

**THE FINANCE ACT 2002**  
**Amendments To Related Acts**  
**Financial Services**

**Section 2**

**The Banking Act amended**

The Banking Act is amended –

- (a) in section 2 -
- (i) by deleting the definitions of “class A banking”, “class B banking”, “Class A Banking Licence”, “Class B Banking Licence”, “class B banking transactions” and “related corporation”;
- (ii) by inserting in their appropriate alphabetical order, the following new definitions -
- “category 1 banking” means banking business other than category 2 banking;
- “category 2 banking” means banking business or investment banking business conducted in currencies other than the Mauritius currency except to the extent permitted by the central bank for trading on the foreign exchange market of Mauritius and investment in money market instruments;
- “Category 1 Banking Licence” means a licence authorising the holder thereof to transact category 1 banking;
- “Category 2 Banking Licence” means a licence authorising the holder thereof to transact category 2 banking;
- “category 2 banking transactions” means transactions effected by a bank holding a Category 2 Banking Licence;
- “related company” has the same meaning as in the Companies Act 2001;

**Section 4**

**The Companies Act 2001 amended**

The Companies Act 2001 is amended -

in section 2(1)-

- (i) by deleting the definition of “International Accounting Standards” and replacing it by the following definition -

“International Accounting Standards” -

- (a) means the International Accounting Standards issued by the International Accounting Standards Committee, the International Financial Reporting Standards issued by the International Accounting Standards Board, and any Standards, by whatever name called, issued by these bodies or their successor bodies; and
- (b) includes the Interpretations of the Standing Interpretations Committee of the International Accounting Standards Committee, the International Financial Reporting Interpretations Committee of the International Accounting Standards Board, and any Interpretations, by whatever name called, issued by the Interpretations Committees of the above bodies or their successor bodies;

- (ii) by inserting in its appropriate alphabetical order, the following new definition -

“investment company” means a company whose business consists of investing its funds principally in securities with the aim of spreading investment risks and giving members of the company the benefit of the results of the management of its funds;

- (b) in section 6, by adding after subsection (3), the following new subsection -

(4) Notwithstanding subsection (1)(b)(ii), the provision relating to stated capital in connection with the solvency test shall not apply to an investment company.

- (c) in section 14 -

- (i) in subsection (7), by deleting the words “shareholder of that company” and replacing them by the words “shareholder, officer, management company or registered agent, of that company”;

- (ii) by adding after subsection (7), the following new subsections -

(8) Notwithstanding subsection (7), a person may, on payment of the prescribed fee, request the Registrar to provide, in relation to a private company holding a Category 1 Global Business Licence or a Category 2 Global Business Licence -

- (a) the name of the company and the address of its registered office; and
- (b) the name and address of any management company or registered agent appointed by the company, as the case may be,

recorded on any register kept by the Registrar on or after the commencement of this Act or in respect of any such company removed from the register after the commencement of this Act.

(9) The payment of the prescribed fees under subsections (1), (3) and (8) shall not apply to a Ministry or Government Department.

- (d) in sections 15(2), 57(7), 68(7), 94(2), 142(3), 189(6), 206(3) and (4) and 275(5) by deleting the words "50,000 rupees" wherever they appear and replacing them by the words "200,000 rupees";
- (e) in section 48(3), by deleting the words "an authorised mutual fund" and replacing them by the words "an investment company including an authorised mutual fund";
- (f) in section 52 -
  - (i) in subsection (4) -
    - (A) in paragraph (a), by adding after subparagraph (iii), the following new subparagraph, the word "and" being deleted at the end of subparagraph (ii) and added at the end of subparagraph (iii) -
    - (iv) the name and description of the persons to whom the shares are issued together with the number and class of shares issued to each person;
    - (B) by deleting paragraph (b) and replacing it by the following paragraph -

- (b) deliver to the Registrar, a certified copy of -
  - (i) any terms of issue approved under subsection (2);
  - (ii) the certificate referred to in

subsection (6);

- (ii) by adding after subsection (5), the following new subsection -

- (6) (a) Where shares are issued to a non-citizen, the Board shall, notwithstanding the constitution of the company, ascertain that the non-citizen has obtained the certificate under the Non-Citizens (Property Restriction) Act authorising him to purchase, acquire or hold such shares before the shares are actually issued to him.

