

LEGAL UPDATE

## THE FSC BRINGS WELCOMED CHANGES TO THE GUIDELINES FOR ISSUE OF CORPORATE AND GREEN BONDS.

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On 23 December 2021, the Financial Services Commission ('FSC') published the Guidelines for Issue of Corporate and Green Bonds in Mauritius ('Guidelines'). The purpose of the Guidelines is to supplement the Guide for the Issue of Sustainable Bonds in Mauritius issued by the Bank of Mauritius in June 2021 ('BOM Guide') by elaborating on various regulatory requirements to be adopted by the issuers of 'Green Bonds' in line with international best practices and the Guidelines go further by also regulating the issuance of corporate bonds which do not have a 'green' element.

Following the issuance of the Guidelines, some reservations emerged on certain provisions of the Guidelines, particularly on corporate bonds, which were viewed as constraining and restricting the ability of potential issuers to fundraise in certain circumstances. The FSC took swift actions by taking onboard the propositions of stakeholders and issuing amended Guidelines on 18 April 2022.

The amendments widened the definition of eligible issuers and thus permitting more issuers to undertake raising of debt capital. In addition, the revisions brought clarifications and flexibility on the overall terms which apply to bonds.

This article summarizes some salient provisions of the Guidelines and highlights certain points which issuers should consider when first contemplating debt raising.

### Application

The Guidelines apply to all issuers meeting the eligibility requirements under the Guidelines and those undertaking a minimum corporate bonds size issue of MUR 100 million or equivalent, but the Guidelines apply to issuers of green bonds irrespective of the issue size.

The Guidelines are split into three Chapters which provide the framework applicable to Corporate and Green Bonds. The first and second Chapters provide the general requirements applicable to both Corporate and Green Bonds which Chapter 3 focusses on Green Bonds. As such, an 'eligible issuer' of Corporate Bonds would need to comply with Chapters 1 and 2 while all three Chapters would be applicable to an 'eligible issuer' of Green Bonds.

Under the Guidelines, an eligible issuer of corporate and green bonds may be:

- a reporting issuer as defined under section 86(1) of the Securities Act (the 'SA') and duly registered with the FSC; or
- an 'issuer' as defined under section 2 of the SA i.e., a person or any other entity that issues, has issued or is going to issue securities and satisfying the following requirements (the 'Base Requirements'):
  - Net Asset - The company has, at any point in time, not earlier than 18 months prior to the proposed issue of corporate bonds, net assets of a total value exceeding MUR 100 million or its equivalent, as certified by its external auditor(s) and reflected in its audited financial statements.
  - Track Record - The company has been in existence for at least three years and:
    - (A) Has positive net profits after tax over the last twelve months' financial periods preceding the application for the issue; or
    - (B) Has a Debt/EBITDA for the last two financial periods preceding the issue maintained at a weighted average between zero and 6 times (inclusive).
  - Credit History - The company does not have a history of recurrent default/late payments based on its MCIB or any relevant reports at the time of issuance.
- an 'issuer' as defined under section 2 of the SA, that issues corporate or green bonds that are fully secured or guaranteed. For guaranteed debt securities, the guarantor must also meet the Base Requirements;
- an 'issuer' as defined under section 2 of the SA and issuing corporate or green bonds having a minimum credit rating of BBB, issued by a domestic credit rating agency licensed or recognised by the FSC. An issuer who makes an offer of corporate or green bonds in reliance of this condition, must review its credit rating on an annual basis until the maturity of the bond and forthwith inform the investors and the corporate finance adviser of any change in rating accordingly;
- a person who does not meet any of the above requirements but proposes to only issue green and corporate bonds to sophisticated investors until such time as they meet the above requirements.

The Guidelines do not apply to:

- (a) an issuer which is issuing corporate bonds to subscribers under a privately negotiated agreement without any solicitation;
- (b) an offer of corporate bonds by an issuer incorporated or established outside Mauritius or an issuer who exclusively offers its securities to persons resident outside Mauritius; and
- (c) an offer or issue of corporate bonds by a corporation holding a Global Business Licence.

For both corporate and green bonds, the minimum subscription amount must be MUR 1 million if made under a preferential offer.

The Guidelines have been issued under the powers conferred to the FSC under section 7(1)(a) of the Financial Services Act and non-compliance with the Guidelines may expose the issuers of corporate

and green bonds to regulatory actions which may include directions, private warning, public censure and administrative penalties.

### Offering of the Corporate and Green Bonds

The Guidelines are not meant to displace existing regulations applicable to the issuance of bonds but are intended to be read together with the SA, the Securities (Public Offers) Rules 2007, the Securities (Preferential Offer) Rules 2017 and any regulations, rules, circulars, notices that the FSC may issue from time to time and other applicable laws.

Accordingly, when putting together their offer document and assessing their submission requirements to the FSC, issuers of corporate or green bonds must consider the provisions of the Guidelines as well as the SA and the applicable FSC rules; for instance, when making an offer to the public, the corporate or green bonds issuer must prepare and register a prospectus with the FSC in line with the SA and the Securities (Public Offers) Rules 2007 or if the offer is made as a preferential offer, the issuer must prepare a preferential offer document in line with the Securities (Preferential Offer) Rules 2017. In addition, when making a preferential offer of bonds, an issuer must also provide the FSC with supplemental information prescribed by the Guidelines together with the customary filing of the preferential offer document.

