disclosure Document.

8.0 Corporate Governance

8.1 The Disclosure Document must:

- (i) explain how the directors will manage the company;
- (ii) provide a summary of the corporate governance policies of the company; and
- (iii) highlight how investors will be able to access a copy of the company's corporate governance policies.

[Note:

- The summary of the corporate governance policies must be brief and not detailed.
- This requirement is not applicable to the Disclosure Document for a Rights Issue conducted by:
 - (a) a company listed on a securities exchange; or
 - (b) an unlisted company that had conducted an initial public offer of shares under the Companies Act 2015 provided that the offer was conducted under a Disclosure Document registered by the Reserve Bank.]

8.2 For companies that are also seeking to list on a securities exchange that operates in a market where disclosure against a corporate governance framework is required, the Disclosure Document must also disclose:

- (i) the corporate governance framework that the company is reporting against;
- (ii) whether the company has not adopted any recommendation or principle in the framework; and
- (iii) the reason the board has not adopted such a principle or recommendation.

[Note: Companies that are intending to list must make a listing application to the relevant securities exchange. Refer to section 22 of this Policy for further guidance.]

- 8.3 Any investment that an investor makes in a company is regarded as an investment in the skills and expertise of its directors and senior management. Accordingly, the minimum disclosure requirements about directors and senior management under Schedule 3 and 4 of the Act, and the guidance under [Appendix 3](#) of this Policy seek to ensure that the company explains to investors:
- (i) whether the directors and senior management have the appropriate expertise and background in relation to the company's business activities; and
 - (ii) the interests directors and senior management have in the results of the offer and how it might conflict the interests of investors.

9.0 Statement by Experts

- 9.1 In line with section 291 of the Act, a Disclosure Document may only include a statement purported to be made by an expert, if:
- (i) the expert has provided his/her written consent to the inclusion of the statement in the form and context in which it is included;
 - (ii) the Disclosure Document states that the expert has given this consent;
 - (iii) the expert has not withdrawn this consent before a copy of the Disclosure Document is delivered to the Reserve Bank for registration;
 - (iv) the expert's qualification is included in the Disclosure Document; and
 - (v) the expert is not a director, officer, employee or professional adviser of the company issuing the Disclosure Document.
- 9.2 The expert's statement must be signed and dated.
- 9.3 Where the statement was made more than four (4) months before the date of delivery of the Disclosure Document to the Reserve Bank for registration, a supplementary statement made by the same expert or another expert must be obtained and included in the Disclosure Document.

B. Preparation of Disclosure Documents

10.0 Disclosure Document to be Clear, Concise and Understandable

- 10.1 A Disclosure Document must be written and presented in a manner that can be easily understood by investors to enable them to assess the information provided and make an informed investment decision.
- 10.2 Persons responsible for drafting the contents of a Disclosure Document must therefore ensure that it is worded and presented in a clear, concise and understandable manner.
- 10.3 A Disclosure Document will be regarded clear, concise and understandable if it:
- (i) **contains a section ("Summary section")** that provides an overview of the issuer and the offer, with a balanced disclosure of the benefits and risks associated with the offer, which will help investors understand the information that they need to focus on.

The section must provide:

- (a) the key features of the company's business operation including its principal activities, business strategies and its position in the industry;
- (b) the key risks associated with the nature of the company's business operations, and the offer;
- (c) key information about the financial performance and projections of the company;
- (d) key information about the directors and senior management of the company including their name and designation;
- (e) a summary of any significant interest and benefits of directors and their related parties in the offer;
- (f) the key terms and conditions of the offer such as the issue price per share, the minimum amount for which an applicant can apply, the targeted amount to be raised and the minimum subscription amount to be raised under the offer;
- (g) a summary of the effect of the offer on the capital structure of the company, the possible effect on voting powers (where known) and the use of proceeds.

