

MAURITIUS

THE SECURITIES ACT 2005

(as amended, 2011)

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PART I—PRELIMINARY

Short title

1. This Act may be cited as the Securities Act 2005.

Interpretation

2. In this Act -

“associate” has the meaning assigned to it in Part I of the Schedule;

“audit firm” has the same meaning as in the Financial Reporting Act 2004;

“bank” has the same meaning as in the Banking Act 2004;

“Category 1 Global Business Licence” has the same meaning as in the Financial Services Act 2007;

“CDS” means the Central Depository and Settlement Co Ltd approved under the Securities (Central Depository, Clearing and Settlement) Act 1996;

“cease trade order” means an order issued by the Commission under section 133;

“Chief Executive” has the same meaning as in the Financial Services Act 2007;

“CIS manager” means a person holding a CIS manager licence issued under this Act;

“CIS manager licence” means a licence granted referred to in section 98;

“closed-end fund” means an arrangement or a scheme, other than a collective investment scheme, constituted in such legal form as may be approved by the Commission and whose object is to invest funds, collected from subscribers during an offering made under Part V of this Act or from sophisticated investors, in a portfolio of securities, or in other financial or non-financial assets, or real property, as may be approved by the Commission;

“collective investment scheme” –

- (a) means a scheme constituted as a company, a trust, or any other legal entity prescribed or approved by the Commission -
 - (i) whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets, real property or non-financial assets as may be approved by the Commission;
 - (ii) whose operation is based on the principle of diversification of risk;
 - (iii) that has the obligation, on request of the holder of the securities, to redeem them at their net assets value, less commission or fees; and
 - (iv) where the participants do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and
- (b) includes closed-end funds whose shares or units are listed on a securities exchange; but

(c) does not include such schemes as are specified in Part II of the Schedule.

“Commission” means the Financial Services Commission established under the Financial Services Act 2007;

“constitutive documents” means the principal documents governing the formation and operation of a collective investment scheme and includes the management agreement, the custodian agreement and any shareholder agreement;

“control”, in relation to securities, means legal or beneficial title to securities, or a right of direction over securities or over voting rights attached to securities;

“controller”, in relation to a corporation, has the meaning assigned to it in the Financial Services Act 2007;

“corporation” has the same meaning as in Financial Services Act 2007;

“Court” means the Bankruptcy Division of the Supreme Court;

“custodian” means a person holding a custodian licence;

“custodian licence” means a licence granted referred to in section 100;

“clearing and settlement facility” means a system that provides for -

- (a) the holding of securities in dematerialized form;
- (b) the process of presenting and exchanging data or documents in order to calculate the obligations of the participants in the system, to allow for the settlement of these obligations; and
- (c) the process of transferring securities;

“clearing and settlement facility licence” means a licence issued referred to in section 10;

“derivative” includes futures and options contracts on securities, indices, interest or other rates, currency, futures or commodities;

“Enforcement Committee” means the committee established under section 52 of the Financial Services Act 2007;

“financial crime” has the same meaning as in the Financial Services Act 2007;

“financial institution” includes -

- (a) a bank licensed under the Banking Act 2004; and
- (b) a corporation licensed by the Commission, other than a management company or a company licensed to conduct global business.

“FSC Rules” means rules made under section 155;

“futures contract” means a legal agreement to make or take delivery of a specified instrument, such as a commodity, at a fixed future date at a price determined at the time of the transaction where the mode of settlement is established in the contract;

“Fund” means a compensation fund established under section 148;

“IFRS” has the same meaning as in the Financial Reporting Act 2004;

“inside information”, in relation to securities of a reporting issuer, means information that -

- (a) is not generally available or disclosed; and
- (b) if generally available or disclosed, would be likely to have a material effect on the price or the value of securities of the reporting issuer or of securities issued by a related corporation of the reporting issuer;

“insider of a reporting issuer” means -

- (a) the reporting issuer itself, its subsidiaries, its officers and those of its subsidiaries;
- (b) any person who exercises -
 - (i) control over more than 5 per cent of a class of shares of a reporting issuer to which are attached voting rights; or
 - (ii) an unlimited right to a share of the profits and in its assets in case of winding-up, other than securities that were the object of an underwriting and are in the course of an offering;
- (c) the officers of a person mentioned in paragraph (b);

