

**Report of the Development Committee**

**on**

**Disclosure**



**INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

October 1993

## **Foreword**

The Development Committee, which is made up of more than 40 members of the International Organization of Securities Commissions ("IOSCO") that regulate emerging securities markets, has endorsed on October 25, 1993 this Report from its Working Group on Disclosure and has authorized its public release during the XIX<sup>th</sup> Annual Conference of the Organization. The Report, prepared under the chairmanship of the Comisión Nacional de Valores of Argentina, presents a model prospectus containing minimum disclosure standards. The objective of the Development Committee of IOSCO is to promote the development of emerging securities markets, in particular, by the exchange of pertinent information and the implementation of common standards.

## INTRODUCTION

In accordance with the purposes of this working group on disclosure, two different stages have been concluded. The first stage resulted in the development of a set of general minimum disclosure standards. This was the basis to elaborate a draft model prospectus containing specific minimum standards for domestic disclosure requirements.

As you all know, the Working Group on Disclosure prepared the report on general minimum disclosure standards which was approved in the London meeting in October last year.

At the Nairobi meeting the Working Group on Disclosure presented the draft prospectus containing more detailed disclosure standards for domestic issues. This prospectus was examined by all the Committee members present in Kenya who concluded that it was a good standard although many representatives expressed the difficulties their markets would have in reaching it.

As a result of the debate and the comments of the other members not present at the meeting (and later consulted), it was decided that the group would prepare this report in the form of recommendations. Thus this document can serve as a model which can be applied by the emerging market members of the Committee for offerings in their home countries.

Working Party N° 1 of the Technical Committee is seeking to promote regulation that will enable world class issuers to raise capital in the most effective and efficient way in all capital markets where investor demand exists, and in a manner consistent with the protection of investors. In this regard, the Working Party is formulating recommendations regarding non-financial statement disclosure standards that would be acceptable to regulators reviewing disclosure documents to be used in connection with multinational offers.

Our aim for the future is to coordinate our work with the Working Party on Disclosure of the Technical Committee. The CNV of Argentina will attend the meeting of the Working Party on disclosure in Rome next December.

## **I- IMPORTANCE OF DISCLOSURE**

One particular area that members of the Development Committee consider critical for promoting efficiency and investor protection is the transparency of the securities markets. In this context, the information disclosed by issuers is of great importance to the public, since investment decisions will be based on this truthful data. Adequate disclosure is so essential to the fairness and soundness of the market that one of the goals of regulation in the international arena must be the development of minimum disclosure standards. Full disclosure will probably develop a fair market which will in turn offer investors a trustworthy environment and encourage them to participate.

## **II- PROSPECTUS**

It is the main document of registration delivered to investors before the consummation of any sale pursuant to a registered offering. It discloses essential information for investors to make an informed decision.

The prospectus provides information on the nature and purposes of an issue of shares, debentures, or other securities created by the company or corporation. It must also contain all material facts concerning a company and its operations so that a prospective investor may make his or her judgment as to the merit of the investment.

## **III- CONTENTS OF A PROSPECTUS**

### **1. Summary page**

The summary page provides prospective investors with a brief comprehensive description of the offering. It should identify the issuer and its business activity and characterize the offering providing information regarding it.

### **2. Information about the issuer**

The identification of the issuer is essential for investors since it is responsible for the issue which

represents a share in his property or a duty to perform an obligation evidenced by the security.

### **3. Business activities of issuer**

The business activities of the issuer must be carefully described so as to inform investors about the nature of the enterprise, its organizational structure, relationship with other companies, independent or affiliate, subsidiaries, etc. This section must cover all information necessary for investors to evaluate the company and its general development over the five past years or since the existence of the company if it was founded within five years of the preparation of the prospectus. It should be like an X-ray of the company to enable investors to assess the strengths, weaknesses, business potential and profitability of the company.

### **4. Financial Statements**

A full description of the company's financial situation should be offered. Financial statements for the last three years prepared in accordance with accepted accounting principles should be furnished. The three-year requisite is intended to offer a possibility to compare the development of the company from year to year and enable investors to analyze the performance of management.

### **5. Information concerning the issue to be publicly offered**

A detailed account concerning the characteristics of the issue is essential to fully inform investors about the securities offered, the quantity that would be offered, and all the rights and liabilities deriving from them.

## **IV- DESIRABLE LEVEL OF DISCLOSURE**

The guidelines set forth herein are intended to provide recommendations regarding specific information that must be disclosed in all domestic issues in order to have certain homogeneity among markets. Consequently, market regulators should, as far as their authority permits, require prospectuses following those guidelines to issuers as they seek to

assess and maximize the transparency of securities markets within their jurisdiction.

