

## **Rules on Minimum Public Holding as a Continuous Listing Requirement**

### **General Rules applicable to all Public Listed Entities**

These general rules are applicable to all Public Listed Entities which have their equity listed on the Colombo Stock Exchange (CSE) subject to the Transitional Rules specified under Rule 7 and shall be effective from 01<sup>st</sup> January 2014.

A sizeable public holding is a necessity for a transparent and liquid market. It is perceived that greater the public holding less is the potential for market abuse. Therefore, a minimum public holding as a continuous listing requirement is introduced with the aim of promoting a liquid and transparent market with a better price discovery mechanism. Further, the maintenance of a minimum public holding is expected to provide a greater opportunity for the citizens of Sri Lanka to share the wealth produced by the Public Listed Entities in Sri Lanka.

### **Minimum Public Holding as a Continuous Listing Requirement**

1. a) A Listed Entity on the Main Board shall maintain,
  - i. a minimum public holding of 20% of its total listed ordinary voting shares in the hands of a minimum of 750 public shareholders; or
  - ii. a market capitalization of Rupees 5 Billion of its public holding in the hands of a minimum of 500 public shareholders while maintaining a minimum public holding of 10%.
- b) A Listed Entity on the DiriSavi Board, shall maintain a minimum public holding of 10% of its total listed shares in the hands of a minimum of 200 public shareholders.
2. a) A Listed Entity shall at all times ensure that its public holding is maintained at or above the level specified by Rules (1) (a) or 1 (b) above as the case may be and it shall be the duty of such Listed Entity to monitor its compliance.
- b) The Listed Entities shall submit a report on the current distribution of shares as at the Effective date, on or before 31<sup>st</sup> March 2014, to the Exchange and to the SEC.

### **Procedure to be followed by Public Listed Entities whose Public Holding falls below the specified requirement in Rule 1 (a) or 1 (b) after the Effective Date**

3. a) In the event the public holding of a Listed Entity falls below the threshold specified in Rule 1 (a) or 1 (b) above after the effective date, such entity shall endeavor to correct the shortfall within a period of 30 market days;
- b) If such entity is unable to correct the shortfall within such period mentioned above, such entity shall make an immediate non-compliance announcement to the market at the end of such period giving the following information:
  - i. that the entity's public holding requirement has fallen below the specified requirement;
  - ii. the existing percentage of the public holding; and
  - iii. the number of shares in the hands of the public shareholders.
- c) Upon the making of such 'non-compliance announcement' to the market, the Listed Entity shall be entitled to a period of 12 months from the date of the 'non compliance announcement' to correct the shortfall.

d) Immediately upon making the above mentioned 'non-compliance announcement' to the market, the Listed Entity shall submit to the SEC the following additional information:-

- i. the proposed rectification plan and the means to achieve the specified percentage and the time plan to achieve the same; and
- ii. if the listed entity has chosen to adopt a method specified in Rule 5 the details and justification for the adopted method.

e) During the aforementioned 12 months period, the Public Listed Entity shall make a 'status announcement' on the first working day of every quarter to the market which shall include the following:-

- i. the existing percentage and the number of shares in the hands of the public; and
- ii. as to whether steps have been taken to rectify the shortfall,

f) Simultaneously with the status announcement the Public Listed Entity shall submit to the SEC a report on the progress of the rectification plan.

g) In the event, an entity fails to increase its public holding to the requirements specified under Rules 1 (a) or 1 (b) as the case may be at the end of the 12 months in Rule 3 (c) above, the entity may seek an extension of time sub-paragraph (i) below.

h) The Exchange may accept on the application of a Public Listed Entity, a lower percentage of public holding to be maintained by such Entity for a further specified time period beyond the 12 months granted under Rule 3 (c) above with the prior approval of the SEC, that may be subject to conditions;

i) First Extension

- i. The Listed Entity permitted to maintain a lower percentage in terms of sub paragraph 3 (h) above, shall be expected to conform to the specified percentage in terms of Rule (1) (a) or (1) (b) above at the expiry of such extended time period as determined by the SEC.
- ii. An application to maintain a lower percentage of shares for a limited specified time period in terms of sub paragraphs 3 (h) above should include the following information:
  - A. the Entity's total issued share capital;
  - B. the number of public shareholders and the percentage of public holding;
  - C. the percentage of total public holding for every month during the preceding 2 years;
  - D. the average market capitalization based on the daily closing price/ value weighted average price of the Entity's shares during the preceding 12 months;
  - E. The names and the number of shares held by the 20 largest holders of voting shares and the percentage of such shares held;
  - F. the proposed rectification plan and the means to achieve the specified percentage and the time plan to achieve the same; and
  - G. the details of the method to be adopted and justification for same.

j) Second Extension

- i. In the event the Listed Entity is unable to conform to the specified percentage at the expiry of the time period granted under the first extension, such Entity may be granted a second extension of time upon an application to the SEC giving reasons as to why the Entity could not reach the required threshold within the time period granted under i (i) above.
- ii. When considering such application, the SEC may take into consideration amongst other things, whether such a lower percentage is sufficient for a liquid market, including whether there are reasonable grounds to expect the public holding to reach the required threshold at the end of the second extension of time period if granted.

