



PUBLIC COMPANIES FORUM

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British Colonial Hilton



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KEYNOTE ADDRESS

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REGULATORY DEVELOPMENTS

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PRESENTATION OUTLINE

Regulatory Developments

❖ Background & Status:

- Draft Securities Industry (Corporate Governance) Rules, 2018
- Draft Securities Industry (Takeover Rules), 2018
- Securities Industry (Business Capital) Rules, 2018

❖ Next Steps



BACKGROUND:

EASE OF DOING BUSINESS

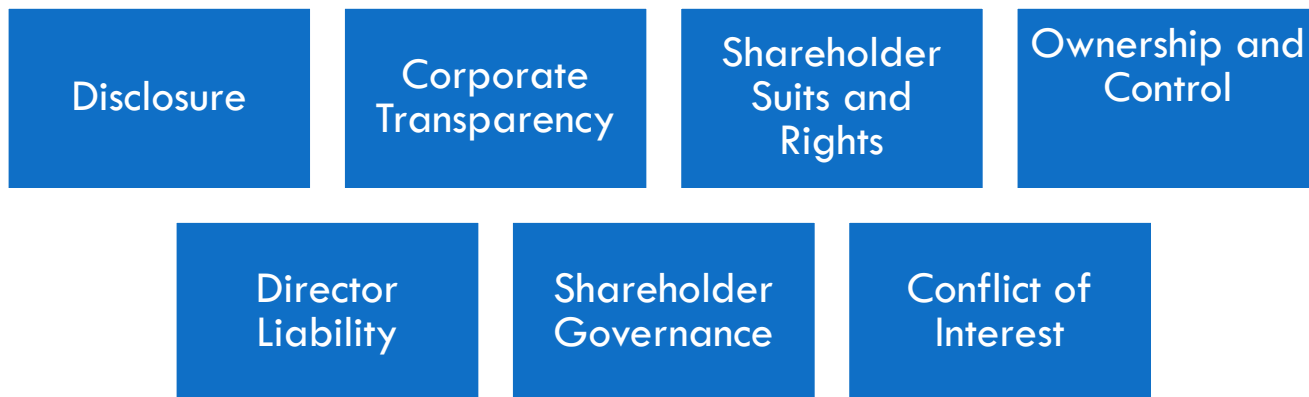
- ❖ Created/monitored by the World Bank Group
- ❖ Ranks economies based on aggregate scores in 11 categories related to the business regulatory environment.
- ❖ Doing Business 2019 Report ranks The Bahamas 118 out of 190 countries





PROTECTING MINORITY INVESTORS

❖ Protecting Minority Investors Indicators:



❖ Key areas of concern include:

- Rules on Related Party Transactions;
- Director Disclosure Requirements;
- Rules for Tender Offers;
- Shareholder Rights in legislation; and
- Board of Directors Make-Up.



SECURITIES INDUSTRY

CORPORATE GOVERNANCE RULES

- ❖ Drafted to create legislative framework compliant with international standards:
 - OECD Principles on Corporate Governance
 - OECD Guidelines on Corporate Governance of State-Owned Enterprises
- ❖ Address gaps in Companies' Legislative Regime
- ❖ Require Public Issuers to implement corporate governance principles in their operations
- ❖ Issued for Public Consultation (29 Oct. – 30 Nov. 2018)



SECURITIES INDUSTRY

CORPORATE GOVERNANCE RULES

❖ Applicable to:

- Public Issuers
- State-owned Enterprises
- Companies seeking to raise funds in capital markets/seeking listing by introduction

❖ Rules address:

- Matters related to Board of Directors
- Relationship with Shareholders
- Risk Management and Internal control
- Audits
- Accountability and Reporting



SECURITIES INDUSTRY TAKEOVER RULES

- ❖ Drafted to establish a harmonized framework for take-overs
- ❖ Ensure fairness and equality regarding treatment of shareholders
- ❖ Rules address:
 - General equality standards & requirements
 - Proper conduct of a bid
 - Restrictions and Limitations
- ❖ Issued for Public Consultation (31 Oct. – 30 Nov. 2018)



SECURITIES INDUSTRY

BUSINESS CAPITAL RULES

- ❖ Business Capital Rules, 2018 first introduced in March 2017 with the aim of:
 - Providing access to capital funding for start-ups and small and medium businesses;
 - Lighten the regulatory burden for small and medium businesses;
 - Fueling innovation and growth within the small business market;
 - Opening investment and trading opportunities for non-accredited investors; and
 - Providing adequate protection for non-accredited investors.
- ❖ Rules went through consultation period during 12 March 2017 through 12 May 2017.