- (b) Paragraph (a) shall apply to a transfer of shares in the same way as it applies to an issue of shares.

- (g) in sections 57(8), 163(7) and 237(7) by deleting the words "20,000 rupees" wherever they appear and replacing them by the words "100,000 rupees";

- (h) in section 97, by adding after subsection (6), the following new subsection -

(7) This section shall not apply to an investment company either on issue of a share certificate or on registration of a transfer of shares.

(i) in section 105 –

in subsection (1), by inserting immediately after paragraph (a), the following new paragraph (b), the existing paragraphs (b), (c) and (d) being relettered (c), (d) and (e) respectively –

reduce the stated capital of the company under section 62;

(ii) in subsection (2), by deleting the words “subsection (1)(a) or (1)(b) or (1)(c)” and replacing them by the words “(1)(a) to (d)”;

(j) by repealing section 106 and replacing it by the following section -

**106. Unanimous resolution**

Any power which the Act or the constitution of a company requires to be exercised by an ordinary resolution or a special resolution may be exercised by way of unanimous resolution.

(k) in section 130, by adding after subsection (7), the following new subsection -

(8) This section shall not apply to an investment company including an authorised mutual fund.

(l) in section 155(2), by deleting the words “authorized mutual fund” and replacing them by the words “investment company”;

(m) in section 160(3), by deleting the words "Without limiting any liability" and replacing them by the words "Subject to section 149 and without limiting any liability";

(n) in section 212(2), by deleting the words "incorporated in Mauritius" wherever they appear;

(o) in section 214 -

(i) by deleting subsection (5) and replacing it by the following subsection -

(5) Subject to subsection (4) -

(a) in the case where the balance sheet date of a subsidiary company is different from the balance sheet date of its parent company, the financial

statements of the subsidiary company may be incorporated into the group financial statements provided that the difference between the reporting dates does not exceed 3 months; or

(b) in any other case, the group financial statements shall incorporate the interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company.

(ii) in subsection (6), by deleting the words "Subject to subsection (4)," and replacing them by the words "Subject to subsections (2) and (4),";

(p) in section 269, by adding after subsection (3), the following new subsection -

(4) A company limited by guarantee may, by delivering to the Registrar an application containing the matters required by section 23(1)(c)(iii), (v) and (vii) and (2)(d) and (i), be registered as a company limited by both shares and guarantee and, where the Registrar is satisfied that the application complies with the Act, the Registrar shall, upon payment of the prescribed fee, issue a certificate of incorporation of the company as a company limited by both shares and guarantee and shall cancel the previous certificate of incorporation.

(q) in section 270, by adding at the end of paragraph (d), the words "or by a unanimous resolution under section 106";

(r) in section 363 –

(i) in subsection (5), by inserting immediately after the words "Category 2 Global Business Licence", the words "entitling it to continue to carry on such activities as the company was entitled to carry on immediately prior to the commencement of this Act";

(ii) by deleting subsection (7) and replacing it by the following subsection –

(7) A public company which on the commencement of this Act is deemed by virtue of subsection (5) to be the holder of a Category 1 Global Business Licence shall, within 9 months of the commencement of this Act, file –

(a) with the Registrar, a prospectus complying with the provisions of the Companies Act 1984 in the case of any company which, on the commencement of this Act, is offering securities to the public in Mauritius;

(b) with the Commission, any financial statements relating to its immediately preceding accounting year within the time prescribed for the filing of such statements by section 215; and

(c) with the Registrar, a notice providing the particulars of its directors  
secretary required by section 23(2)(b) and (c).