Information disclosed in this section must be consistent with the disclosures in other parts of the Disclosure Document, and the following statement must be included at the beginning of the section:

"This Summary section only highlights the key information from other parts of this [name of Disclosure Document]. It does not contain all the information that may be important to you. You should read and understand the contents of the whole [name of Disclosure Document] prior to deciding on whether to invest in this offer of shares."

[Note: This section should include appropriate cross-references to the specific sections of the Disclosure Document which contain the full details of the outlined matters.]

(ii) uses plain and simple language, and easy-to-read sentences.

The following, amongst others, should be considered:

- (a) The use of common everyday language that will enable investors to understand complex information. A shorter or simpler synonym for a word should be used if such a synonym exists;

For example: use *"quicken"* instead of *"expedite"*, "

Simple words should also be used in the definition/ glossary section.

- (b) The use of personal pronouns as if the issuer is speaking directly to potential investors, such as referring to the company as *"we"*, *"us"*, *"our"* and referring to potential investors as *"you"*.

It will provide greater clarity to statements made in the Disclosure Document and make them sound more personal and friendly.

For example: *'Investors should consider obtaining a professional*

advice’ can be rewritten as ‘*You should consider obtaining a professional advice*’.

[Note: The Disclosure Document should explain at the outset who or whom the pronouns refer to avoid any confusion.]

- (c) Use the active voice rather the passive voice.

The passive voice can hide details on who will take the action, and usually require more words.

For example: “*The company can be reached for further information*” can be rewritten as “*You can call the company for further information*”.

- (d) Use positive sentences instead of multiple negative sentences.

For example: “*Persons other than preference shareholders may not receive these dividends*” can be rewritten as “*Only preference shareholders may receive these dividends*”.

- (e) Use less legal or financial jargon.

If there is no plain English alternative for a certain term, the Disclosure Document should explain what the term means when it is first used.

(iii) is logically ordered and easy to navigate.

The layout of the Disclosure Document must be simple and information must be logically ordered. The following should also be considered:

- The font type and size should be easy to read;
- All pages should be numbered and any blank or partly blank page shall contain words that the page has been intentionally left blank;
- Different levels of headings, fonts, underlining, italics and colour can help indicate the importance of information; and
- Tables, bulleted lists, diagrams and graphs should be used where appropriate to reduce text and increase clarity.

(iv) is as short as possible while satisfying the disclosure requirements.

A lengthy Disclosure Document could be problematic for retail investors.

The Disclosure Document should only contain information that is relevant for investors. Unnecessary information such as the following should not be included:

- A detailed Summary section. The Summary section should only contain key information as other information should be covered in the other sections of the Disclosure Document;
- Long or detailed extracts from, or summary of, another document. For example, a detailed extract of the company’s Articles of Association;

- General marketing statements that are not relevant;
- Industry information that are general in nature which have very little or no effect on the company's business operation; and
- Too many photographs.
[Note: Any photograph used should be relevant to the issuer's business operation or the offer, and should be appropriately labelled.]

10.4 The focus of the Disclosure Document should be on providing information to retail investors, while simultaneously meeting the information needs of sophisticated investors.

10.5 In that regard, the following questions must be considered when a Disclosure Document is being drafted:

(i) *Is the Summary section readily noticeable?*

The section should follow the Chairperson's letter at the beginning of the Disclosure Document. The Chairperson's letter should not diminish nor repeat information in the Summary section.

(ii) *Have the benefits and risks been presented in a balanced manner?*

The disclosure of risks should be given similar importance as the disclosure of benefits.

(iii) *Is there a logical flow of information presented in the document?*

As much as possible, related information should be grouped together.

(iv) *Would the Disclosure Document be confusing to a person who is not familiar with the offer or the issuer?*

Complex information such as complicated methodologies or analyses, legal or financial jargon, and other technical terms must be avoided unless they can be clearly explained. It is important for drafters to keep the targeted audience in mind, and that not all investors are legally or financially skilled.