“insurer” means an insurer licensed under the Insurance Act 2005;

“interest” in relation to a collective investment scheme, means a right to a return or benefit produced by the scheme whether the right is actual, prospective or contingent and whether it is enforceable or not;

“investment adviser” means a person who holds an investment adviser licence;

“investment adviser licence” means a licence referred to in section 30;

“investment dealer” means a person who holds an investment dealer licence;

“investment dealer licence” means a licence referred to in section 29;

“issuer” means a person or any other entity that issues, has issued or is going to issue securities;

“issuer bid or buyback” means an offer by a reporting issuer, other than a collective investment scheme, to acquire or redeem its own securities, including convertible debt securities, made to any person and includes a purchase or other acquisition of its securities by the issuer from any such person;

“law practitioner” has the same meaning as in the Law Practitioners Act 1984;

“licence” means a licence issued by the Commission;

“licensee” means a person -

- (a) holding or deemed to hold a licence; and
- (b) approved or deemed to be approved by the Commission;

“listed securities” means securities listed on a securities exchange, whether traded or not;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“offer” has the meaning assigned to it in section 67;

“officer” means a member of a board of directors, a chief executive, a managing director, a chief

financial officer or chief financial controller, an executive, a secretary, a partner, a trustee, or a person holding any similar function with a licensee, a CIS, a reporting issuer or a trust;

“options contract” means a contract that gives its holder the right but not the obligation to buy or sell a fixed number of securities or other instrument at a fixed price on or before a given date;

“prescribed” means prescribed by regulations;

“private placement” means an offer of securities where the total cost of subscription or purchase for each person to whom the offer is made is at least equal to the amount determined by FSC Rules and where each person subscribes or purchases for his own account and no publicity is made by the person making the offer;

“prospectus” –

- (a) means a notice, circular, advertisement or request inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, a share in, or debenture of, a company or proposed company; and
- (b) includes a statement attached to or intended to be read with the prospectus;

“relevant Acts” has the same meaning as in the Financial Services Act;

“reporting issuer” has the meaning assigned to it in section 86(1);

“representative” means an individual who is employed by an investment dealer or an investment adviser for the purpose of exercising, on behalf of that person, securities transactions that the investment dealer or the investment adviser, as the case may be, is licensed to carry out and includes an officer who carries out securities transactions on behalf of an investment dealer or an investment adviser;

“representative proceedings” means the proceedings referred to in section 149;

“Review Panel” means the Financial Services Review Panel established under section 54 of the Financial Services Act 2007;

“secondary market” means a market where securities are or can be traded;

“securities” means -

- (a) shares or stocks in the share capital of a company, whether incorporated in Mauritius or elsewhere, other than a collective investment scheme;
- (b) debentures, debenture stock, loan stock, bonds, convertible bonds or other similar instruments;
- (c) rights, warrants, options or interests in respect of securities mentioned in paragraphs (a) and (b);
- (d) treasury bills, loan stock, bonds and other instruments creating or acknowledging indebtedness and issued by or on behalf of or guaranteed by the Government of the Republic of Mauritius or the government of another country, a local authority or public authority, as may be prescribed;
- (e) shares in, securities of, or rights to participate in, a collective investment scheme;
- (f) depositary receipts or similar instruments;
- (g) options, futures, forwards and other derivatives whether on securities or

commodities;

- (h) any other transferable securities, interests or assets as may be approved by the Commission; or
- (i) any such other instruments as may be prescribed;

“securities advertisement” means any form of communication made to any person in Mauritius which contains or refers to an invitation or inducement to subscribe for or purchase any form of investment whether that investment constitutes particular securities which are or are to be offered for subscription or purchase or related generally to investment in some form of securities but does not include a prospectus which has been granted effective registration;

“securities exchange” means a market, exchange, place or facility, including an organised over the counter market, that provides for bringing together, on a regular basis, buyers and sellers of securities to negotiate or conclude purchases or sales of securities in accordance with the rules of securities exchange;