## Section 9

### **The Financial Services Development Act 2001 amended**

The Financial Services Development Act 2001 is amended -

(a) in section 2 -

(i) by deleting the definition of "relevant Acts" and replacing it by the following definition -

"relevant Acts" -

(a) means this Act and the Acts specified in Part I of the First Schedule; and

(b) includes any regulations made under these Acts;

(ii) by inserting in its appropriate alphabetical order, the following new definition -

"licensee" -

(a) means the holder of a licence; and

(b) includes -

(i) any person registered or approved under the relevant Acts; and

(ii) any institution established to provide any service under the relevant Acts;

(b) in section 6, by inserting immediately after paragraph (l), the following new paragraph (m), the existing paragraphs (m) and (n) being relettered (n) and (o) respectively -

(m) collect, compile, publish and disseminate statistics in respect of the non-bank financial services sector;

(c) in section 7, by adding after subsection (7), the following new subsections

(8) In the discharge of its functions under section 6(m), the Commission -

(a) may require any licensee to furnish such statistical information relating to his business or to the business administered or managed by him for his clients at such intervals and within such time as may be required by the Commission;

(b) may, subject to paragraph (c), publish and disseminate any information obtained under paragraph (a) in any aggregate form and figures;

(c) shall not publish or disseminate information relating to the individual affairs of any particular client of the licensee.

(9) Any licensee who fails to comply with a requirement under subsection 8(a) shall commit an offence.

(10) The Commission may, for the purpose of section 6(j), enter into an agreement or arrangement for the exchange of information with a foreign supervisory institution having responsibility to supervise financial institutions and the conduct of financial markets and the provision of financial services, where the Commission is satisfied that the foreign supervisory institution has the obligation to protect the confidentiality of the information so imparted.

(d) in section 10(2)(a), by deleting the words "no document" and replacing them by the words "no document"

relating to any transactions referred to in paragraphs (a) to (e) of subsection (1)";

- (e) in section 14(3) -
  - (i) by deleting the words "under subsection (1)" and replacing them by the words "under this Act";
  - (ii) by adding after subsection (4), the following new subsection -
    - (5) The Commission shall keep a register of persons licensed under this section which shall be -
      - (a) in such form and with such particulars;
      - (b) published at such intervals and in such manner;
      - (c) open to public inspection at such time,  
as the Commission may decide.
- (f) in section 21 -
  - (i) in subsection (1)(b), by adding after the words "Category 1 Global Business Licence", the words " or a Category 2 Global Business Licence";
  - (ii) in subsection (2)(a), by deleting the words "Class A Banking Licence" and replacing them by the words "Category 1 Banking Licence";
  - (iii) in subsection (3)(b)(ii), by adding after the words "the laws of Mauritius", the words "other than a corporation holding a Category 1 Global Business Licence or a Category 2 Global Business Licence";
- (g) in section 22(3)(a)(i), by deleting the words "the Economic Crime and Anti-Money Laundering Act 2000" and replacing them by the words "the Financial Intelligence and Anti-Money Laundering Act 2002";
- (h) in section 26 -
  - (i) in subsection (1), by deleting the words "made under those Acts" and replacing them by the words ", directions, rules, codes or guidance notes made, or to carry out its general powers of supervision, under those Acts";

(ii) in subsection (2), by deleting the words "other than a company holding a Category 2 Global Business Licence" and replacing them by the words "and a corporation holding a Category 1 Global Business Licence";

(iii) in subsection (3) -

(A) by deleting paragraph (a) and replacing it by the following paragraph -

(a) Except where otherwise required by the Commission or specifically prescribed under any relevant Acts, a corporation specified in subsection (2) or a corporation holding a Category 1 Global Business Licence shall file with the Commission audited financial statements within 6 months after the close of its financial year.

