



## **Registration of Securities in Trinidad and Tobago – Distribution via a Limited Offering**

The COVID-19 pandemic has increased financial challenges faced by a number of companies. It is therefore important that entrepreneurs understand all of their available options to ensure their funding/capital requirements are met as cost-effectively as possible. In previous articles, we focused on the requirements for the registration of securities such as equities and bonds as well as explained the various types of service providers that facilitate the issuance and distribution of securities via Public Offerings. This article will discuss another way in which companies can distribute securities; via the issuance of a ‘limited offering’. Companies may choose to issue a limited offering to raise funds in order to:

- augment capital after a period of economic decline/loss;
- finance necessary organisational restructuring;
- fund infrastructure that facilitates increased remote working or social distancing requirements; and
- fund start-ups as the ‘new normal’ may create opportunities for new greenfield businesses or activities.

### **What is a limited offering?**

The Securities Act, 2012 (“the SA 2012”) defines a ‘limited offering’ at Section 4(1) as follows:

*“‘limited offering’ means a distribution by a government entity or private issuer where –*

*(a) following the completion of such distribution, the number of security holders of the issue is thirty-five or less persons not including senior officers and employees or former senior officers and employees of the issuer and its affiliates;*

*(b) the constituent documents of the distribution contain provisions restricting the aggregate number of security holders of the issue to thirty-five persons or less not including senior officers and employees or former senior officers and employees of the issuer and its affiliates;*

*(c) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services provided by a registrant under section 51(1), (2) or (5); and*

*(d) no general solicitation or advertising to market the securities is used.”*

In order to be considered as a limited offering, the issuer of the securities that will be distributed must be either a government entity or a private issuer. These terms are also defined at Section 4(1) of the SA 2012 as follows:

“‘government entity’ means the Government of the Republic of Trinidad and Tobago, the Tobago House of Assembly, the Central Bank of Trinidad and Tobago or any department or agency thereof that is otherwise prescribed.”

“‘private issuer’ means an issuer—

- a) that is not a reporting issuer;
- b) whose securities, other than non-voting debt securities—
  - i. are subject to restriction on transfer; and
  - ii. are beneficially owned by no more than thirty-five persons, not including employees and former employees of the issuer;
- c) that does not distribute securities in the securities market on a frequent basis; and
- d) that meets such other requirements as may be prescribed.”

A private issuer in essence must be an entity that is not a reporting issuer, has fewer than thirty-five (35) shareholders (excluding its employees and former employees), has restrictions on the transferability of its shares, and does not distribute securities frequently.

Given the definitions and extracts above from the SA 2012, a limited offering can best be described as a distribution of securities by a government entity or private issuer where:

- those securities are distributed to a small number of investors (less than thirty-five (35) persons (excluding employees or former employees of the issuer));
- there are restrictions on the transferability of those securities; and
- there is no general marketing of the securities being distributed.

Securities that are distributed via limited offerings are provided exemptions in the SA 2012 from the requirement to be registered by the TTSEC. Limited Offerings therefore do not need to be approved for registration by the TTSEC.

### **Limited Offerings vs. Registrable Securities**

The table below identifies some of the key differences between securities that are distributed as limited offerings as compared to securities that are required to be registered with the TTSEC.