A desirable level of disclosure may be obtained by contemplating the following items:

1. SUMMARY PAGE

Identification of issuer; type or class, number, principal characteristics and origin of securities to be offered under Prospectus; issue price, commissions and discounts, net proceeds to issuer from the public offering; name(s) of offeror (s) if other than issuer; names of intermediaries, if any; date and conditionalities of public offering authorization; date of Prospectus; opening and closing dates of offer period.

2. ISSUER

2.1 Name of issuer;

2.2 Legal domicile;

2.3 Principal offices;

2.4 Date and place of incorporation;

2.5 Authorized capital (if different from 2.6);

2.6 Subscribed capital;

2.7 Paid-in capital;

2.8 Class, types and characteristics of shares issued and outstanding; \*

2.9 Class, types, value and characteristics of any other securities issued and outstanding;

2.10 Stock price trends, illustrating high and low prices for that share in the past 3 years if applicable (quarterly for the first 2 years and monthly for the last year);

2.11 Number of shareholders and equity distribution;

2.12 Names and holdings of significant shareholders as defined in relevant law;

2.13 Names and Holdings of significant holders of other securities issued and outstanding (if applicable);

2.14 Names of board members and senior management (this can be complemented by a statement regarding the experience and qualifications of each person);

2.15 Position held in related companies by board members and senior management;

2.16 Shareholdings in issuer of board members and senior management; Options, if any, should also be included;

2.17 Details of employee share ownership programs, if any.

\* Special emphasis to be put on dividend rights or priorities, preference in case of liquidation, voting rights, rights to conversion from one class into another, put and call provisions for redeemable shares, preemptive rights and other restrictions on transferability (when applicable).

### 3. BUSINESS ACTIVITIES OF ISSUER

3.1 Principal economic or business activities with their respective share in production, employment, turnover, etc. of issuer;

3.2 Brief historical summary concerning evolution of business activities, at least covering the last five years. Conservative evaluation of three to five year outlook for future business development, including evaluation of any major expansion, innovation or other types of projects;

3.3 Degree of dependence upon major suppliers or customers, local or foreign, if in excess of 20% of total supplies and of gross sales, respectively (if applicable or desired);

3.4 Illustrate the competitive position of the company with respect to other companies in that market, in addition to its market share.

3.5 Brief description of fixed assets, divided as to ownership, leasing rental or other form;

3.6 Brief description of any significant mortgages, pledges or other liens concerning assets of the issuer and entities under 3.4;

3.7 Investments other than those under 3.4, if exceeding in the aggregate 10% of total assets of issuer;

3.8 Patents, trademarks and other rights owned by issuer or being used under royalty agreements with third parties. Royalties earned and paid;

3.9 Organizational structure, including relationship with subsidiaries, affiliated companies, etc.;

3.10 Description of any significant contracts between issuer and its shareholders or issuer and its subsidiaries, affiliated companies and/or their respective shareholders, partners, co-owners and management;

3.11 Description of any government protection and the degree of any investment encouragement law affecting the company.

3.12 Disclosure of any pending litigation involving claims for more than 10% of the net worth of the company, subsidiaries and/or affiliated companies.

#### 4 FINANCIAL STATEMENT AND RELATED INFORMATION

4.1 Annual financial statements for the immediately preceding three years (or less if issuer has been in existence for less than three years), duly certified by independent external auditors qualified under the applicable legislation;

4.2 Interim financial statements if more than 180 days have elapsed since the date of the most recent audited annual financial statements;

4.3 Consolidated statements as under 4.1 and 4.2, if applicable or, if not, schedules concerning the financial situation of subsidiaries, affiliated and other companies in which issuer maintains significant investments, such as under 3.3;

4.4 Schedules reflecting changes in capital accounts, reserves and surplus of issuer for the last



three years or less if issuer has been in existence for less than three years);

4.5 Schedules reflecting levels of profitability and dividend record over same period as under 4.4;

4.6 Brief summary of accounting principles adhered to by issuer;

#### 5. INFORMATION CONCERNING ISSUE TO BE PUBLICLY OFFERED

5.1 Identification of shareholder Meeting or Board resolution authorizing issue of securities to be offered under the Prospectus;

5.2 Size and characteristics of issue, if different from amount of securities to be offered under the Prospectus;

5.3 Main purpose for the issue of securities and principal areas of utilization of net proceeds;

5.4 Estimated aggregate amount of gross and net proceeds from securities to be offered under the Prospectus and a classified schedule of expenses incurred from the offering if possible.