(B) in paragraph (b)(i), by deleting the words "any period of 6 to 15 months" and replacing them by the words "any period not exceeding 18 months";

(iv) by adding after subsection (3), the following new subsection -

(4) A corporation holding a Category 1 Global Business Licence shall be deemed to comply with subsection (2) where the audited financial statements are prepared in accordance with such internationally recognised accounting standards as may be agreed with the Commission from time to time.

(i) in section 27 -

(i) by deleting subsection (1) and replacing it by the following subsection -

(1) On receipt of a complaint under section 17, or where he has reasonable suspicion that a licensee -

(a) has committed, is committing or is likely to commit a breach of -

(i) any of the relevant Acts;

(ii) any condition of his licence; or

(iii) any direction issued by the Commission;

(b) has carried on, is carrying or is likely to carry out any activity which may cause serious prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system,

the Chief Executive may make an inquiry into the business or any part of the business of the licensee, and for that purpose may -

(A) by notice request the production of any documents, books or records to be inspected at all such reasonable time and place, including on the business premises of the licensee, as may be specified in the notice;

(B) take copies of, extract from, any documents, books or records so produced;

(C) seize any document or material which may be relevant to the inquiry.

(ii) by deleting subsection (4) and replacing it by the following subsection -

(4) (a) For the purposes of this section, "licensee" and "holder of a licence" shall include -

(i) a corporation whose licence has expired, or has been cancelled, revoked, suspended or surrendered;  
or

(ii) any person who is a present or past director, manager, partner or any shareholder holding more than 50 per cent of the voting rights in the licensee.

(b) Any person who fails to comply with a requirement under subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000

rupees and to imprisonment for a term not exceeding 5 years.

- (iii) in subsection (5), by deleting the words "to ensure compliance with" and replacing them by the words "to ensure compliance with the law, the conditions of its licence and with";
- (j) in section 33(7), by adding after paragraph (b), the following new paragraph, the full-stop at the end of paragraph (b) being deleted and replaced by a semi-colon -
  - (c) disclosure, under condition of confidentiality for the sole purpose of exercising its supervisory functions in relation to a financial institution carrying out any services or business activities specified in Part II of the First Schedule -
- (i) to the Bank of Mauritius; and
  - (ii) to any other institution which performs in a foreign country functions similar to those of the Commission under this Act.
- (k) in section 37(13), by deleting paragraph (a) and replacing it by the following paragraph -
  - (a) The Agency shall, for the purposes of this Part, establish a General Fund into which shall be paid all sums received from the Consolidated Fund.
- (l) in section 42 -
  - (i) in subsection (2), by deleting paragraph (e), the semi-colon at the end of paragraph (d) being deleted and replaced by a full-stop;
  - (ii) in subsection (3) -
    - (A) by deleting the words "Class B Banking Licence" and "class B banking transactions" and replacing them by the words "Category 2 Banking Licence" and "category 2 banking transactions" respectively;
    - (B) by deleting paragraph (d), the semi-colon at the end of paragraph (c) being deleted and replaced by a full-stop;

- (m) in section 43, by numbering the existing provisions as subsection (2) and by inserting immediately before the new subsection (2), the following new subsection -

(1) Any licensee, or present or former director of a licensee, any shareholder who holds more than 50 per cent of the voting rights in a licensee or any employee of a licensee, who fails to comply with any requirement imposed by or under this Act, or a direction or requirement issued under this Act, shall commit an offence and shall, where no specific penalty is provided, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

