

## Consolidated Version

Government Notice No 129 of 2015

### THE INVESTMENT PROMOTION ACT

#### Regulations made by the Minister under sections 12 and 28 of the Investment Promotion Act

#### 1. Short title

These regulations may be cited as the Investment Promotion (Property Development Scheme) Regulations 2015.

#### 2. Interpretation

In these regulations –

“Act” means the Investment Promotion Act;

“builder” means a person who uses his own human and material resources or those of third parties to execute building works;

“Building and Land Use Permit” has the same meaning as in the Local Government Act;

“common law partner” means a non-citizen who –

(a) lives with a purchaser as spouse (*en concubinage*); and

(b) holds, at the time of application under regulation 12, a *certificat de concubinage*, or other document, attesting such relationship with the purchaser, duly certified by a law practitioner or civil status authority from the country of residence of the purchaser;

“company” means a company incorporated or registered under the Companies Act;

“EIA licence” has the same meaning as in the Environment Protection Act;

“Foundation” has the same meaning as in the Foundations Act;

“letter of approval” means a letter of approval issued under regulation 7(4);

“limited partnership” has the same meaning as in the Limited Partnerships Act;

“Mauritian Diaspora Scheme” means the Mauritian Diaspora Scheme referred to in the Act;

“non-citizen” –

- (a) means a citizen of any country, other than Mauritius;
- (b) includes a member of the Mauritian Diaspora under the Mauritian Diaspora Scheme;
- (c) includes –
  - (i) a company of which any shareholder or ultimate beneficiary is a non-citizen;
  - (ii) a *société* or limited partnership, where any associate, partner or ultimate beneficiary is a non-citizen;
  - (iii) a trust or Foundation in which a non-citizen holds a beneficial interest; but
- (d) does not include a prohibited immigrant as defined in the Immigration Act;

“PDS Certificate” means a certificate issued under regulation 7(6);

“PDS Company” means a company to which a PDS Certificate has been issued;

“PDS Developer” means a person carrying out a project under the Scheme;

“PDS Project” means a project under the Scheme;

“PDS Social Fund” means the contribution referred to in regulation 10;

“qualified trustee” has the same meaning as in the Trusts Act;

“residential property”, in relation to the Scheme, means any luxury villa, apartment, penthouse or other similar property used, or available for use, as residence with attending services or amenities;

“Scheme” or “PDS” means the Property Development Scheme set up under regulation 3;

“serviced land” means land on which all infrastructural works, including those relating to roads, walls, drains, landscaping and utility services, have been completed;

“social needs assessment” means the assessment of social needs carried out under regulation 7(2)(d);

“trust” has the same meaning as in the Trusts Act.

### **3. Property Development Scheme**

There is set up for the purposes of section 12 of the Act a Property Development Scheme.

### **4. Objects of Scheme**

The objects of the Scheme shall be –

- (a) to promote inclusive development and provide for a wide range of living, employment and leisure opportunities to Mauritian citizens, members of the Mauritian Diaspora registered under the Mauritian Diaspora Scheme as well as non-citizens; and
- (b) to ensure that the benefits of the development of the Scheme accrue to neighbouring communities and to small entrepreneurs generally.

### **5. Project under Scheme**

(1) Every project under the Scheme shall consist of inclusive development on an area of land of an extent of not less than 1 arpent providing for –

- (a) not less than 6 residential properties of high standing;
- (b) high quality public spaces for the purpose of promoting social interaction and a sense of community;
- (c) leisure and commercial amenities as well as facilities intended to enhance the properties referred to in paragraph (a); and
- (d) day to day management services to the residents, including security, maintenance, gardening, solid waste disposal and other household services.

(2) The area of land referred to in paragraph (1) may be made up of more than one plot of land belonging to one or more persons and where the area is made up of more than one plot of land, the plots making up the area shall be contiguous.

(3) The extent of land in respect of each residential property under paragraph (1), other than an apartment complex, shall not exceed 0.5276 hectares (1.25 arpent), excluding common areas.

### **6. Qualifications of a PDS Developer**

No person shall be a PDS Developer unless that person –

- (a) is a company having as sole purpose or object the promotion, development and implementation of a PDS Project; and

- (b) holds a PDS Certificate.

## **7. PDS Certificate**

(1) A person intending to carry out a PDS Project shall apply to the Board for a PDS Certificate in such form as the Board may determine.