SECURITIES INDUSTRY BUSINESS CAPITAL RULES

- ❖ Key changes after consultation:
 - Maximum that a business can raise in a crowdfunding project raised from \$1 million to \$3 million
 - Maximum that a business can raise in SME project raised from \$3 million to \$5 million.
 - Annual investor limits raised to \$20,000 per year (Crowdfunding) and \$50,000 per year (SME Financing).



NEXT STEPS

- ❖ Corporate Governance/Take-Over Rules
 - Submit Comments: SIAConsultation@scb.gov.bs
 - Finalisation by end of year

- ❖ Business Capital Rules



SECURITIES INDUSTRY (CORPORATE GOVERNANCE) RULES, 2018



Presenter: Ms. Odecca Gibson
Legal Counsel, Office of Legal Counsel



OBJECTIVES

- ❖ To create the legislative rules on the requirement under Part XI section 106 (Governance of Public Issuers) of the Securities Industry Act, 2011 that licensees implement corporate governance principles and procedures in the operation of their companies.
- ❖ To incorporate the principles enunciated by the OECD in its Guidelines on Corporate Governance, 2015 and Guidelines on Corporate Governance of State-Owned Enterprises, 2015.
- ❖ To address and complement those legislative gaps in the Companies legislative regime by incorporating international best practices on corporate governance.



SECTION 106 SECURITIES INDUSTRY ACT

“...A public issuer shall comply with all prescribed requirements regarding the governance of public issuers...”



SECTION 106 SECURITIES INDUSTRY ACT

- ❖ Composition and qualifications of the Board, and the independence of members;
- ❖ Establishment of Board committees;
- ❖ Establishment and enforcement of a code of business conduct and ethics for directors, officers, employees, and related persons;
- ❖ Procedures to regulate conflicts of interest between the company and directors or officers.



OECD CORPORATE GOVERNANCE PRINCIPLES

Six Principles

1. Ensuring the basis for an effective corporate governance framework;
2. The rights and equitable treatment of shareholders and key ownership functions;
3. Institutional Investors, stock markets, and other intermediaries;
4. The role of stakeholders in corporate governance;
5. Disclosure and transparency; and
6. The responsibilities of the board.



WHO IS A PUBLIC ISSUER?

“...an issuer that –

- (a) has filed a prospectus (to trade in a security)...
- (b) has completed a takeover, business combination or other reorganization, involving an **exchange of securities** in which one of the parties was a public issuer;
- (c) has issued a security that –
 - (i) is **listed for trading** on a securities exchange registered with the Commission...
 - (ii) ...has been **traded** on a registered marketplace...
- (d) was a public company or deemed public company under the former Act...
- (e) is described in an order (as a public issuer) made under ss. 162(2)...



SECTION 3

Who do the Rules apply to?

- Public Companies (defined by s.2 Companies Act)
- **State-Owned Enterprises**
- Any Private Company seeking to raise funds in the capital markets (**private placement**)
- Any Private Company seeking listing by introduction



WHAT IS A STATE-OWNED ENTERPRISE?

“...an entity, whose shares **may or not be publically traded**, -

- (a) in which the Government of The Bahamas –
 - (i) **exercises ownership or control** whether as a majority or minority shareholder; or
 - (ii) **is the ultimate beneficial owner** of the entity’s economic activities; and
- (b) where the **purpose of part of its activities are of an economic nature.**”



SUMMARY OF PROVISIONS

❖ Rules address –

- The composition, appointment, qualifications, duties, training and remuneration of the Board;
- The company's relationship with shareholders and how shareholders' right, specifically minority shareholder rights, are to be protected;
- The company's obligations to implement a risk management and internal control protocols;
- The accountability and reporting obligations of the Board



THE BOARD

PART II

- ❖ Introduces requirements addressing
 - Orientation and training of directors;
 - Remuneration of Directors;
 - How multiple directorships and conflicts of interest of Directors are to be handled;
 - Performance Evaluation of the Board;
 - The obligation to issue a separate corporate governance statement in the annual report.



