

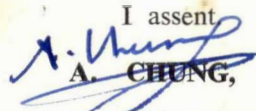
BBAL No. 1038/71



GUYANA.

ACT NO. 19 OF 1971

CAPITAL ISSUES (CONTROL) ACT, 1971.

I assent

A. CHUNG,
President.

25th November, 1971.

Arrangement of Sections.

Section

1. Short title.
2. Interpretation.
3. Control over issues of capital.
4. Control over prospectuses and other advertisements.
5. Purchase of securities.
6. Pending transactions.
7. Restriction on issue and transfer of securities.
8. Power of company to restrict transfer of its securities.

9. Power to call for information.
10. Prohibition on making of false statements.
11. Prohibition against disclosure of information.
12. Exemptions.
13. Committee to advise the Minister.
14. Offences.
15. Burden of proof.
16. Regulations.

AN ACT to provide for the control of issues of capital and for purposes connected therewith.

A.D. 1971. Enacted by the Parliament of Guyana:—

Short title. 1. This Act may be cited as the Capital Issues (Control) Act, 1971.

Interpretation. 2. In this Act, unless the context otherwise requires—

“alien” includes —

- (a) an individual who is not a citizen of Guyana;
- (b) any unincorporated body of persons of which any member is not a citizen of Guyana;
- (c) any company not incorporated in Guyana;
- (d) any company incorporated in Guyana—
 - (i) if any of its directors is an alien;
 - (ii) if more than one-third of the votes exercisable at any meeting of the company, or which would be exercisable if a meeting of the company was held, are vested in aliens or in persons who are nominees for aliens;
 - (iii) in the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by aliens or persons who are nominees for aliens;
 - (iv) in the case of a company not having a share capital if more than one-third in number of its members are aliens or persons who are nominees for aliens;

“issue of capital” means the issuing of any securities whether for cash or otherwise and includes a reissue;

“member” with reference to a company includes any person entitled under the memorandum or articles of

any resolution of the company to participate in its assets or in its divisible profits;

“Minister” means the Minister responsible for finance;

“securities” includes shares, bonds, notes, debentures, debenture stock and units under a unit trust scheme;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

“unit” means, in relation to a unit trust scheme, any right or interest (described whether as a unit or otherwise) which may be acquired under the scheme, being a right or interest created or issued for the purpose of raising money for the purposes of the scheme or a right or interest created or issued in substitution (whether directly or indirectly) for any right or interest so created or issued.

3. (1) No company incorporated in Guyana shall, except with the consent of the Minister, make an issue of capital outside Guyana. Control over issues of capital.

(2) No company, whether incorporated in Guyana or not, shall except with the consent of the Minister—

- (a) make an issue of capital in Guyana;
- (b) make in Guyana any public offer of securities for sale;
- (c) renew or postpone the date of maturity or repayment of any security maturing for payment in Guyana:

Provided that this paragraph shall not apply—

- (i) to the borrowing of money by any person from a company carrying on banking or insurance business in Guyana;
- (ii) to the borrowing of money by any person from any other company the essential feature of whose business is the lending of money.

(3) Any consent of the Minister under this section may be given subject to such conditions as he may think fit to impose.

4. (1) No person shall issue in Guyana any prospectus or other document offering to the public for subscription or sale any securities unless the consent of the Minister in relation thereto has been secured under section 3, and every such prospectus or document shall include a statement that the consent of the Minister has been obtained for the offer for subscription or sale of the securities. Control over prospectuses and other advertisements.

(2) Before granting his consent under subsection (1), the Minister may require the person who proposes to issue the prospectus or other document to include therein such additional information as the Minister may think fit.

Purchase of securities.

5. No person shall accept or give any consideration for any securities in respect of an issue of capital or an offer of securities for sale where such issue of capital or offer of securities for sale is in contravention of section 3.

Pending transactions.

6. (1) Where at the commencement of this Act any issue, sale or transfer of a security is pending pursuant to an issue of capital or a public offer of securities for sale, being an issue or an offer of a class to which section 3(1) or 3(2) refers, no such issue, sale or transfer of the security shall be made except with the consent of the Minister.

(2) Where the consent of the Minister to the issue, sale or transfer of a security is required by subsection (1) and such consent has not been given in any particular case, it shall be an offence against this Act for any person in any such case to register or in any other way to give effect to such issue, sale or transfer as the case may be.

(3) Where the consent of the Minister to any issue, sale or transfer of a security is required by subsection (1) and such consent has been refused in any particular case, or application for such consent has not been made within thirty days after the commencement of this Act, any monies paid by way of consideration in respect of such issue, sale or transfer shall be repayable and shall constitute a debt due from the person to whom such monies were paid to the person making such payment:

Provided that where such monies were paid to an agent of that person in Guyana and remain in the possession of that agent at the commencement of this Act such monies shall be repayable by such agent and shall constitute a debt due from him to the person making such payment.

(4) Where any monies are repayable by virtue of subsection (3) the obligation to make such repayment shall have effect as if it were a judgment of a civil court and shall be enforceable accordingly.

Restriction on issue and transfer of securities.