“securities exchange licence” means a licence referred to in section 9;

“securities trading systems licence” means a licence referred to in section 11;

“securities transaction” means a sale, transfer, purchase, exchange or conversion of securities or other dealing thereof;

“SEM” means the Stock Exchange of Mauritius Ltd established under the repealed Stock Exchange Act;

“solicit” has the meaning set out in section 31(2);

“sophisticated investor” means -

- (a) the Government of Mauritius;
- (b) a statutory authority or an agency established by an enactment for a public purpose;
- (c) a company, all the shares in which are owned by the Government of Mauritius or a body specified in paragraph (b);
- (d) the government of a foreign country, or an agency of such government;
- (e) a bank;
- (f) a CIS manager;
- (g) an insurer;
- (h) an investment adviser;
- (i) an investment dealer; or
- (j) a person declared by the Commission to be a sophisticated investor;

“special resolution”, in relation to a collective investment scheme, means a resolution approved by a majority of seventy-five per cent or, if a higher majority is required by the constitutive documents of the scheme, that higher majority, of the votes of those participants entitled to vote and voting on the resolution;

“SRO” has the same meaning as in the Financial Services Act 2007;

“takeover offer” has the meaning assigned to it in section 94(2);

“unit trust” means a trust authorised under this Act as a collective investment scheme.

Application of Act

3.(1) This Act shall apply to public offerings of shares owned by the Government of the Republic of Mauritius but shall not apply to debt securities or treasury bills issued or guaranteed by the Republic of Mauritius or such other country as may be prescribed.

(2) The Commission may, by notice, exempt any person or class of persons, or any securities transaction from the provisions of this Act.

Companies Act interpretation to apply

4. Unless otherwise provided in this Act, words and expressions in this Act have the same meaning as in the Companies Act 2001.

Relationship with other laws

5. Where there is an inconsistency in respect of the offer, issue or trading of securities between this Act and the Companies Act 2001, the provisions of this Act shall prevail to the extent of the inconsistency.

PART II—THE COMMISSION

Objects of the Commission

6.(1) This Act shall be administered by the Commission.

(2) In administering this Act, the Commission shall -

- (a) promote the confident and informed participation of investors and consumers in, and the efficiency of, securities markets in Mauritius;
- (b) improve the protection of investors in Mauritius from unfair, improper and fraudulent practices in relation to securities;
- (c) foster fair, efficient, transparent and informed markets for securities in Mauritius;
- (d) reduce systemic risk in the Mauritius financial sector in collaboration with other agencies;
- (e) regulate the disclosure of information by persons issuing securities and by reporting issuers to securities holders and to the public;
- (f) monitor and regulate the operation of securities exchanges and the activities of persons providing clearing and settlement services and trading systems for securities;
- (g) suppress and prevent financial crimes and illegal practices;

- (h) cooperate and collaborate with domestic and international organisations, law enforcement, supervisory and regulatory bodies; and
- (i) carry out research and collect, compile, publish and disseminate data and information on the securities industry.

(3) Without prejudice to any powers provided under any other enactment, the Commission shall have such powers as are necessary for the performance of its functions and the attainment of its objects under this Act.

Delegation of powers

7.(1) The Commission may delegate to the Chief Executive, such powers and functions under this Act as may be necessary for the effective administration of this Act other than the power to make rules.

(2) The Chief Executive may delegate any of the delegated powers and functions under subsection (1) to a member of staff of the Commission, other than the power -

- (a) to order an investigation under section 124; and
- (b) to issue a cease trade order under section 133.

(3) In performing or exercising powers and functions delegated under subsection (1) or (2), the delegate shall comply with any direction given by the Commission or by the Chief Executive, as the case may be.

(4) A delegated power or function, when performed or exercised by the delegate, shall, for the purposes of this Act, be taken to have been performed or exercised by the Commission or by the Chief Executive, as the case may be.

(5) A delegation shall not prevent the performance or exercise of the delegated power or function by the Commission or by the Chief Executive, as the case may be.