(2) An applicant under paragraph (1) shall, together with the application, submit to the Board –

- (a) all the information and particulars relating to the PDS Project;
- (b) an implementation plan relating to the PDS Project together with full details including a timeframe for its completion;
- (c) a social impact assessment to identify the impact of the PDS Project on its neighbouring community together with a written undertaking that the benefits of the PDS Project shall accrue to the neighbouring community and to small entrepreneurs generally in terms of employment and business opportunities;
- (d) an assessment of the social needs of the neighbouring community of the PDS Project in terms of social amenities, community development and other facilities together with a description of the social needs to be met by the applicant as well as the costs of and the time frame for meeting these needs;
- (e) such other particulars of information and documents as may be required by the Managing Director.

(3) On receipt of an application under paragraph (1), the Board shall –

- (a) examine the PDS Project and, where necessary, request the applicant to make such modifications as may be required; and
- (b) upon being satisfied that the project meets the requirements of these regulations, approve the project on such terms and conditions as it may determine.

(4) Where the PDS Project is approved under paragraph (3), the Managing Director shall issue a letter of approval to the applicant on such terms and conditions as the Board may determine.

(5) Where an applicant is issued with a letter of approval –

- (a) the shareholders of the applicant shall give a written undertaking to the Managing Director that they will retain shares in the applicant equivalent to at least the value of the land to be used

for the PDS Project for at least one year following the completion of the PDS Project;

- (b) the applicant shall obtain all the permits, licences and clearances, including an EIA licence and a Building and Land Use Permit, necessary to carry out the PDS Project; and
- (c) the applicant shall furnish a bank guarantee of 50,000 rupees per residential property forming part of the PDS Project to the Managing Director.

(6) Where the Board is satisfied that paragraph (5) and the terms and conditions of the letter of approval have been complied with, it shall issue the applicant with a PDS Certificate.

## **8. Obligations of PDS Company**

(1) A PDS Company may sell a residential property under a PDS Scheme

–

- (a) on the basis of a plan;
- (b) during the construction phase; or
- (c) when the construction is completed.

(2) (a) Where the sale of a residential property is made on the basis of a plan or during the construction phase, the sale shall be governed by the provisions of a *vente à terme* or *vente en l'état futur d'achèvement*, as the case may be, in accordance with the provisions of articles 1601-1 to 1601-45 of the Code Civil Mauricien.

(b) Every PDS Company shall, pursuant to subparagraph (a), comply with article 1646-1 of the Code Civil Mauricien.

(3) Every PDS Company shall –

- (a) require the builder of each residential property constructed under the Scheme to subscribe to a property damage insurance policy in favour of the PDS Company or an eventual purchaser or a subsequent purchaser of a residential property to guarantee for a period of one year from the delivery of the residential property to the PDS Company, the payment of compensation for any property damage due to execution faults or defects which affect the finish works or elements;
- (b) subscribe, in respect of each residential property, to a property damage insurance policy in favour of eventual or subsequent purchasers to guarantee –

- (i) for a period of 10 years from the date of delivery of a residential unit to the purchaser, the payment of compensation for any property damage caused to a residential building by faults or defects originating in or affecting the structural elements including the foundation, supports, beams, framework, load-bearing walls or other structural elements and which could directly jeopardise the building's structural soundness and stability; and
  - (ii) for a period of 2 years from the date of delivery of the residential property to the purchaser, the payment of compensation for any property damage resulting from faults or defects in non-structural elements or services resulting in non-compliance with the requirements of a deed of sale in respect of a residential property;
- (c) appoint an independent quality assurance contractor who shall –
- (i) ensure that construction works conform with standards set out in the contract with the builder; and
  - (ii) at the time of delivery of a residential property to a purchaser, deliver to that purchaser a clearance certificate stating that the construction works conform with the standards set out in the contract between the PDS Company and the builder.

(4) Where the builder fails to subscribe to the property damage insurance policy referred to in paragraph (3)(a), the PDS Company shall withhold an amount representing 5 per cent of the contractual price of the building works.

## **9. Implementation of PDS Project**

(1) Every PDS Company shall, at all times, be responsible for the execution of the whole project, and shall be answerable to the Board for its proper implementation in accordance with the PDS Certificate issued under section 18 of the Act.