THE BOARD

PART II

Note:

- (1) Requirement for the Board of an SOE to be **appointed consistent with any applicable legislation** addressing appointments and composition.
- (2) Increased role of the **Non-Executive Director**.
- (3) Focus on conduct of *Members*, i.e. ethics.
- (4) Emphasis on independence of the Board
- (5) Emphasis on the experience and competence of *Members*.



SHAREHOLDERS

PART III

- ❖ Concerned with the relationship between company and shareholders.
- ❖ Introduces standards addressing:
 - The equal treatment of shareholders;
 - Protection of proxy rights;
 - The role of institutional shareholders in general meeting;
 - The disclosure of institutional shareholders of their own corporate governance policy.



BEST PRACTICES

❖ RISK MANAGEMENT (Part IV)

- Establishment of a risk-management framework
 - Internal risk assessment
 - Whistle-blowing policy

❖ AUDITS (Part V)

- Creation of Internal Audit Function
 - Establishment of an internal audit unit
- Strengthening of External Audit Function
 - Rotation of external audit and changing of audit personnel
 - Establishment of an Audit Committee



BEST PRACTICES

- ❖ **ACCOUNTABILITY AND REPORTING (Part VI)**
 - Requirement for the Board and Head of Finance to certify the financial statements;
 - Inclusion of Corporate Governance Report in company's annual report;
 - Annual Report to disclose accounting and risk-management issues;
 - Disclosure of details related to a Director's interest in company contracts.



SECURITIES INDUSTRY (BUSINESS CAPITAL) RULES, 2018



Presenter: Ms. Odecca Gibson
Legal Counsel, Office of Legal Counsel



OBJECTIVE

To establish the legislative framework to enable established and new companies to access capital to fund their business needs by issuing securities to members of the public without the need for filing a prospectus.



SECTION 92 SECURITIES INDUSTRY ACT

EXEMPT OFFERINGS

The Commission is empowered to exempt certain offerings from having to comply with the requirement to file a prospectus and consequently having to comply with provisions of the SIA which apply to public issuers.



BUSINESS FUNDING

- ❖ Exempt distributions to source or obtain business capital.
 - Two Mechanisms:
 1. Crowdfunding
 2. SME business funding



WHAT IS CROWDFUNDING?

Section 2

- ❖ The funding of a project or venture by **raising money from members of the public** utilizing an **internet platform**.
- ❖ **Project initiators** lists distribution on the platform



WHAT IS AN SME BUSINESS FUNDING?

- ❖ The issue of securities as an exempt distribution.

Section 2/Schedule 1

An SME is a small or medium-sized enterprise.

Category	Annual gross income (B\$)
Small-sized enterprise	Up to 1.5 million
Medium- sized enterprise	Up to 3 million



WHAT ARE THE RULES FOR BUSINESS FUNDING?

- ❖ Securities must be issued, i.e. shares;
- ❖ Eligibility: Must be legal persons (companies and ELP) operating within The Bahamas;
- ❖ Formalities:
 - Offering document or Memorandum;
 - Form 16 Notice of Exempt Transaction;
 - Payment of the prescribed fee



WHAT ARE THE RULES FOR BUSINESS FUNDING?

- ❖ Method of business funding must be selected and may not be combined;
- ❖ Transactions for the purchase of securities must be made in BSD;
- ❖ Method of business funding will determine the distribution period, i.e. dates for the start of distribution and end according to the offering document;
- ❖ Non-accredited investors must complete the Risk Awareness and Investor Limit Forms



WHAT ARE THE RULES FOR BUSINESS FUNDING?

- ❖ Accredited investors must complete the Accredited Investors Form;
- ❖ Funds collected from the purchase of securities must be paid over to a project initiator or issuer within three days of the end of the distribution period;
- ❖ Purchaser's of securities are entitled to withdraw a purchase within 72 hours after the purchase was made, and the funds must be returned within two days;
- ❖ Platforms and registered firms are prohibited from buying the securities or offer to or agree to lend money to a project initiator or issuer, or set off the cost of any fees.



REGULATION OF CROWDFUNDING

THE DISTRIBUTION

- ❖ Purpose for distribution must be lawful;
- ❖ Distribution must be used to invest in, acquire or merge with a new or existing non-listed company;
- ❖ Crowdfunding offering document –
 - must be prepared and filed with Commission no later than five days before the first sale of securities;
 - Must state the distribution period; and
- ❖ Project Initiator must submit reviewed financial statements to Commission if \$150,000 raised, otherwise compiled financial statements must be submitted.



