

# GUIDELINES FOR UNDERWRITING OF SECURITIES BY BANKS

## PRELIMINARY

These Guidelines are made under the section 37 of the Maldives Securities Act, 2/2006.

These guidelines stipulate the terms and conditions for underwriting of securities by banks licenced by the Maldives Monetary Authority.

### 1. Interpretation

In these guidelines, unless the context otherwise requires, any term defined in the Maldives Securities Act shall have the meaning assigned to it in the Act -

'Act' means the Maldives Securities Act (Law No. 2/2006);

'Authority' means the Capital Market Development Authority;

'Financial Institution' has the meaning ascribed to it in the Act;

'Underwriting' has the meaning ascribed to it in the Act;

'Securities' has the meaning ascribed to it in the Act;

'Sub-underwriting' refers to a process where lead underwriters are able to lay off their underwriting risk to institutional and other investors who, for a fee assume the commitment to take up any shares that are not subsequently placed by the underwriter;

'Firm commitment' underwriting is where the underwriter buys all the securities on offer at an agreed price, and the issuer gets the guaranteed proceeds even if the underwriter does not sell all the securities;

'Best efforts' underwriting is where the underwriter agrees to exercise best endeavours to sell all of the new securities on offer, but does not guarantee it

'Underwriting Syndicate' refers to a number of underwriters who have agreed to be part of the group that will be responsible for the sale of the securities.

## **2. Notification to Authority**

- (1) A bank which is licenced by the Maldives Monetary Authority may enter into agreements and engage in transactions to underwrite securities without holding an underwriters licence subject to terms and conditions stipulated in these Guildelines.
- (2) A bank which is licenced by the Maldives Monetary Authority, which seeks to engage in underwriting of securities shall notify the Authority of it's intention to underwrite a security on offer and shall state, among others, the following -
  - (a) The amount it intends to underwrite;
  - (b) Its role in underwriting, i.e. whether as the sole underwriter, as manager or member of an underwriting syndicate.
- (3) A bank seeking to underwrite any securities shall obtain a written approval of the Maldives Monetary Authority on a case by case basis and shall furnish such approval to the Authority.

## **3. Registration and Fees**

- (1) Banks seeking to underwrite securities shall register with the Authority as specified in Schedule 1.
- (2) The registration form shall accompany with the fees stipulated by the Authority as specified in Schedule 2.

## **4. Underwriting Contract**

- (1) An Underwriter shall execute a written contract prior to carrying out any business for and on behalf of a client containing all the terms and conditions agreed to by and between itself and the client.
- (2) Such contract shall not be modified in any way other than in writing.

## **5. Information to the Authority**

- (1) All underwriting agreements must be submitted to the Authority.
- (2) An underwriting agreement submitted to the Authority shall contain, at a minimum, the following information -
  - (a) Names of the parties to the agreement;

- (b) Type of underwriting commitment, i.e. whether firm commitment, best efforts or other;
  - (c) The underwriting commission;
  - (d) Responsibility in case of default by an underwriter where there is more than one underwriter or there is an underwriting syndicate;
  - (e) Time of closing of the deal;
  - (f) Covenants and obligations of the parties;
- (3) Where an issue is sub-underwritten, a sub-underwriting agreement shall also be filed with the Authority stating the parties to the sub-underwriting agreement and the terms and conditions.
- (4) Where an underwriting is on a best efforts basis, the underwriter shall open a separate bank account for the purpose of underwriting and all money collected from any sales shall be deposited in the separate account for the benefit of subscribers and inform such to the Authority in writing within 3 (three) working days, and
- (5) In the event that the best efforts underwriting is unsuccessful and is cancelled at any point, all money collected shall be returned to the subscribers and inform such to the Authority in writing, with in 3 (three) working days.

## **6. Trading in Underwritten Securities**

Pursuant to Section 39(e) of the Act, where an underwriter has purchased a security under an underwriting or sub-underwriting obligation, by virtue of the fact that no one has purchased the security or part of the security or made payment to purchase thereof, such security shall be offered for sale only through the stock exchange. Any recommendation pertaining to such security shall be given after disclosing the fact that the securities were obtained under an underwriting or sub-underwriting agreement.

## **7. Reports to the Authority**

- (1) A lead underwriter or manager of an underwriting transaction shall furnish the Authority with a report on the outcome of an underwriting transaction. Such report shall include, but is not limited to, the following -
- (a) Amount raised;
  - (b) Fees charged;

- (c) Net proceeds of the issue;
  - (d) Members of the underwriting syndicate (if applicable).
- (2) The report stipulated in sub-section 1 above shall reach the Authority not later than five (5) working days after the close of the offer.