(2) The PDS Company shall –

- (a) not make any alteration to the components of the project without the prior approval of the Board; and
- (b) submit to the Managing Director, every month, a progress report on –
  - (i) the building works certified by an independent quality assurance contractor referred to in regulation 8(3)(c); and

(ii) the general implementation of the Scheme.

(3) (a) Where a PDS Company fails to complete the construction works within the timeframe specified in the PDS Certificate, the Board shall, subject to subparagraph (b), realise the bank guarantee referred to in regulation 7(5)(c).

(b) The Board may, for reasons beyond the control of the PDS Company, extend the time period referred to in subparagraph (a) to such period as it may determine.

## **10. PDS Social Fund**

(1) Every PDS Company shall set up a PDS Social Fund to implement a social programme identified in the social needs assessment and provide for social amenities, community development and other facilities for the benefit of the neighbouring community where the PDS Project is implemented.

(2) Every PDS Company shall contribute 200,000 rupees per residential property to the PDS Social Fund.

(3) The costs of any infrastructure works required outside the development area to service the PDS Project and any costs to compensate those adversely affected by the PDS Project shall not form part of the PDS social contribution made under paragraph (2) and shall be borne by the PDS Company.

(4) The PDS Company shall, every quarter or such other later period as the Board may determine, report progress on the implementation of the social programme.

(5) The Board shall, having regard to the report referred to in paragraph (4), monitor or cause to monitor through the relevant public sector agency the implementation of the social programme.

## **11. Acquisition of residential property**

(1) No person shall acquire a residential property under the Scheme on the basis of a plan, during the construction phase or when the construction is completed, unless the person is –

(a) in the case of a citizen of Mauritius, non-citizen or member of the Mauritian Diaspora registered under the Mauritian Diaspora Scheme, a natural person;

(b) in any other case –

(i) a company;

(ii) a *société*, of which the deed deed of formation is deposited with the Registrar of Companies;

- (iii) a limited partnership;
- (iv) a trust, where the trusteeship services are provided by a qualified trustee; or
- (v) a Foundation.

(2) Any acquisition of a residential property under the Scheme made by a non-citizen, shall be in US dollars or in any other hard convertible foreign currency or in Mauritius currency.

(3) Where the payment is effected pursuant to paragraph (2), the amount for the acquisition of the property and the registration duty payable thereon under the Registration Duty Act shall be financed by the purchaser –

- (a) from funds outside Mauritius and transferred to Mauritius through any reputable bank listed in the Banking Almanach recognised by the Bank of Mauritius; or
- (b) where the price of the property exceeds 500,000 US dollars, from loans contracted in Mauritius currency with a bank in Mauritius provided that –
  - (i) the first 500,000 US dollars are, or its equivalent in any hard convertible foreign currency is, paid to the PDS Company; and
  - (ii) the repayment of the loan is effected in any hard convertible foreign currency.

## **12. Application to acquire residential property**

(1) Any person referred to in regulation 11(1) who intends to acquire a residential property under the Scheme shall, through a PDS Company, make an application to the Managing Director in such form and manner as the Managing Director may determine.

(2) Where an application is made under paragraph (1), the PDS Company shall, at the time of the application, pay to the Board of Investment a non-refundable processing fee of 10,000 rupees per residential property.

(3) Deleted.

## **13. Status of resident**

(1) Where an application under regulation 12 is approved, the Managing Director shall inform an applicant who is not a citizen of Mauritius or a person registered under the Mauritian Diaspora Scheme that upon acquisition of a residential property for a sum of not less than 500,000 US dollars or its equivalent in

any other hard convertible foreign currency, he shall have the status of resident pursuant to section 5(1)(g) of the Immigration Act.

(2) Where the amount payable is made in any hard convertible foreign currency other than US dollars or in Mauritius currency, the exchange rate to be used to calculate the US dollar equivalent to the amount specified in paragraph (1) shall be the exchange rate in force on the date of the application.

(3) Where a person has the status of resident pursuant to paragraph (1) –

- (a) his spouse or common law partner; or
- (b) the child, stepchild or lawfully adopted child, under the age of 24, of the person or a person to whom paragraph (a) applies;
- (c) a wholly dependent next of kin of the person, where he is unmarried, provided that the number of dependents does not exceed 3,

shall have the status of resident.

(4) Where a non-citizen who has acquired the status of resident pursuant to section 5(1)(g) of the Immigration Act no longer satisfies the requirements of the Scheme, the Managing Director shall forthwith certify to the Ministry responsible for the subject of immigration that the non-citizen has ceased to satisfy the criteria and conditions of registration under the Act.

