



POST CONSULTATION PAPER

PRIVATE PLACEMENTS

The Financial Services Commission of Barbados (the “Commission”) has introduced a regime which will be applied to persons who offer or issue securities by way of private placement transactions. The rationale for the regime was outlined in a consultation document which was circulated to the industry for comments in May 2014.

The Commission notes that respondents generally supported the establishment of the regime. In finalising the regime the Commission considered the various comments and recommendations received and developed a regime which incorporated points raised by the respondents where appropriate. The Commission is of the view that the regime responds to the needs of the industry and at the same time maintains protection for investors. The details of the regime are outlined in the Commission’s circular **SEC-C01/15**.

A summary of the comments made by the industry and the responses in respect of the same are outlined in the following paragraphs:

Summary - consultation comments & responses

1. Clear guidance on the nature of offers & registration requirements

The respondents to the consultation expressed the need to have clear guidance, through a policy decision or otherwise, regarding the nature of the offers that would constitute a private placement offer and registration requirements. Some of the commenters emphasised that the persons who participated in private placement transactions could be viewed as not being part of the conventional “public”.

Commission’s response: The regime addresses the comments by clarifying the characteristics of offers that would be captured as private placement offers. The regime includes references to the type of offer e.g. whether it is a limited offer; the type of persons to whom the offer is being made and the characteristics of the issuer or offeror. It also clarifies that persons issuing or offering securities by way of a private placement will not be required to register with the Commission as reporting issuers once the terms outlined in the regime are met.

2. The type of investor

Respondents sought assurance that the regime would adequately capture the various types of investors who may participate in private placement transactions. Specifically, the commenters indicated that the regime should extend beyond offers to “sophisticated persons” so that restricted offers by private companies would be applicable.

Commission’s response: The Commission is of the view that the regime is wide enough to include a range of investors. It is not restricted to sophisticated persons and includes an array of potential investors such as employees and shareholders of the issuer, as well as other persons.

3. The type of issuer

In addition to looking at the types of investors, the respondents pointed to the need to ensure that the regime encompassed the range of issuers that may undertake private placement transactions. Reference was made to international business companies; non-Barbados issuers and the transactions undertaken by such entities to sections of the public.

Commission’s response: The Commission is of the view that the regime is sufficiently comprehensive regarding the types of issuers that can utilise the regime.

4. Administrative functioning – efficient, time sensitive regime

The respondents spoke to the administrative functioning of a private placement regime and emphasised that, in addition to being clear, an efficient framework which recognised the time sensitivity of private placement transactions was vital.

Commission’s response: The regime that was originally proposed was modified and facilitates a streamlined process which addresses the comments regarding responsiveness and efficiency. Of particular note, there will be no requirement for prior registration or evaluation of the offer by

the Commission; or submission to the Minister of Finance in order to determine whether the criteria has been met. The regime is structured such that issuers will evaluate for themselves whether the offer meets the criteria and provide information to the Commission on completion of the transaction in the form of the post distribution filing. Issuers will therefore be in a position to act as promptly as required in facilitating the transactions.

5. Existing registrants – private placement transactions

A recommendation was made that the regime should be open to existing registrants who issued securities by way of a private placement.

Commission’s response: Persons registered as reporting issuers who have issued securities by way of private placement will be able to utilise the new regime and “de-register” as reporting issuers. They will need to demonstrate that the issue/distribution would have met the criteria for a private placement and where applicable, that it still meets the criteria.

6. Future developments – collective investment schemes

Respondents sought clarification and/or expressed views on the applicability of the regime to collective investment schemes. Some respondents supported the inclusion of funds in the regime, while others argued against their inclusion.

Commission’s response: As outlined in the aforementioned circular, the regime will not apply to collective investment schemes. Funds are required to be licensed in accordance with the Mutual Funds Act, Cap. 320B. The points raised may be considered further as the Commission examines revisions to the securities and funds legislation.

7. General comment

The regime proposed in the consultation paper was revised and a number of the comments that were submitted regarding certain aspects of the proposal e.g. requirements related to reporting of material changes, are not applicable to the new regime. Such comments are therefore not explicitly addressed in this post-consultation document.