## **8. Agreement with clients**

Every underwriter shall enter into an agreement referred to in section 4 with each client and the said agreement shall, amongst other things, provide for the following, namely -

- (a) the period for which the agreement shall be in force;
- (b) the amount of underwriting obligations;
- (c) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
- (d) the amount of commission or brokerage payable to the underwriter;
- (e) details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

## **9. Compliance and Monitoring**

- (1) The registered underwriter shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc. issued by the Authority and for redressal of investors' grievances.
- (2) The registered underwriter shall establish a mechanism to report any non-compliance issues to the authority. The underwriter shall comply to the directions issued by the Authority subject to any non-compliance observed or reported.
- (3) An authorized person must be identified by the underwriter and informed to the Authority for compliance purposes.

## **10. Regulatory Compliance and Internal Controls**

- (1) An Underwriter shall have an internal compliance manual related to underwriting services, applicable to its directors and employees which sets out adequate compliance procedures and practices to ensure –
  - (a) that the directors and employees of the Underwriter do not contravene the provisions of the Act or any rules or regulations and guidelines made there under; and
  - (b) the consistent and fair implementation of its operational procedures and administrative processes.
- (2) An Underwriter and its directors shall be responsible for due compliance with such internal compliance manual.
- (3) An Underwriter shall inform the Authority in writing where any member of the staff or a director contravenes the provisions of the Act or any rules or regulations and guidelines made there under.
- (4) An Underwriter shall make an annual compliance report signed by two of its directors confirming compliance with the rules and regulations laid down by the Authority and forward same to the Authority.

## **11. Governance**

An Underwriter shall -

- (1) Establish and implement good business practices and follow just and fair principles in the conduct of business;
- (2) Comply with codes and best practices applicable to the activities of an Underwriter and such Code and practices.
- (3) Ensure that its relationships or activities create no conflict of interest between itself and its clients. In the event such conflict cannot be avoided there shall be full disclosure thereof to its clients and to the Authority and the Underwriter shall comply with any directions in this respect made by the Authority.

## **12. Client Information, Record Keeping and Confidentiality**

- (1) An Underwriter shall maintain the following records in its office -
  - (a) all subsisting agreements entered into by the Underwriter;

- (b) all agreements entered into by the Underwriter that have been concluded spanning a period of 6 (six) years from the date of conclusion;
  - (c) all transactions relating to clients including the identity of clients spanning the immediately preceding period of 6 (six) years.
- (2) An Underwriter shall have suitable information recording and retrieval systems and maintain such information for inspection by the Authority.
  - (3) An Underwriter shall ensure confidentiality of all information relating to clients including such client's identity and transactions carried out for such client, unless and to the extent such disclosure is required by law and regulations.

**13. General responsibilities of an underwriter**

- (1) The underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.
- (2) Every underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 20 (twenty) days of the receipt of such information from such body corporate and inform to the Authority.

---

---

## SCHEDULE 1

### REGISTRATION FORM

#### 1. General Information:

- (a) Name of applicant:
- (b) Banking Licence number

#### 2. Group and associated person information

Please specify names of holding company, subsidiary companies and associates of the applicant indicating companies or partnerships in which the applicant has an interest:

#### 3. Other Information

- (1) Has the applicant or any director or secretary of the applicant within the past 6 (six) years -
  - (a) been licensed or registered in any place under any law which requires licensing or registration in relation to dealing in securities? If answer is "YES" give details thereof:
  - (b) been licensed, registered or otherwise authorised by law to carry on any trade, business or profession in any place? If answer is "YES" give details thereof:
  - (c) been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific license, registration or other authority is required by law in any place? If answer is "YES" give details thereof:
  - (d) been suspended from membership of any securities exchange or otherwise disciplined by a securities exchange? If answer is "YES" give details thereof:
  - (e) been refused membership of any securities exchange? If answer is "YES" give details thereof:

- (2) Has any director or management staff of the applicant had any experience in performing the functions in this area? If answer is “YES” give details thereof:

**Note:**

The application form must be signed by all the Directors and Company Secretary of the Company.

**Declaration:**

- (1) We are aware of the provisions of section 32 of the Maldives Securities Act relating to false statements in applications.
- (2) We, the undersigned, declare that the above information is true and accurate. We undertake in the event of our application being accepted to abide by the Maldives Securities Act and the Regulations, Rules, procedures, guidelines and directions present and prospective issued from time to time by the Authority established by the Maldives Securities Act. We also undertake to inform the Authority immediately of any change in any of the particulars stated in this application.

**We Enclose:**

- (1) A certified copy of the license issued by the MMA

SEAL OF APPLICANT:

Name of Director/Company Secretary

Signature

Date

---

---

## SCHEDULE 2

### FEES

- |     |                                      |                |
|-----|--------------------------------------|----------------|
| (a) | Registration fee                     | MRF 120,000.00 |
| (b) | Annual fee for underwriting services | MRF 50,000.00  |

DRAFT