#### **14. Letting of residential property**

(1) No owner of a residential property under the Scheme shall offer that property for letting otherwise than through –

- (a) the PDS Company; or
- (b) a provider of property management services, designated by the PDS Company.

(2) The property for letting under paragraph (1) shall be subject to section 25A of the Tourism Authority Act.

#### **15. Resale of residential property**

(1) Where the owner of a residential property under the Scheme is a non-citizen and intends to sell or transfer the property or any shares, rights or interests therein, he shall, within 30 days prior to the sale, give notice in writing thereof to the Managing Director.

(2) No sale or transfer shall be made pursuant to paragraph (1) unless –

- (a) the sale or transfer is made to a person referred to in regulation 11(1);
- (b) the acquisition of the residential property is in conformity with these regulations; and
- (c) a non-refundable fee of 10,000 rupees for residential property is paid to the Managing Director.

## **16. Sale of property other than residential property**

(1) Where a PDS Company intends to sell any part or whole of an immovable property other than a residential property, it shall, subject to paragraph (2), within 30 days prior to the sale, give notice in writing thereof to the Managing Director.

(2) A PDS Company shall not sell any bare land or serviced land to a non-citizen for the construction of residential properties.

(3) Subject to regulation 12(3), a PDS Company may sell serviced land not exceeding 25 per cent of its land area planned for the construction of residential properties to citizens of Mauritius or members of the Mauritian Diaspora registered under the Mauritian Diaspora Scheme on condition that –

- (a) the infrastructural works, including those related to roads, walls, drains, landscaping and utility services have been completed in respect of the area of the serviced land;
- (b) the leisure and commercial amenities and facilities referred to in regulation 5(1)(c) have been completed;
- (c) the purchaser constructs a residential property on the land within 5 years from the date of its acquisition in accordance with the architectural guidelines issued by the PDS Company.

(4) Where a person acquires a property pursuant to paragraph (1), he shall not use the property for any purpose other than the one approved under the project, unless he obtains written authorisation from the Managing Director.

(5) No plot of serviced land acquired pursuant to paragraph (3) shall be sold or transferred unless the construction of the residential property is completed on the plot.

(6) Where the sale pursuant to paragraph (1) is made to a non-citizen, the sale shall be made in conformity with section 3(3)(c)(iv) of the Non-Citizens (Property Restriction) Act.

## **17. Duties and taxes**

(1) No duties and taxes under the Land (Duties and Taxes) Act and the Registration Duty Act shall be payable on a deed witnessing the transfer of land to a PDS Company under the Scheme, provided that the transferor holds shares in the PDS Company equivalent to at least the value of the land transferred.

(2) Where the transferor holds shares in the PDS Company, the value of which is less than the value of the immovable property transferred, the land transfer tax and registration duty shall be levied in accordance with section 4(1)(h) of the Land (Duties and Taxes) Act and item 15 of the Second Schedule to the Registration Duty Act on the difference between the value of the immovable property transferred and the value of the shares held by the transferor in the PDS Company.

(3) Any deed witnessing the transfer of a residential property under the Scheme shall be subject to –

- (a) a land transfer tax payable by the transferor in accordance with section 4(6) of the Land (Duties and Taxes) Act at the rate of 5 per cent on the value of the property at the time of registration and shall be paid in the currency in which the property is acquired; and
- (b) a registration duty payable by the transferee in accordance with paragraph J of Part I of the First Schedule to the Registration Duty Act at the rate of 5 per cent on the value of the property at the time of registration.

#### **18. Mode of payment of duty or tax**

(1) The amount of land transfer tax and registration duty referred to in regulation 17 shall, when paid in foreign currency, be credited to the account of the Accountant-General with the Bank of Mauritius at the exchange selling rate in force at the time of signature of the title deed.

(2) Where payment is effected in accordance with paragraph (1), the notary shall, at the time of registration of the deed of transfer with the Registrar-General, deposit a certificate from the bank certifying the particulars of the payment of the land transfer tax and the registration duty.

#### **19. Miscellaneous**

(1) The Morcellement Act shall not apply to an excision or a morcellement under the Scheme.

(2) Section 50L of the Income Tax Act shall not apply to a PDS Company.

Made by the Minister on 12 June 2015.

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