REGULATION OF CROWDFUNDING

THE PLATFORM

- ❖ Platforms must –
 - be registered with the Commission as a marketplace under the SIA;
 - maintain solvency requirements;
 - institute internal controls to protect data and confidentiality;
 - segregate client accounts;
 - designate a compliance officer;
 - keep records per Regulations 26 to 36;
 - prepare and submit the Platform Due Diligence Form to the Commission within five days of the close of the distribution period;
 - report non-compliant project initiators.



REGULATION OF CROWDFUNDING

THE PLATFORM

❖ Platform operations –

- Distributions may not be advertised unless there is a written agreement;
- Must notify users of website warning that neither returns on purchases and use of funds are guaranteed;
- Disclose compensation received from a project initiator;
- Commission must receive fee by 31 January annually;
- Securities may be underwritten but underwriting fees may not exceed 3% of value of each sale;
- Must return purchaser's funds if distribution is cancelled by project initiator or Commission, or removed by the platform.



REGULATION OF CROWDFUNDING

THE PLATFORM

The Platform must conduct background and criminal checks on the natural persons associated with the project initiator and determine if –

- Project initiator is not disqualified to advertise a distribution;
- distribution was previously the subject of another distribution with the same 12-month period;
- distribution seeks to raise more than maximum sum;
- Project initiator is not an IBC or a listed company;
- distribution would be a different type of exempt distribution.



REGULATION OF CROWDFUNDING

PROHIBITED ACTIONS

- ❖ Project Initiators shall not –
 - Lend to or arrange financing with a purchaser or act as a lender for another project initiator;
 - Solicit loans from purchasers;
 - Offer incentives to a connected person, i.e. promoter or underwriter for, or markets distribution;
 - Use non-platform third parties to promote distribution.



REGULATION OF CROWDFUNDING

PROHIBITED ACTIONS

- ❖ Platforms shall not –
 - Engage in or offer investment advice/recommend a project initiator to purchasers;
 - Curate or solicit prospective purchasers with respect to specific offerings; and
 - Advertise offerings related to a company or group controlled by the beneficial owners who control the platform.



REGULATION OF SME BUSINESS FUNDING

THE DISTRIBUTION

- ❖ May be done over-the-counter;
- ❖ Proceeds of the offering must be used to invest in, acquire or merge with another unlisted company;
- ❖ Registered firms must be used;
- ❖ Must not exceed the maximum amount (\$5 million) or restrict the number of investors who may participate;
- ❖ Offering must satisfy the conditions for exemption and comply with provisions of offering memorandum;
- ❖ Any member of the public may purchase securities;
- ❖ Distribution period cannot exceed 90 days.



REGULATION OF SME BUSINESS FUNDING REGISTERED FIRMS

- ❖ Must be licensed with Commission to deal in, arrange deals in, manage, and advise on securities;
- ❖ Must provide the Commission with a monthly report disclosing all information on an exempt distribution; and
- ❖ Must comply with all statutory requirements on ongoing obligations.



REGULATION OF SME BUSINESS FUNDING

THE SME (ISSUER)

- ❖ Must submit to the Commission not later than 5 days before the first sale of securities; –
 - the Offering Memorandum;
 - The Notice of Exempt Transaction;
 - Each Purchaser's risk awareness form and investor limits form.
- ❖ Must submit copy of the offering memorandum to the registered firm and each prospective purchaser;
- ❖ Must retain all documents and records related to the offering per s. 67 of SIA;
- ❖ Must submit –
 - Within 12 months of close of distribution period - audited financial statements to the Commission where more than \$1 million raised, and reviewed financial statements if less than \$1 million raised;
 - Within 6 months of close of distribution period – quarterly statements to show use of gross proceeds of distribution.



REGULATION OF SME BUSINESS FUNDING

PROHIBITED ACTIONS

- ❖ An SME cannot –
 - Launch more than one distribution in a 12-month period;
 - Have previously utilized an exempt distribution having not complied with the Commission's requirements;
 - Have previously initiated a crowdfunding distribution and the distribution period has not expired;
 - Launch distribution exceeding the maximum investment amount or restricting the number or category of investors;
 - Finance, lend to, or arrange financing or lending to purchaser.



THANK YOU!



QUESTIONS & ANSWERS