BANKS AND TRUST COMPANIES (ACQUISITION OF SHARES) REGULATIONS

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BANKS AND TRUST COMPANIES (ACQUISITION OF SHARES) REGULATIONS

S.I. 22/2005
23 of 2010
S.I. 55/2016

(SECTION 24)

[Commencement 13th April, 2005]

Citation.

1. These Regulations may be cited as the Banks and Trust Companies (Acquisition of Shares) Regulations.

Interpretation.

2. In these Regulations —

"Central Bank" means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act; Ch. 351.

"licensee" means any Bank or Trust Company which is incorporated in The Bahamas and which holds a licence granted under section 4 of the Act;

"person" means an individual; sole proprietorship; partnership; joint venture; foundation; trust; estate; business trust; company; corporation; fund; unincorporated association or organisation; sovereign government or agency; instrumentality, or political subdivision thereof; or any similar entity or organisation;

"shares" for the purposes of these regulations means ordinary or preference shares in the share capital of a licensee;

Ch. 316.

"the Act" means the Banks and Trust Companies Regulation Act.

Application for acquiring shares.

3. (1) A person who desires to acquire shares in a licensee shall before acquiring any shares —

23 of 2010, s. 16.

(a) apply in writing to the Central Bank for approval of such acquisition pursuant to section 6(1) of the Act; and

23 of 2010, s. 16.

(b) supply to the Central Bank the information, documents and particulars set out in the Schedule:

Schedule.

Exemption for publicly traded Licensees.

Provided that the requirements of sub-regulation (1) shall not apply where the issued share capital of a publicly traded licensee is to be acquired by a single person or a group of persons acting together, and the aggregate holdings of such person or persons does not exceed five percent of the issued share capital of the publicly traded licensee.

(2) Where three percent or more of the issued share capital of a publicly traded licensee is held or acquired by a single person or a group of persons acting together, the licensee shall, within twenty-eight days of the acquisition, notify the Inspector of the acquisition and provide him with the following information —

(a) in the case of any person who holds or acquires three percent or more of the shares of a licensee —

(i) the name of the licensee of which the shares have been acquired;

(ii) a description of the number and type of shares which have been acquired, including a description of the number and type that are held beneficially for others;

(iii) the date of the acquisition; and

(iv) the names of persons for whom any shares are held beneficially;

(b) in the case of a company that holds or acquires three percent or more of the shares of a licensee —

(i) the information required under paragraph 2(a) of the Schedule;

(ii) the name(s) of the corporate applicant(s) or companies; and

(iii) the address(es) of the headquarters of the corporate applicant(s) including the mailing address (es), if different;

(c) in the case of an individual or group of individuals holding or acquiring three percent of the shares of a licensee —

(i) the information required under paragraph 2(b) of the Schedule; Schedule.

(ii) the name of each individual making application; and

(iii) the business and personal address, including mailing address if different, of each individual making application;

(d) such other information or documents as the Inspector may require.

Governor may vary limits. *23 of 2010, s. 16.*

4. The Central Bank may, by Notice in writing served on a licensee vary the limits set out in regulations 3(1) and 3(2) in relation to that licensee.

Foreign banks & trust companies. *23 of 2010, s. 16.*

5. Where a bank or trust company not licensed in The Bahamas applies to the Central Bank pursuant to regulation 3(1), that bank or trust company is required to provide to the Central Bank written confirmation from the relevant Supervisory Authorities that the requirements prescribed by sections 4(4)(b), (c), (d), (e) and (f) of the Act have been, or will be, met, as the case may be.

Additional information. *23 of 2010, s. 16.*

6. The Central Bank may require applicants to provide such additional information as he may determine on a case-by-case basis.

Exemptions. *23 of 2010, s. 16.*

7. The Central Bank may exempt any licensee or group or class of licensees from these Regulations, subject to such terms and conditions, if any, as the Central Bank may deem necessary.

8. *Repealed*. *S.I. 55/2016.*

SCHEDULE (Regulation 3)

1. General Information —

(a) All applicants must provide the following information —

(i) the name of the licensee of which the shares are to be acquired;

(ii) a description of the number and type of shares to be acquired, including a description of the number and type that are to be held beneficially for others;

(iii) the date of the acquisition;

(iv) the names of persons for whom any shares will be held beneficially;

(v) the purpose for acquiring the shares;

(vi) details of any planned changes in the licensee's business plan and activities, directors, management, internal and external audit and compliance programs, and any internal operating and management processes; which would be a consequence of the proposed acquisition.

(b) In the case of a bank or trust company or any other corporate entity, collectively referred to as "corporate applicants", who make application to acquire the shares of a licensee, the following additional information is required —

(i) the name(s) of the corporate applicant(s);

(ii) the address(es) of the headquarters of the corporate applicant(s) including the mailing address(es), if different;

(iii) for each applicant —

(aa) a description of the applicant, its history, details of its business activity, and details of its organisational structure;

(bb) annual reports (including audited consolidated financial statements where applicable) for the three consecutive financial years immediately preceding the date of application; and

(iv) unaudited consolidated financial statements as at the end of each quarter following the most recent financial year end, certified by a director or senior officer.

(c) In the case of individual applicants or a group of individuals acting together making application to acquire the shares of a licensee, which shall in these Regulations be collectively referred to as "individual/group applicants", the following additional information is required —

(i) the name of each individual making application;

(ii) the business and personal address, including mailing address if different, of each individual making application;

(iii) statements of assets and liabilities, certified in a manner acceptable to the Central Bank, prepared as at a date no earlier than six months prior to the date of application, for each individual making application, including those for whom any shares will be held beneficially; *23 of 2010, s. 16.*

(iv) the Central Bank may, in his discretion, require an applicant to provide certified copies of official tax returns filed with relevant authorities; and *23 of 2010, s. 16.*

(v) where the application is made by a group of individuals acting together —

(aa) the date of formation of the group, its history, details of its business activities, the current structure and organisation of the group; and any trade names under which the group carries on business; and

(bb) a description of any dominant ownership within the group.

2. Information on ownership of Applicant —

(a) Corporate applicant(s) must provide —

(i) a list of and background information on all direct or indirect shareholders who represent, either

individually or as a group acting together, 10 percent or more of the voting rights, shares, and/or other controlling interests of each applicant at the time of the application, whether or not the shares of the applicant are publicly traded;

(ii) a copy of the Act, Charter, Certificate of Incorporation and Memorandum and Articles of Association of each applicant, as may be appropriate, verified by statutory declaration made by a director or secretary duly authenticated under seal of the jurisdiction in which the applicant has been incorporated; and

(iii) an organisational chart showing the structure of the direct and indirect shareholding of each applicant analysed according to holdings of voting rights, shares, and/or other controlling interests.

(b) Individual/group applicants must provide the following information for each individual involved, including those for whom the shares will be beneficially held —

(i) date, place of birth and nationality;

(ii) curriculum vitae, incorporating — personal data, educational background, professional education and training, and list of previous professional activities and scope of responsibilities;

(iii) where applicable, a completed "Confidential Statement by Individuals Who Are Proposing to Hold the Position of Director and/or Executive Officer of a Bank or Trust Company licensed by the Central Bank of The Bahamas";

23 of 2010, s. 16.

(iv) two character references in original form from sources satisfactory to the Central Bank;

23 of 2010, s. 16.

(v) one financial reference in original form from a financial institution acceptable to the Central Bank; and

23 of 2010, s. 16.

(vi) a police or other certificate in original form satisfactory to the Central Bank, confirming that the individual has not been convicted of a serious crime or any offence involving dishonesty.