**Procedure to be followed when the Public Holding of a Listed Entity falls due to Supervening Extraordinary Events after the Effective Date**

4. a) In the event, the public holding of a Listed Entity falls below the minimum threshold of public holding in terms of Rule 1 (a) or 1 (b) as the case may be, on account of supervening extraordinary events, including, but not limited to -
  - i. Issuance or transfer of shares in compliance with directions of a regulatory or statutory authority or court or tribunal;
  - ii. any acquisition in accordance with the Takeovers and Mergers Code;
  - iii. re-organization of capital by way of a scheme of arrangement; and
  - iv. issuance or transfer of shares under a restructuring plan approved by a regulatory authority;

such Listed Entity shall immediately inform the Exchange and the SEC about such supervening extraordinary events and make an application to the SEC requesting time to increase the public holding to the specified level in terms of Rule 1 (a) or 1 (b) as the case may be.

b) The SEC may, after examining and satisfying itself about the circumstances of the case, may grant time not exceeding 12 months to the Listed Entity to conform to the requirements stipulated in Rule 1 (a) or 1 (b) and it shall be the responsibility of the Listed Entity to conform to the specified requirements within the time period granted.

c) In the event, the Listed Entity fails to conform to the specified requirements in Rule 1 (a) or 1 (b) at the end of the time period granted in terms this Rule, such entity shall make an application to the SEC for an extension of time in terms of Rule 3 (h) above.

5. a) A Listed Entity which falls below the required level of a minimum public holding, shall as soon as practicable adopt methods to raise the public holding to the minimum level subject to the Listing Rules of the CSE. Such methods may include any of the following methods:
  - i. issuance of new shares to the public through prospectus; or
  - ii. offer for sale of shares held by the non public shareholders to public through prospectus; or
  - iii. any other lawful modality determined by the Public Listed Entity.

b) A Listed Entity which follows any of the above methods in order to raise the public holding to the minimum specified level shall do so subject to the Listing Rules of the Exchange.

6. a) An entity that fails to comply with the aforesaid Rules within the specified/permitted time period granted in terms of these Rules shall be liable to be transferred to the Default Board of the CSE;
- b) In the event, an entity fails to bring its public holding to the specified requirement within 3 months thereof, such entity shall be liable to any one or more of the following sanctions imposed by the SEC:
  - i. publication of a notice of malfeasance; or
  - ii. suspension of trading; or
  - iii. a mandatory delisting

**Transitional Rules for the Public Listed Entities having a public holding below the specified levels as at the Effective Date of these Rules**

7. a) i.) Listed entities having a public holding below the specified levels as at the Effective Date of these Rules shall submit a report on the current distribution of shares as at the Effective Date, on or before 31<sup>st</sup> March 2014, to the Exchange and to the SEC;
- ii.) An existing Listed Entity having a public holding below the required level specified in Rule 1 (a) or 1 (b) as the case may be as at the Effective Date of these rules, shall ensure that the public holding of such entity is maintained at a minimum level of 15% of its total listed ordinary voting shares in the hands of minimum 500 public shareholders on or before 31<sup>st</sup> December 2015 if it's a Main Board Entity; and  
  
a minimum level of 7.5% of its total listed ordinary voting shares in the hands of a minimum 100 public shareholders on or before 31<sup>st</sup> December 2015 if it's a DiriSavi Board Entity.
- iii.) An Entity described in Rule 7 (a) (ii) above shall bring the public holding to the required level specified in Rule 1 (a) or 1 (b) as the case may be on or before 31<sup>st</sup> December 2016.
- b) i.) In the event, a Listed Entity which has a public holding below the specified percentage in Rule 1 (a) or 1 (b) as at the Effective Date of these Rules, is unable to comply with the requirements stipulated in Rule 7 (a) (ii) or (iii) above, the Exchange shall permit such entity to have a public holding below the percentage specified under Rule 7 (a) (ii) or (iii) above for a limited time period if upon the application to the SEC, the SEC is satisfied that such lower percentage is sufficient for a liquid market in such shares or for any other reason deemed appropriate by the SEC. This application shall be made on or before 01<sup>st</sup> December 2015 in respect of Rule 7 (a) (i) or on or before 01<sup>st</sup> December 2016 in respect of Rule 7 (a) (ii) as the case may be.
- ii.) In such application the entity shall submit to the SEC, the methodology by which the entity proposes to abide by either Rule 7 (a) (ii) or (iii) as case may be and the details and justification for the adopted method; Where the said method requires the prior approval of either the Commission or the Exchange then the entity shall obtain such prior approval. The Listed Entity which obtained such approval from the SEC shall be expected to conform to the specified percentage at the expiry of such time period granted.
- c) Upon this approval being granted for an extension of time, the entity shall forthwith make a market announcement stating that the Entity is abiding by Rule 7 (a) (ii) or (iii) as the case may be.