11.0 Responsibilities of Parties Involved

11.1 The Reserve Bank expects high standards of due diligence and accountability from all parties involved in the preparation of a Disclosure Document and its delivery to the Reserve Bank in ensuring that the Disclosure Document contains all information necessary for investors to assess the merits of the shares on offer.

11.2 In accordance with section 290(3)(b) of the Act, the Reserve Bank will not register a Disclosure Document if it contains a statement that is false or misleading in a material way or omits any material particular.

(i) Responsibility of the Issuer

11.3 Issuers have the primary obligation and liability with respect to the content of Disclosure Documents and must ensure that:

- (a) it does not contain a statement that is misleading or deceptive; and

- (b) there are no omissions from the Disclosure Document of material required by the Act.
- 11.4 Where a Disclosure Document contains financial projections and other forward-looking statements, the directors of the issuer must ensure that such statements have a reasonable basis. Otherwise, the Disclosure Document will be regarded as misleading.
- 11.5 If an issuer appoints an adviser to undertake work relating to the offer of shares under a Disclosure Document, the issuer must:
 - (a) ensure that the adviser has adequate, qualified and competent resources with the necessary experience to undertake such responsibilities; and
 - (b) have in place a terms of reference on the scope and extent of the responsibilities that is to be undertaken by the adviser.
- 11.6 The issuer must also assess whether the appointment of the adviser would give rise to any situation of conflict of interest, and it must undertake relevant steps to mitigate or resolve any such conflict.
- (ii) Responsibility of an Adviser**
- 11.7 An adviser appointed by the issuer must ensure that the terms of reference arranged by the issuer will enable him/ her to effectively discharge his role. In undertaking his/her role, the adviser must:
 - (a) act honestly, fairly and efficiently; and
 - (b) exercise due care, skill and diligence expected of a reasonably competent member of his profession.
- 11.8 An adviser must also take all measures reasonably necessary to avoid, resolve or adequately mitigate possible conflict of interest situations.
- (iii) Responsibility of Party Lodging an Application for Registration**
- 11.9 In relation to the delivery of a Disclosure Document to the Reserve Bank (refer to section 13 of this Policy) for registration, the party that lodges the application for registration must also act honestly, fairly and efficiently, and maintain the integrity of the market.
- 11.10 The party must not submit or cause to be submitted any Disclosure Document or any related information if, at the time the Disclosure Document or any other information is lodged with the Reserve Bank, the party:
 - (a) has no regard as to whether the Disclosure Document or related information contain a statement that is false or misleading or from which there is an omission; or
 - (b) knows or ought reasonably to have known that the statement or information is false or misleading or from which there is an omission.
- 11.11 The party must ensure that it has conducted due diligence, and it has reasonable grounds to believe that the Disclosure Document meets the regulatory requirements.

12.0 Exemption from a Requirement of a Disclosure Document

- 12.1 The Reserve Bank may, upon application, grant an exemption from a disclosure requirement if it is satisfied that:
- (a) the disclosure of that information would be contrary to the public interest; or
 - (b) there are mitigating factors which justify the exemption.
- 12.2 For an offer to existing members of the company by a company listed on a securities exchange, the Reserve Bank may provide an exemption from a disclosure requirement if up-to-date information equivalent to the requirement is available as a result of the requirements of that securities exchange.
- [Note: Please refer to paragraph 82 and 83 of [Appendix 3](#) of this Policy on a general exemption provided by the Reserve Bank in relation to Rights Issue by companies listed on the South Pacific Stock Exchange. No application is to be made in this regard].
- 12.3 Any application for exemption from a disclosure requirement must be made at least 15 business days prior to the intended date of the delivery of the Disclosure Document to the Reserve Bank, accompanied by the relevant supporting documents.
- 12.4 Issuers are encouraged to consult the Reserve Bank prior to making an application for exemption.
- 12.5 Information on the exemption obtained from a disclosure requirement or any other exemption from compliance with relevant securities laws, including listing rules, must be disclosed in the Disclosure Document.