7. (1) Except with the permission of the Minister, no person shall in Guyana issue any security or do any act which involves, is in association with or is preparatory to the issuing outside Guyana of any security which is registered or to be registered in Guyana, unless neither the person to whom the security is to be issued nor the person, if any, for whom he is to be a nominee, is an alien.

(2) Except with the permission of the Minister, a security registered in Guyana shall not be transferred, and a security not so registered shall not be transferred in Guyana, unless, in either case, the following requirements are fulfilled, that is to say —

- (a) neither the transferor nor the person, if any, for whom he is a nominee is an alien; and
- (b) neither the transferee nor the person, if any, of whom he is a nominee is an alien.

(3) In this section, the expression "registered" includes inscribed, the expression "registered in Guyana" means registered in a register in Guyana, and the expression "a register" includes any book, file or index in which securities are registered.

(4) For the purposes of this section, a person shall be deemed to transfer a security if he executes any instrument of transfer thereof, whether effective or not, and shall be deemed to transfer it at the place where he executes the instrument.

(5) Any permission of the Minister under this section may be given subject to such conditions as he may think fit to impose.

(6) This section shall have effect notwithstanding the provisions of the Status of Aliens Ordinance. pro-Cap. 102.

8. Notwithstanding anything contained in the Companies Ordinance or in the memorandum or articles of association of the company, or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated in Guyana shall, for the purpose of securing compliance with the provisions of this Act, have power — Power of company to restrict transfer of its securities Cap. 328.

- (a) to restrict or prohibit the issue or transfer of its shares or debentures to any person;
- (b) restrict or prohibit the holding by persons of share warrants and debentures transferable by delivery;
- (c) refuse to register any person as a member of the company or as the holder of a debenture,

and the company may require such evidence as it may think fit as to the grant of any consent required by this Act or as to the nationality of any person desiring to be registered as a member or as the holder of a debenture, and as to the nationality of the holder of a share warrant or debenture transferable by delivery or of a coupon or other document entitling the bearer to payment of any dividend, or interest.

9. The Minister or any public officer authorised by him in that behalf may, for the purpose of enquiring into the correctness of any statement contained in an application for the grant of any consent of the Minister under this Act or for the purpose of ascertaining whether or not the requirements of any condition imposed by the Minister pursuant to section 3 (3) or section 7 (5) have been complied with, require the person making the application to submit to him such accounts, books or other documents, or to furnish him with such information, as he may think necessary. Power to call for information.

Prohibition
on making
of false
statements.

10. No person shall, when complying with a requirement of a company pursuant to section 8 or of the Minister or a public officer pursuant to section 9, give any information or make any statement which he knows or has reasonable cause to believe, to be false.

Prohibition
against
disclosure
of information.

11. No person who obtains any information by virtue of this Act shall, otherwise than in connection with the execution of the provisions of this Act, disclose that information to any other person except with the permission of the Minister.

Exemptions.

12. The Minister may, by order, grant exemptions from the provisions of sections 3, 4, 5 and 7 or any of them.

Committee
to advise
the Minister.

13. (1) There shall be constituted an Advisory Committee consisting of —

- (a) the Secretary to the Treasury, who shall be the Chairman of the Committee;
- (b) the Governor of the Bank of Guyana; and
- (c) not more than three other persons appointed by the Minister from amongst persons appearing to him to be qualified as having had experience of matters relating to banking, commerce, finance, industry or trade,

and the Minister may, from time to time, refer to the Committee for advice such matters arising out of the administration of this Act as he may think fit.

(2) It shall be competent for the Minister to refer to the Advisory Committee for advice any matter arising out of the administration of section 11 of the Exchange Control Ordinance as he may think fit.

No. 28
of 1958.

Offences.

14. (1) Any person who contravenes or fails to comply with the provisions of section 3, 4, 5, 6 or 7 or fails to comply with any condition imposed by the Minister under any of those sections shall be guilty of an offence and shall be liable —

- (a) on summary conviction to a fine of five thousand dollars and to imprisonment for one year;
- (b) on conviction on indictment to imprisonment for five years and to a fine not exceeding whichever is the highest of the following amounts —
 - (i) ten thousand dollars, or
 - (ii) the amount of any money raised; or
 - (iii) the nominal or market value, whichever is the greater, of any securities to the issue or sale of which (whether actual or projected) the transaction in question relates.

(2) Any person who fails to comply with any requirement of the Minister or a public officer under section 9 or who contravenes or fails to comply with the provisions of section 10 or 11 shall be guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars and to imprisonment for six months.

(3) Where a body corporate is convicted of an offence under this section, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be guilty of the same offence unless he proves that it was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

15. Where any person is prosecuted for contravening any provision of this Act which prohibits him from doing an act without the permission or consent of the Minister the burden of proving that he had the requisite permission or consent shall lie on him. Burden of proof.

16. The Minister may make regulations for the purpose of carrying out the purposes of this Act. Regulations.

Passed by the National Assembly on the 24th of November, 1971.


F. A. NARAIN,
Clerk of the National Assembly.

(Bill No. 23/1971)