Such market announcement shall consist of the following information:

- i. the existing percentage and number of shares in the hands of the public;
- ii. the fact that the shortfall will be cured; and
- iii. the expected time duration to comply with Rule 7 (a) (ii) or (iii) as the case may be;

8. Any person or Listed Public Entity aggrieved by any decision made by the SEC under these Rules may appeal to the Commission within two weeks thereof.

9. The SEC shall have the discretion to waive the application of any or all of these Rules in respect of a Public Listed Entity or any class or category of Public Listed Entities under exceptional circumstances.

10. The CSE shall adopt the definition of the Public Holding given below in the Listing Rules of the Colombo Stock Exchange.

*For the avoidance of doubt, the definition of the phrase 'public shareholder' and 'non-public shareholder' appearing in SEC Directives dated 23<sup>rd</sup> August 2013 (SEC/LEG/13/08/38) and 11<sup>th</sup> October 2013 (SEC/LEG/13/10/16) shall continue to be in force.*

## **Definitions**

11. In these Rules unless the context otherwise requires-

**Close Family Member** shall mean and include the spouse and a child below 18 years and any of the following persons provided that they are financially dependent and/or acting in concert:

- a) child above 18 years;
- b) grandparents;
- c) parents;
- d) brothers;
- e) sisters;
- f) grandchildren; and
- g) spouse of the persons referred to (c), (d), (e) and (f) above

**Effective Date** means 01<sup>st</sup> January 2014.

**Key Management Personnel** means the persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

**Non-Compliance Announcement** is the market announcement made through the Exchange that a Entity's public holding has dropped below the required public holding under Rule (1) (a) or 1 (b) above.

**Parties Acting in Concert** comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operate, through the acquisition by any of them of any interests in shares in a Entity, to obtain or consolidate control of that Entity, or of any other Entity, or to frustrate the successful outcome of a takeover or merger offer for a Entity. Without prejudice to the general application of this definition, the following individuals and Entities will be presumed to be persons acting in concert with each other unless the contrary is established to the satisfaction of the Commission:-

- a) an Entity, its parent, subsidiaries and fellow subsidiaries, and their associated Entities, and Entities of which such Entities are associated entities, all with each other;

- b) an Entity with any of its directors (together with their close family members, related trusts as well as Entities controlled by any of the directors, their close family members and related trusts);
- c) An Entity with any of its pension funds and employee share schemes;
- d) any person who has otherwise provided financial assistance to any of the aforesaid persons for the purchase of any shares or interests in shares of a Entity, other than any registered Margin Provider or any other financial institution regulated by the Central Bank of Sri Lanka who provides such assistance in the ordinary course of business.

**Public Holding** shall be defined as shares of a Listed Entity held by any person other than those directly or indirectly held by;

- a) its parent, subsidiary or associate entities or any subsidiaries or associates of its parent Entity;
- b) its directors who are holding office as directors of the entity and their close family members;
- c) Chief Executive Officer, his/her close family members;
- d) Key Management Personnel and their Close Family Members; and,
- e) any party acting in concert with the parties set out in (a), (b), (c) and (d) above;
- f) shares that are in a locked account with the Central Depository Systems (CDS) due to a statutory or regulatory requirement other than those which have been subject to a voluntary lock-in at the instance of the shareholder; and
- g) shares that have been allotted to employees whereby the shares of a Listed Entity are, directly or indirectly controlled by the management or the majority shareholder of the Entity;
- h) any Entity or an individual or individuals jointly or severally holding 5% or more of the shares of the Listed Entity if it's a DiriSavi Board Entity and 10% or more of the shares if the Listed Entity is a Main Board Entity except where such shareholder is;
  - i. a statutory institution managing funds belonging to contributors or investors who are members of the public; or
  - ii. an entity established as a unit trust or any other investment fund approved by the SEC or
  - iii. not a related party declared in terms of Sri Lanka Accounting Standards or a party acting in concert declared in terms of the Takeovers and Mergers Code (ToM Code).

Explanatory Note

- a) *With regard to (f) above, shares that are locked in belonging to public shareholders due to a regulatory requirement shall be deemed to be a public shareholding once the lock-in is lifted. Shares that are locked in belonging to a non-public shareholder due to a regulatory requirement shall continue to be deemed as a non-public shareholding even after the lock-in is lifted;*
- b) *With regard to h (iii) above, where a Listed Entity is seeking an exemption in terms of this rule, it shall be the duty of such Listed Entity to submit to the Exchange a Declaration signed by two Directors of the Board or the Secretary of the Entity and one Director that the said shareholder does not fall into the category of a related party in terms of Sri Lanka Accounting Standards or a party acting in concert in terms of the Takeovers and Mergers Code (ToM Code).*