C. Procedure for Registration of Disclosure Documents

13.0 Delivery to the Reserve Bank

- 13.1 A Disclosure Document must be delivered to the Reserve Bank at least 20 business days before the intended date of registration.
- 13.2 A Disclosure Document delivered to the Reserve Bank for registration must be accompanied by:
- (a) Form A56 of the Companies Regulations 2015 – *Application for Registration of a Prospectus or Offer Document*, with the prescribed lodgement fee. (Refer to [Appendix 5](#) for a copy of Form A56 and its guide);
- [Note: Where the issuer/applicant is different from the party lodging the application, Form A56 must be accompanied by a cover letter from the issuer, advising the Reserve Bank of the arrangement and the specific person responsible for the submission.]
- (b) Certified true copy of the letter of consent from an expert who has made a statement included in the Disclosure Document;
 - (c) Certified true copy of any expert's report referred to in the Disclosure Document;

- (d) Certified true copies of the company's certification of registration or incorporation, and Articles of Association or a similar governing document;
 - (e) Certified true copies of the audited financial statements of the company for each financial year and period, where the audited financial statements of the company have been included in the Disclosure Document;
 - (f) Documentation that supports the basis for determining the issue price outlined in the Disclosure Document;
 - (g) Certified true copy of any material contract or document, including an underwriting agreement, referred to in the Disclosure Document; and
 - (h) Where certain matters disclosed in the Disclosure Document would necessarily require approvals from other relevant authorities, confirmations that these approvals have been obtained.
- 13.3 The prescribed lodgement fee for Form A56 is FJ\$5,000, and for offers above FJ\$5,000,000, an additional FJ\$1.00 for every FJ\$1,000 in excess of FJ\$5,000,000. The stated amounts are exclusive of VAT and the VAT inclusive amount must be paid.
- 13.4 Electronic copies of the Disclosure Document and the accompanying documents must be also submitted to the Reserve Bank in a text-searchable format.
- 13.5 The Reserve Bank reserves the right to return a Disclosure Document if it is of the opinion that the Disclosure Document is not in its final form or if it is not accompanied by all relevant documents/ information.
- 13.6 The Reserve Bank does not verify the content of a Disclosure Document before its delivery to the Reserve Bank.
- 13.7 It is the responsibility of the issuer to ensure that the Disclosure Document complies with regulatory requirements before an application for registration is lodged with the Reserve Bank.

14.0 Reserve Bank's Process

- 14.1 Section 290(2) of the Act stipulates that the Reserve Bank may not register a Disclosure Document if:
- (a) it does not comply with the Act or any regulations made under the Act;
 - (b) it contains any misdescription, error or a matter that is not clearly legible or is contrary to law; or
 - (c) the prescribed lodgement fee has not been paid.
- 14.2 Under section 290(3) of the Act, the Reserve Bank must refuse to register a Disclosure Document if it:
- (a) does not contain all information reasonably necessary for an investor to understand the nature and the terms of the offer; or
 - (b) contains a statement that is false or misleading in a material way particular or omits any material particular.
- 14.3 Any Disclosure Document lodged for registration is reviewed to determine whether it is fit for registration.