Code of ethics

8.(1) The Minister may, by regulations, make code of ethics for the members of the Board of the Commission, the Chief Executive and the staff of the Commission relating to -

- (a) acceptance of gifts or other reward;
- (b) other employment within the securities industry;
- (c) acting as or accepting a function as an officer of a reporting issuer, a licensee, an SRO or a collective investment scheme; and
- (d) their involvement in securities transactions.

(2) Regulations made under subsection (1) may provide that any person who contravenes them shall be liable to a fine not exceeding 500,000 rupees.

PART III—FINANCIAL MARKETS REGULATION

Sub-Part A—Securities exchanges, clearing and settlement facilities and securities trading systems

Licence for securities exchanges

9.(1) No person shall establish, maintain or operate a securities exchange in Mauritius, whether physically, electronically or otherwise, unless the person holds a securities exchange licence issued by the Commission.

(2) No person other than a body corporate incorporated or registered in Mauritius as a public company shall hold a licence to operate a securities exchange.

Licence for clearing and settlement facilities

10.(1) No person shall provide, whether physically, electronically or otherwise, services in Mauritius with respect to the deposit, clearing or settlement of securities transactions unless the person holds a clearing and settlement facility licence issued by the Commission.

(2) Subsection (1) shall not apply to the clearing and settlement facility provided by the Bank of Mauritius for securities it issues on its own behalf or on behalf of the Government of Mauritius.

Licence for trading securities systems

11. No person shall establish, maintain or operate in Mauritius, whether physically, electronically or otherwise, a system for trading securities independent of a licensed securities exchange, unless the person holds a licence issued by the Commission.

Matters required for grant of licences

12.(1) The Commission shall not grant a securities exchange licence, a clearing and settlement facility licence or a securities trading systems licence unless it is satisfied that, having regard to the general condition, needs and interests of the capital market and the community, there is a need for the additional facility or system proposed to be authorised by the licence.

(2) The Commission shall not grant a securities exchange licence unless it is satisfied that -

- (a) the applicant has operating rules and procedures adequate to ensure, as far as is reasonably practicable, that the market will operate fairly, transparently and in an orderly way;
- (b) the applicant has adequate rules or systems for -
 - (i) handling conflicts between the commercial interests of the applicant and the need for it to ensure that the securities exchange operates fairly, transparently and in an orderly way;
 - (ii) monitoring the conduct of participants on, or in relation to, the securities exchange; and
 - (iii) enforcing compliance with the operating rules of the market;
- (c) the applicant has or has access to adequate clearing and settlement arrangements for transactions effected through the securities exchange; and
- (d) the applicant, and each of its officers, are fit and proper persons.

Securities exchange rules

13.(1) A securities exchange may make rules, not inconsistent with this Act, any regulations made under this Act or any FSC Rules, for or with respect to the operation of the securities exchange.

(2) Rules made under subsection (1) may provide for -

- (a) the terms and conditions for access to the securities exchange, including conditions related to financial integrity and business ethics;
- (b) the terms and conditions for admission of securities for listing on the securities exchange;
- (c) the conditions under which securities are to be traded on the securities exchange;
- (d) enforcement and disciplinary procedures and sanctions to be applied;
- (e) the management of conflicts of interest;
- (f) rules and conditions concerning the buy back of listed securities by companies whose securities are listed;
- (fa) rules and conditions relating to the expiry of futures contracts or other derivatives, and to the modes of corresponding delivery and settlement;
- (g) procedures to give effect to directions of the Commission; and
- (h) Rules of conduct for officers and employees of the securities exchange and for members of committees established for the securities exchange.

(3) Rules made under this section shall be approved by the Commission.

(4) Rules made under this section shall have effect as a contract between each of the following -

- (a) the securities exchange;
- (b) each issuer whose securities are admitted for listing on the securities exchange;
- (c) each person permitted to use the securities exchange to trade securities;

under which each of those persons agrees to observe and perform the obligations imposed on the person by those rules.

Clearing and settlement facility rules

14.(1) A clearing and settlement facility may make rules, not inconsistent with this Act, any regulations made under this Act, or any FSC Rules, for or with respect to the operation of the facility.