Prior to the issue of any Green Bond, an issuer must prepare a Green Bond Memorandum which will be the main source of disclosure for issuers to demonstrate the 'greenness' of their proposed projects and their application of the principles set out in these Guidelines for the proposed issue. For both public and preferential offers, this Green Bond Memorandum should form part of the offer document.

### Key provisions applicable to Corporate and Green Bonds

The Guidelines cater for numerous conditions in respect of corporate and green bonds and some of the key requirements are summarised below:

- **Nature of the bonds:** bonds must be in the form of debentures under the Companies Act 2001 and have a maturity of more than 365 days with a coupon determined by the issuer taking into consideration the prevailing Government Bond Yield Curve when the issuance is in Mauritian Rupee and any other relevant market data and risk premium;
- **IPA:** issuers need to appoint an issuing and paying agent ("IPA") who holds a registrar and transfer agent licence and through whom all subscriptions/redemptions/payments will have to be routed;
- **Corporate Finance Adviser:** a corporate finance adviser licensed by the FSC must be appointed to advise the issuer on the issuance and act as liaison with the FSC;
- **Compliance with offer document:** issuers will need to report, within 14 days from the issue date to the Corporate Finance Adviser that the issuer of the bonds is adhering to the conditions of the offer document. An issuer must notify the IPA once the proceeds raised have been used for the disclosed purpose;
- **Reporting to the FSC:** the issuer must furnish to the FSC, as soon as possible, any information that may have a direct and material impact which may affect the pricing of the bonds and during the

- period the corporate or green bonds remaining outstanding, the issuer must submit to the FSC, on a yearly basis, status of the outstanding bonds within 30 days of delay.
- **Transferability:** bonds must be transferable, and the issuer must only recognize the investor whose name is last registered in the books of the IPA;
  - **Buy Back:** issuer may buy back bonds from current holders before maturity through the IPA provided the buyback offer is extended to all investors of the relevant bonds and in a particular tranche;
  - **Market conventions:** (i) yields on the bonds must be rounded to 2 decimal points and prices must be rounded to 3 decimal points; and (ii) the day count convention shall be Actual/Actual, Actual/365, Actual/364, Actual/360 or 30/360 or such other convention as may be advised by the Corporate Finance Adviser in respect of the offer.
  - **Trading:** corporate and green bonds, not listed on a securities exchange, may be traded Over the Counter ('OTC') on the secondary markets. Settlement for OTC trades of corporate and green bonds shall be carried out within 3 business days of the date of approval by the Registrar General;
  - **Additional information:** the offer document must contain information on corporate governance and board practice, on comprehensive indebtedness of the issuer as particularised in the Guidelines. The issuer is also required to detail out all the potential events of default in respect of the bonds.

#### Special Requirements imposed on 'Green Bonds'

A Green Bond has been defined in the Guidelines as a debt instrument which facilitates capital-raising and investments into new and/or existing qualifying green projects which have environmental benefits and can mitigate risks associated with climate change. The proceeds of Green Bonds may only be used for the funding of qualifying green projects which have clear environmental benefits which should be assessed and, where feasible, quantified by the issuer.

The qualifying green project categories include renewable and sustainable energy, energy efficiency, pollution prevention and control, terrestrial and aquatic biodiversity conservation, clean transportation, sustainable waste management including recycling, efficient disposal of wastage, climate change adaptation, green buildings, environmentally sustainable management of living natural resources and land use, eco-efficient and/or circular economy adapted products, production technologies and processes or any other category as may be specified by the FSC from time to time.

Certain green projects may have social co-benefits and in such circumstances, the classification of the proceeds as a Green Bond should be determined by the issuer based on the primary objectives for the underlying projects.

Issuers engaging in Green Bonds issue should establish defined internal processes for the evaluation and selection of projects to be funded by the proceeds and at a minimum, disclose the following information to the FSC and potential investors prior to issuance:

- the internal process for evaluating how the proposed project is classified as a qualifying green project;
- the expected environmental benefits of the proposed project;

- the internal process around the selection and approval of the proposed project
- any green standards or certifications referenced in the proposed project; and
- intended types of temporary placement for the balance of unallocated proceeds.

Issuers should establish clearly defined internal mechanisms to manage and track the proceeds of Green Bonds to ensure that these are used exclusively for the qualifying green projects as disclosed. This relates to the traceability of the use of invested proceeds as well as the remaining uninvested balance.

The above must be evaluated by an independent external reviewer, who can be an auditor, a credit rating agency or another service provider recognized by the FSC, and who will produce a Pre-issuance Review Report for the benefit of prospective investors. The Guidelines warn against 'Greenwashing' and require issuers to endorse a governance structure to ensure that they are not making false or misleading claims about the green credentials of their financial product(s).

Following the issuance of the green bonds, as part of its reporting process, the issuer should prepare, annually throughout the term of the issue, a Green Bond Progress Report for the attention of the investors to ensure the ongoing transparency and regular disclosure of information about the status of the Green Bond proceeds.

#### Concluding Note

The issuance of the Guidelines in respect of the Green Bonds is a welcome step forward in the development of the Mauritius debt market generally. They provide guidance on a segment of this market which is likely to provide many opportunities for Mauritian businesses.

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