- 14.4 The Reserve Bank reviews the Disclosure Document with the objective of ensuring adequate investor protection and maintaining investor confidence by focusing on whether the disclosure requirements of the Act and the guidance under this Policy have been satisfactorily met. The review is not based on the merits of the offer, that is, it does not consider whether the shares on offer are desirable investments.
- 14.5 During the review, the Reserve Bank considers the disclosure requirements of the Act, the guidance under this Policy, and other relevant policies within the context of the issuer and the offer to ascertain whether it contains all information reasonably necessary for an investor to understand the nature and the terms of the offer. Whether or not a statement in a Disclosure Document is misleading will depend on the content of the statement and other circumstances relating to the issuer and the offer.
- 14.6 While reviewing a Disclosure Document, the Reserve Bank may also review other form of disclosures relating to the issuer, such as advertisements, media reports, stockbrokers' reports, and market announcements of a securities exchange.
- 14.7 During the review, the Reserve Bank may raise queries relating to the disclosures and may require the applicant to submit a revised version of the Disclosure Document and/or submit further information or supporting documents to address the concerns raised. Queries raised by the Reserve Bank may also include matters that are not covered in the disclosure requirements.
- 14.8 The party lodging the application for registration must deal promptly in relation to the Reserve Bank's queries and the responses must be complete.
- 14.9 The Reserve Bank will only grant registration, by issuing a certificate of registration, once the matters raised have been effectively addressed.
- 14.10 Where a revised version of the Disclosure Document is submitted, a marked-up electronic copy must be also provided, and the issuer must provide a confirmation that it has seen and confirmed the revisions made to the Disclosure Document.

15.0 Disclaimer Statements

- 15.1 A Disclosure Document must contain the disclaimer statement by the Reserve Bank and the applicable disclaimer statement by the Securities Exchange (where relevant) as outlined in section 289 of the Act. [Refer to [Appendix 4](#)]
- 15.2 Any disclaimer made by the issuer must not be inconsistent with the obligations of the issuer under Part 43 of the Act. The placement of any disclaimer in the Disclosure Document should be such that it can be generally seen by investors, and it must be written in a manner that can be generally understood.

D. Post-Registration and Other Aspects

16.0 Applications/ Subscriptions Process

- 16.1 Once a Disclosure Document is registered by the Reserve Bank, a physical copy must be made available at no cost, within one business day upon request, at a specified location during the offer period. An electronic copy must also be made available on a website that is accessible to the public.
- 16.2 No application for shares on offer shall be processed unless:
- (i) the Disclosure Document has been registered; and
 - (ii) the application is made on an application form accompanying the Disclosure Document.

17.0 Validity of Disclosure Document

- 17.1 A registered Disclosure Document is valid for 12 months from the issue date of the registration certificate if no validity period is specified in the registration certificate.
- 17.2 The issuer shall not issue shares under the registered Disclosure Document after the expiry date of the Disclosure Document.

18.0 Supplementary Information

- 18.1 Where, after the registration of a Disclosure Document, the issuer becomes aware that:
- (a) a new circumstance has arisen that would have been required by the Act to be included in the Disclosure Document;
 - (b) the registered Disclosure Document contains a misleading or false statement; or
 - (c) there was a material omission of information required under the Act from the registered Disclosure Document,
- the issuer must not continue with the offer until the deficiency is corrected by, or updated information is made available by, issuing a Supplementary Information document that is approved by the Reserve Bank.
- 18.2 The Supplementary Information document must:
- (a) state that the document is an Annexure of the registered Disclosure Document;
 - (b) clearly outline the change in or update to disclosed information, by providing a list that highlights the original information in the registered Disclosure Document and the supplementary information;
 - (c) provide a description of new risk factors if the change or new information in the Supplementary Information document gives rise to new risk factors that have not been covered in the registered Disclosure Document;
 - (d) outline a process by which applications already made by investors can be withdrawn in accordance with section 18.5 of this Policy;

- (e) be accompanied by a new application form that is reasonably identical to the original application form, however it must contain a feature that distinguishes it from the application forms accompanying the registered Disclosure Document;
 - (f) state that while the Reserve Bank has approved the supplementary information, it does not assume responsibility for the correctness of any statement made in the registered Disclosure Document and the Supplementary Information document; and
 - (g) be signed by the Chairperson of the company, and dated.
- 18.3 The Supplementary Information document must be submitted to the Reserve Bank at least five business days before the intended date of approval of the Supplementary Information document.
- 18.4 A notice relating to the Supplementary Information document must be published in a newspaper, and included with the original Disclosure Document when sent or given to potential investors, and be made available on a website that is accessible to the public.
- 18.5 Applicants who wish to withdraw their applications upon the dissemination of the Supplementary Information document must have their application monies refunded as soon as practicable.