(2) Rules made under subsection (1) may provide for -

- (a) clearing and settlement procedures;
- (b) the operation of a book-entry system;
- (c) the dematerialisation of securities in connection with the facility.

(3) Rules made under this section shall be approved by the Commission.

- (4) Rules made under this section shall have effect as a contract between -
- (a) the clearing and settlement facility; and
 - (b) each person permitted to use the clearing and settlement facility, under which each of those persons agrees to observe and perform the obligations imposed on the person by those rules.

Securities trading system rules

15.(1) A securities trading system may make rules, not inconsistent with this Act, any regulations made under this Act or any FSC Rules, for or with respect to the operation of the system.

(2) Rules made under this section shall be of no effect unless approved by the Commission.

(3) Rules made under this section shall have effect as a contract between -

- (a) the trading system; and
- (b) each person permitted to use the trading system to trade securities;

under which each of those persons agrees to observe and perform the obligations imposed on the person by those rules.

Enforcing rules made under this Sub-Part

16.(1) Where a person who is under an obligation to comply with or enforce rules under this Sub-Part fails to perform the obligation, the Commission may direct -

- (a) that person; or
- (b) where the person is a corporation, its officers, to comply with such rules or enforce them, as the case may be.

(2) Notwithstanding subsection (1), where a person who is under an obligation to comply with or enforce rules under this Sub -Part fails to perform the obligation, the Court may, on application by -

- (a) the Commission;
- (b) the licensee that made the rules; or
- (c) a person aggrieved by the failure, to give directions to –
 - (i) the person against whom the order is sought; and
 - (ii) its officers about compliance with, or enforcement of, the rules.

Obligations of securities exchanges

17.(1) A securities exchange shall -

- (a) perform its functions so as to ensure fairness, efficiency and transparency of transactions effected through the securities exchange; and

- (b) publish daily and periodic information, indices and averages on its activities in order to ensure transparency and equity to investors.

(2) A securities exchange shall submit to the Commission the information under subsection (1)(b) at such intervals as the Commission may request.

(3) A securities exchange shall submit to the Commission its trading logs at such times and for such period as the Commission may request.

Directors of securities exchanges

18.(1) The directors of a securities exchange shall ensure that, at all times -

- (a) at least one third of the number of directors are independent of the management of the securities exchange; and
- (b) the directors include in their number directors who have experience in the operations of such securities exchange.

(2) A director of a securities exchange has a duty to act in the best interests of investors and, where there is a conflict between the interests of the investors and the interests of the securities exchange, the director shall give priority to the interests of the investors.

Directors of clearing and settlement facilities

19. A director of a clearing and settlement facility shall, in acting as such a director, have proper regard to safeguarding the interest of users of the facility and the public interest.

Annual reports

20.(1) A person licensed under this Sub-Part shall file with the Commission, within 90 days of its balance sheet date, an annual report which shall include -

- (a) a report on the corporate governance policy of the licensee and any other information required by the Commission;
- (b) audited financial statements prepared in accordance with IFRS and such other standards issued under the Financial Reporting Act 2004 and such other requirements as may be specified in the FSC Rules; and
- (c) consolidated financial statements, where the person is a holding company or a subsidiary.

(2) The financial statements to be included in an annual report under subsection (1), shall be audited in accordance with International Standards on Auditing and such other standards as may be issued under the Financial Reporting Act 2004 by an audit firm approved by the Commission.

(3) *Repealed*

(4) The annual report of a clearing and settlement facility shall also include an audited report on risk management procedures and their application and any other information required by the Commission.

**Restriction on use of the words “stock exchange”, “securities exchange”, “commodities exchange”,
“derivatives exchange” and “futures exchange”**

21. No person shall use the words “stock exchange”, “securities exchange”, “commodities exchange”, “derivatives exchange” or “futures exchange” in connection with a business except in accordance with the approval of the Commission.

Offences

22. Any person who fails to comply with any provision of this Sub-Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees together with imprisonment for a term not exceeding 8 years.