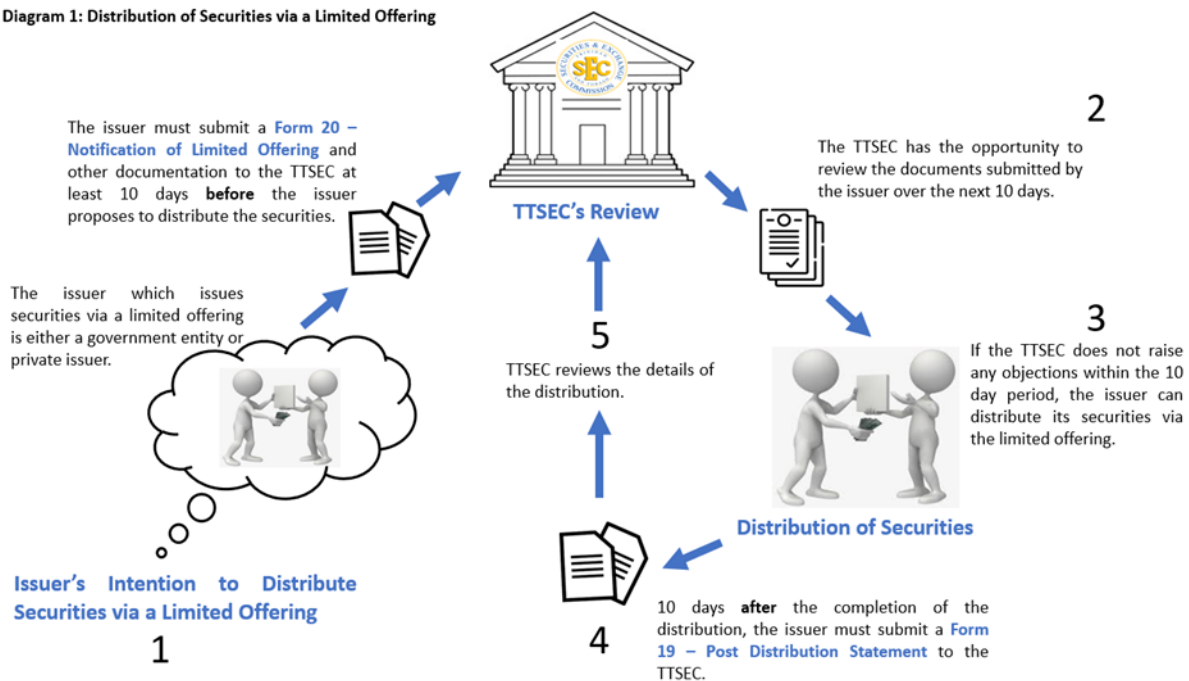
	<b>Limited Offerings</b>	<b>Registrable Securities</b>
How much funds can be raised?	No limit	No limit
How many can invest?	Up to 35 investors	No limit
How often can it be issued?	Infrequently	No limit
Are there legislative requirements?	Yes	Yes
Are there any registration fees associated?	No	Yes
Can the distribution be advertised?	No	Yes
Is a company or the security required to be registered with the TTSEC?	No	Yes

## Process for the Distribution of Securities via a Limited Offering

A government entity or private issuer may claim exemptions from the registration of the issuer as well as the securities being distributed where the securities being distributed are a limited offering. These exemptions are outlined under Sections 61(4) and 62(9) of the SA 2012. These exemptions from registration can be claimed by the issuer by:

- i. providing *prior written notice* to the TTSEC at least ten (10) days before the first distribution of securities pursuant to the limited offering; and
- ii. filing a *post distribution statement* with the TTSEC within ten (10) days of the completion of the distribution.

Diagram 1: Distribution of Securities via a Limited Offering



It should be noted that the 'prior written notice' referred to above, is meant to be submitted through the use of a '**Form 20 - Notification of Limited Offering**' together with other documents in respect of the proposed distribution – these documents are identified in the instructions on the Form 20. The **Form 20 - Notification of Limited Offering** is meant to be used by entities wishing to claim the exemptions provided at Sections 61(4) and 62(9) of the SA 2012 in respect of proposed distributions. Among other things, this Form requires the applicant to provide relevant information pertaining to limited offerings such as:

- proposed issue dates;
- details of the security to be issued; and
- confirmation that restrictions on transferability of the securities exist.

The '**Form 19 - Post Distribution Statement**' captures relevant information regarding the actual details of the securities that were distributed. Among other things, it captures information such as:

- issue date;
- list of investors in the limited offering; and
- details of the security that was issued.

Both the *Notification of Limited Offering* and *Post Distribution Statement* can be accessed on the TTSEC's website via this URL: <https://ttsec.org.tt/registration/forms-instructions-and-other-documents/>.

**END**

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You may also visit our Investor Education website at [www.investucatett.com](http://www.investucatett.com) or  
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