19.0 Extension of the Offer Period

- 19.1 The Disclosure Document must outline whether the directors reserve the right to extend the closing date of the offer. The method of informing the public if the closing date is extended must be also specified.
- 19.2 Any extension to the closing date of the offer must not be inconsistent with the provisions of the company's Articles of Association.
- 19.3 A notification must be provided to the Reserve Bank seven (7) business days prior to the closing date of the offer together with the rationale for the extension. The Reserve Bank may require the submission of a Supplementary Information document if it is of the opinion that the rationale for the extension warrants the provision of updated information to the target of the offer.

20.0 Investors' Right to Have Application Money Returned

- 20.1 All application money received must be held on trust by the Company until:
- (a) where there is no intention to list on a securities exchange, either:
 - (i) the shares are issued or transferred;
 - (ii) the money is returned to applicants.
 - (b) if the company is listed or there is an intention for it to be listed on a securities exchange, either:
 - (i) the shares are issued or transferred, and the securities exchange has accepted the application for the quotation of the issued shares; or
 - (ii) the money is returned to applicants.

- 20.2 The following are the circumstances upon which application monies must be returned to applicants:
- (a) Where the Disclosure Document specifies that shares will only be issued or transferred if the minimum subscription amount is met, and such condition is met. The money must be returned as soon as practicable.
 - (b) For companies listed on a Securities Exchange:
 - (i) an application for the quotation of securities offered is not made within 28 days of the issue date of the registered Disclosure Document; or
 - (ii) the shares are not accepted for quotation within three (3) months from the issue date of the registered Disclosure Document.
 - (c) For companies that are intended to be listed on a Securities Exchange:
 - (i) an application for listing/ quotation of securities offered is not made within 28 days of the issue date of the registered Disclosure Document;
 - (ii) the company is not listed within three (3) months from the issue date of the registered Disclosure Document.
 - (d) An application is not accepted in whole or part or if excess application monies were received from an applicant.
- 20.3 The application money must be returned within seven (7) days of the end of the 3-months period in terms of 20.2(b) & 20.2(c) above.

21.0 Advertising or Publicity of the Offer

- 21.1 The general prohibitions against false or misleading statements under section 652 of the Act also apply to advertising or other publications relating to an offer of shares.
- 21.2 In accordance with section 664 of the Act, the advertising or publicity of an offer of securities, where a Disclosure Document is needed, is prohibited except for the prescribed allowable circumstances. The objective of the restriction is to ensure that the Disclosure Document is the primary basis of investors' investment decisions, not advertising.
- [Note: The Reserve Bank does not have the power to grant a relief from the prohibition under section 664.]
- 21.3 The exceptions only allow basic information about an offer of shares that requires a Disclosure Document to be advertised or published for the following:
- (a) an advertisement or publication before a Disclosure Document is lodged if the offer is of shares in a class already quoted on a Securities Exchange *[refer to section 664(5) of the Act for specific conditions]*;
 - (b) an advertisement or publication after a Disclosure Document is lodged *[refer to section 664(6) of the Act for specific conditions]*; and
 - (c) other exceptions, including those available for independent reports and news reports or commentary in the media. *[refer to section 664(7) of the Act for specific conditions]*.
- 21.4 The Reserve Bank does not assess advertisements or intended marketing activities as it considers that it is responsibility of the issuer to ensure compliance with the Act.

22.0 Listing on a Securities Exchange

- 22.1 In accordance with section 289 (3) and 289 (7) of the Act, an application must be made to the relevant securities exchange within 28 days from the issue date of the Registered Disclosure Document for:
- (a) for the listing of the company, if the Company making the offer intends to be listed on a Securities Exchange; or
 - (b) for the quotation of securities on offer, if the company making the offer is a listed company

- 22.2 The registration of a Disclosure Document by the Reserve Bank for an offer of shares is not an approval to list on a Securities Exchange. For any proposed listing on a Securities Exchange, an application must be made to the relevant Securities Exchange and the proposal will be assessed by the relevant Securities Exchange.