5.5 Type and class, if any, of securities to be offered; \*

5.6 Initial offering date and closing date;

5.7 Date, place and method of distributing the securities ownership certificates.

5.8 Procedures to be applied in case of over-subscription as well as in case of insufficient demand for full placement;

5.9 In case of offering under guarantees of full placement by underwriters: names and addresses of underwriters with their respective share in risk exposure;

5.10 In case of offering under best efforts underwriting: names and addresses of underwriters participating;

6.11 Names and addresses of transfer and payment agents, depository or custodian entities.

\* Full description of characteristics of the securities, including par value, if any, form of issue (certificate, bearer, etc.), issue price, determination of issuing price, placement conditionalities, dividend rights or priorities, preference in case of liquidation, voting rights, rights to conversion from one class into another, preemptive rights, put and call provisions for redeemable shares and restrictions of transferability

## 6. OTHER INFORMATION REQUIREMENTS FOR ISSUES OF DEBT SECURITIES

6.1 Identification of the issue of debt securities;

6.2 Summary of each issue (or series of issues) of debt securities issued or guaranteed by issuer as to issue date, maturity date, issue value and value outstanding at Prospectus date, debt securities held by issuer and/or subsidiaries or affiliated companies, form and characteristics of interest or other modalities of remuneration of investment;

6.3 Characteristics of issue to be publicly offered as to; issue price, redemption price, form and rate of discount, interest or other modalities for remuneration of investment, guarantees constituted in favor of holders of these debt securities, put and call provisions, if any, maturity and amortisation schedules, subordination to claim and rights of creditors and/or holders of other securities issued or guaranteed by issuer, if any;

6.4 Conversion rights and formulae for each issue or series of debt securities in circulation, including issue to be publicly offered under Prospectus;

6.5 Financial covenants of the issuer, including those concerning dividend payments, capital increases (in case of convertible debt securities issues), issues of other forms or series of debt securities;

6.6 Definition of events constituting defaults and effect upon acceleration of maturity of debt securities;

6.7 Provisions for modification of terms and conditions of debt securities issue to be publicly offered;

6.8 Provisions concerning appointment of Bondholder Representative, his functions, rights and obligations. Name of representative appointed by bondholders.

## 7. OTHER INFORMATION REQUIREMENTS FOR ISSUES OF OTHER SECURITIES

7.1 Characteristics and designation of other securities to be publicly offered under the Prospectus, including rights attached to or emanating from such securities, period for exercising such rights at a given or a varying formula price, provisions for adjustments in determining such price, and other essential or material terms, conditions and features of such securities;

7.2 Type and volume of other securities previously issued and outstanding at the time of issue of securities to be publicly offered under the Prospectus, including conditionalities and subordination, if any, affecting either such prior issues or the issue to be publicly offered under the Prospectus.

## 8. GENERAL INFORMATION

8.1 Origin, nature and conservatively estimated effect upon the business activity, or financial results or the issuer or its securities, of any material claim or legal proceedings introduced against the issuer or any of its subsidiaries or affiliated companies and still pending at the date of the Prospectus, including provisions set up for potential liabilities arising therefrom;

8.2 Certification by authorized member of the board that the Prospectus contains all information required by law and that the information it contains is correct and not misleading in form or content;

8.3 Reference to the fact that material information has been withheld from the Prospectus on grounds that disclosure would adversely affect the interests of the issuer and its shareholders (provided that such withholding of information has been authorized under law);

8.4 Information concerning methods of obtaining copies of the Prospectus and requirements regarding the method and form of application for securities offered thereunder.

#### **V- DIFFERENT DEGREES OF DISCLOSURE**

The items of information described in IV should be included in the basic long-form disclosure document. However, authorities should also contemplate prospectuses requiring lesser degrees of detail in disclosure according to the issue in question. For example a short form prospectus may be required for short-term debt securities such as commercial paper.

#### **VI- CONCLUSION**

It is important to acknowledge that members of the Development Committee have markets in different stages of development. Because of this, their needs vary. Some may be at a stage at which an interest to develop the domestic market may prevail over an interest to make cross-border offerings. Thus, regulators may find it inadequate to impose full disclosure requirements if their goal is to encourage domestic companies to offer their securities. On the other hand, once the domestic market has achieved some degree of development and the authorities' interest is to attract foreign capital, they may be able to require full disclosure to afford more protection to foreign investors coming from developed markets.

Consequently, members of the Development Committee should strive to achieve a high standard of disclosure by gradually incorporating more disclosure items. This will only result in higher standards of transparency and investor protection which are more akin to those prevailing in healthier, more developed markets.

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