## **Section 10**

### **The Foreign Exchange Dealers Act amended**

The Foreign Exchange Dealers Act is amended -

- (a) in section 2 -
- (i) by deleting the definitions of "company", "domestic bank", "offshore bank" and "offshore company";
  - (ii) by inserting in their appropriate alphabetical order, the following new definitions -
    - "Category 1 banking" has the same meaning as in the Banking Act;
    - "Category 2 banking" has the same meaning as in the Banking Act;
    - "Category 1 Banking Licence" has the same meaning as in the Banking Act;
    - "Category 2 Banking Licence" has the same meaning as in the Banking Act;
    - "Category 1 Global Business Licence" has the same meaning as in the Financial Services Development Act 2001;
    - "company" has the same meaning as in the Companies Act 2001 and includes a foreign company registered under that Act and a corporation holding a Category 1 Global Business Licence;
- (b) in section 3(4)(a), by deleting the words "an offshore bank" and replacing them by the words "a bank holding a Category 2 Banking Licence";

- (c) in sections 4 and 5, by deleting the words “a domestic bank” wherever they appear and replacing them by the words “a bank holding a Category 1 Banking Licence”;
- (d) in the Schedule, by deleting the words “Domestic banks” and replacing them by the words “Banks holding a Category 1 Banking Licence”.

**Section 21**  
**The Non-Citizens (Employment Restriction) Act amended**

The Non-Citizens (Employment Restriction) Act is amended -

- (a) in section 3, by adding after subsection (5), the following new subsection -

- (6) A non-citizen who invests under the Permanent Resident Scheme prescribed under the Investment Promotion Act, may, notwithstanding subsections (1) and (3), engage in any occupation for reward or profit or be employed without a permit as long as he maintains his investment as required under that Scheme.

- (b) in section 4, by inserting immediately after subsection (2) the following new subsection (3), the existing subsections (3) and (4) being renumbered (4) and (5) respectively -

- (3) Where an application for a permit by a professional or his spouse under the Scheme to Attract Professionals for Emerging Sectors prescribed under the Investment Promotion Act is granted, the permit shall be for a period of 3 years.

**Section 22**

**The Non-Citizens (Property Restriction) Act amended**

The Non-Citizens (Property Restriction) Act is amended –

(a) in section 2, by deleting the definition of “share” and replacing it by the following definition -

“share” -

means an interest, by any name called, in a company, partnership or société or any other body corporate which holds or purchases or otherwise acquires an immovable property in Mauritius; and

includes -

- (i) a share in a partnership or société or any body corporate which reckons amongst its assets -
  - (A) any freehold or leasehold immovable property in Mauritius; or
  - (B) any share in a company or in a company holding shares in a subsidiary or any share in a partnership or société or any other body corporate, which itself reckons amongst its assets, freehold or leasehold immovable property in Mauritius;
  
- (ii) a share in a company which reckons amongst its assets -
  - (A) any freehold or leasehold immovable property in Mauritius; or
  - (B) any share in a company holding shares in a subsidiary or any share in a partnership or société or any other body corporate, which

itself reckons amongst its assets, freehold or leasehold immovable property in Mauritius.

(b) in section 3(3) -

(i) in paragraph (a), by deleting the words "of a lease for a term not exceeding, in the aggregate, 6 months in any year" and replacing by the words "of a lease agreement or tenancy agreement for a term not exceeding 20 years";

(ii) in paragraph (c), by adding immediately after subparagraph (ii), the following new subparagraph, the full-stop at the end of subparagraph (ii) being deleted and replaced by the words "; or" -

(iii) purchases or otherwise acquires an immovable property, a flat or apartment under the Permanent Resident Scheme, or under the Scheme to Attract Professionals for Emerging Sectors or from a company holding an investment certificate in respect of a project under the Integrated Resort Scheme, prescribed under the Investment Promotion Act.

(c) by deleting the words "Class B Banking Licence" wherever they appear and replacing them by the words "Category 2 Banking Licence".

## **Section 30**

### **The Unit Trust Act amended**

The Unit Trust Act is amended -

(a) in sections 3 and 4, by deleting the word "Minister" wherever it appears and replacing it by the word "Commission";

(b) in section 13 -

(i) by deleting subsection (4);

- (ii) by deleting the word "Minister" wherever it appears and replacing it by the word "Commission".