[Note: The listing requirements of the relevant Securities Exchange, including the elements that will be considered by the Securities Exchange in assessing a company's suitability to list, must be considered by the company when it is planning its public offer process.]

- 22.3 For compliance listing on a Securities Exchange in Fiji, the disclosure requirements shall be in accordance with the rules of the relevant Securities Exchange.

23.0 Ongoing Obligations of Unlisted Issuers

- 23.1 An company who has made an offer of shares under a registered Disclosure Document and does not list on a securities exchange following the successful completion of the offer ("unlisted company") must use an over-the-counter facility operated by a Securities Industry Licence holder for the secondary sale or transfer of the company's shares, in consideration of section 242(4) of the Act.

[Note: Section 242, which is under the administration of the Registrar of Companies, states that an instrument of transfer will be deemed to be properly executed by the transferor or transferee where it is executed by the holder of a Securities Industry Licence (SIL) on behalf of the transferor or transferee, provided the same holder of a SIL does not execute the instrument of transfer on behalf of both the transferor and transferee.]

- 23.2 To enable investors to be informed of the developments in the operation of an unlisted issuer that would be likely to bring about a material change in the value or market price of its shares, the unlisted company must provide the following to its members:
- Notification of material change or any major new developments in its business activities which are not public knowledge;
[Note: This does not apply to information about impending developments or matters in the course of negotiation which are confidential, and a reasonable person would not expect the information to be disclosed.]
 - Annual report;
[Note: Refer to Part 32 of the Act on Annual reporting to members.]
 - A significant change in accounting policy adopted by the company;

- A recommendation or declaration of a dividend or distribution;
- Change in control;
- Results of an issue of shares;
- Notification of material acquisition or disposal of assets;
- Notification of transactions other than in the ordinary course of business with related companies where the company is a subsidiary;
- Changes to the board members and senior management of the company; and
- Information relating to winding-up and liquidation of the company.

PART IV: IMPLEMENTATION ARRANGEMENTS

24.0 Oversight by the Reserve Bank

- 24.1 The Reserve Bank may from time to time, issue Guidance notes to further clarify any provision in this policy or the Act. The Guidance notes must be observed in the same manner as this policy.
- 24.2 The Reserve Bank shall keep a register of issuers making an offer under a registered Disclosure Document, together with a copy of the registered Disclosure Document which must be accessible by the public.

25.0 Offences

- 25.1 In accordance with section 631 of the Act, the following provisions on offences under Part 43 of the Act apply:
- False or misleading statements (s652 & s668);
 - Inducing persons to deal (s653);
 - Dishonest conduct (s654);
 - Misleading or deceptive conduct (s655);
 - Offering Securities in a body that does not exist (s658);
 - Offering Securities without a current Disclosure Document (s659);
 - Misstatement in, or omission from, Disclosure Document (s660);
 - Restrictions on advertising and publicity (s664);
 - Offering Securities in breach of the Act (s667); and
 - Obstructing or hindering the Reserve Bank (s670).

26.0 Implementation Arrangements

- 26.1 This Policy applies to all issuers intending to conduct an offer of shares to the public under the Companies Act 2015.
- 26.2 This Policy shall become effective from _____.

Appendices:

[Schedule](#)

[Appendix 1](#) – Minimum Content Requirements for a Prospectus

[Appendix 2](#) – Minimum Content Requirements for an Offer Document

[Appendix 3](#) – Guidance to the Minimum Content Requirements for a Prospectus or Offer Document

[Appendix 4](#) – Disclaimer Statements

[Appendix 5](#) – Form A56: Application for Registration of a Prospectus or Offer Document

SCHEDULE

Interpretation –

- 1) Any term or expression used in this Policy that is not defined in this Policy, which is defined in the Act or its subsidiary legislations, or the Reserve Bank of Fiji (Capital Markets and Securities Industry) Regulations 2015, unless the context otherwise requires, have the meaning to it by the said legislations;
- 2) In this Notice, unless the context otherwise requires:

‘Act’ means the Companies Act 2015.

‘Adviser’ means a person appointed by the issuer to undertake work relating to the offer of shares under a Disclosure Document.

‘Disclosure Document’ means a Prospectus or an Offer Document.

‘Expert’ means a person whose profession or reputation provides authority to a statement made by him or her in relation to a certain matter.

‘Issuer’ or **‘Company’** means a person or company intending to make an offer of shares to the public or to existing members of the company.

‘Offer to the public’ means, in line with Part 26 of the Act, an offer of Securities to:

- (a) any section of the public, however selected;
- (b) individual members of the public, however selected; and
- (c) any section of the public or individual members of the public, who have approached the Company to acquire Securities.

‘Retail Investor’ means an investor that is not a sophisticated investor.

‘Sophisticated Investor’ means a high net worth investor with extensive knowledge and experience in investment and business matters.

‘Share’ means share in the share capital of a Company.

‘Securities’ means Shares, Debentures or an Interest in a Managed Investment Scheme, whether Listed or not, and includes any right, option or interest in respect thereof.

APPENDIX 4

Disclaimers in Prospectus or Offer Document - Section 289 of the Companies Act 2015

- (1) Each Registered Prospectus and Registered Offer Document must contain the following statement if registered by the Reserve Bank:

DISCLAIMER—RESERVE BANK

This document has been registered with the Reserve Bank in accordance with the Companies Act 2015 (Fiji).

The Reserve Bank accepts no liability for any statement contained or information omitted from this document.

- (2) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer intends to apply to be Listed but has not done so:

DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document has not applied to be listed on the [insert short name of Securities Exchange] as at the issue date of this document.

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

- (3) The Company must apply to be listed on a Securities Exchange within 28 days of the issue date of the Registered Prospectus or Registered Offer Document.
- (4) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer has applied to be Listed and the Securities Exchange has provided a written acknowledgment that the Company complies with all requirements for listing on a Securities Exchange:

DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document has applied to be listed on the [insert short name of Securities Exchange] and has complied with all requirements for listing on the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

- (5) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer has applied to be Listed and the Securities offered by the Company have been accepted for quotation by a Securities Exchange:

DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document (“Company”) has applied to be listed on the [insert short name of Securities Exchange] and has complied with all requirements for listing on the [insert short name of Securities Exchange]. The Company’s Securities have been accepted for quotation by the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

- (6) Each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer is a Listed Company and the Company has applied for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on a Securities Exchange and the Securities have not yet been accepted for quotation by the Securities Exchange:

DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document (“Company”) is listed on the [insert short name of Securities Exchange]. The Company has applied for quotation of the Securities offered under this document to be quoted on the [insert short name of Securities Exchange] but the Securities have not yet been accepted for quotation by the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.

- (7) The Company must apply for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on Securities Exchange within 28 days of the issue date of the Registered Prospectus or Registered Offer Document, and each Registered Prospectus and Registered Offer Document must contain the following statement (or words to the like effect), if the Company making the offer is a Listed Company and the Company has applied for the Securities offered by the Company under the Registered Prospectus or Offer Document to be quoted on a Securities Exchange and the Securities have been accepted for quotation by a Securities Exchange—

DISCLAIMER—[INSERT FULL NAME OF SECURITIES EXCHANGE]

This document has been Lodged with the [insert full name of Securities Exchange], [insert short name of Securities Exchange]. The company making the offer under this document (“Company”) is listed on the [insert short name of Securities Exchange]. The Securities offered under this document have been accepted for quotation by the [insert short name of Securities Exchange].

The [insert short name of Securities Exchange] accepts no liability for any statement contained or information omitted from this document.