Sub-Part B—Stock Exchange of Mauritius Ltd. (SEM)

Licensing

23. The SEM shall be deemed to be licensed as a securities exchange by the Commission and shall be governed by the provisions of this Act, any regulations made under this Act and any FSC Rules.

Regulatory functions

24.(1) In addition to its other functions, the SEM shall have regulatory functions and shall -

- (a) ensure that it adequately supervises the market operations and the conduct of market participants;
- (b) ensure the adequacy and efficiency of internal controls;
- (c) ensure that market participants follow capital adequacy rules;
- (d) investigate misconduct or apparent misconduct by market participants and their representatives that could seriously affect investors or other participating organisations and promptly report to the Commission on these instances of misconduct;
- (e) investigate possible market abuses, including insider dealing and fraudulent behaviour;
- (f) take disciplinary measures or agree to a settlement after a public hearing.

(2) Where an investigation is carried out by the SEM, it shall, in writing, forthwith -

- (a) inform the Commission of the nature of such investigation and persons involved in the investigation; and
- (b) advise the Commission on the status of such investigation at such intervals as the Commission may request.

(3) On the completion of an investigation, the SEM shall -

- (a) transmit to the Commission all information in its possession relating to any such investigation; and
 - (b) inform the Commission of the outcome of such investigation and of any disciplinary measure or other course of action taken as a result of an investigation.
- (4) The SEM shall -
 - (a) ensure that an adequate budget allocation is made to properly carry out the regulatory functions mentioned in subsection (1); and
 - (b) submit in the annual report under section 20, information on the exercise of its regulatory functions.
- (5) In this Sub-Part -

“internal controls” means the system of controls put in place to assess and ensure the effectiveness of the SEM in the exercise of its regulatory functions;

“market participant” means any investment dealer or any other person which has been given direct access to trading on the exchange.

Demutualisation

- 25.(1) The SEM shall be a demutualised exchange constituted as a public company.
- (2) Except with the approval of the Commission, the SEM shall not -
 - (a) make any change in its legal structure; and
 - (b) make any public offer of its securities.

Sub-Part C- Central Depository and Settlement Co Ltd (CDS)

Licensing

- 26. The CDS shall be deemed to be licensed as a clearing and settlement facility by the Commission and shall be governed by the provisions of this Act, any regulations made under this Act and any FSC Rules.

Clearing and Settlement Advisory Committee

- 27. The CDS shall establish a Clearing and Settlement Advisory Committee to review and make recommendations concerning systems design, operational procedures and problems and the introduction of new services.

Transfer of ownership of securities

- 28.(1) Notwithstanding any other enactment, the exclusive method of transferring the ownership of securities deposited in the CDS shall be a transfer made in accordance with the rules and procedures of the CDS.

(2) In the event of a conflict between the records of the CDS and any other records or documents concerning the ownership and transfer of securities deposited in the CDS, the records of the CDS shall prevail.

Sub-Part D - Intermediaries

Licence for investment dealers and their representatives

29.(1) No person shall, by way of business -

- (a) act or hold himself out as an intermediary in the execution of securities transactions on behalf of other persons;
- (b) trade or hold himself out to trade in securities as principal for his own account with the intention of selling them to the public; or
- (c) underwrite or distribute or hold himself out to underwrite or distribute securities on behalf of an issuer or a holder of securities, without an investment dealer licence issued by the Commission or without being licensed as a representative of an investment dealer by the Commission.

(2) No person other than a body corporate may apply for an investment dealer licence.

(3) The Commission may make rules providing for the authorisation and conditions under which a financial institution may carry out the functions or activities of an investment dealer.

Licence for investment advisers and their representatives

30. No person shall, by way of business -

- (a) advise, guide or recommend other persons, or hold himself out to advise, guide or recommend other persons, whether personally or through printed materials or by other means, to enter into securities transactions; or
- (b) manage or hold himself out to manage, under a mandate, whether discretionary or not, a portfolio of securities, without an investment adviser licence issued by the Commission or without being licensed as a representative of an investment adviser by the Commission.

Solicitation

31.(1) No person other than the holder of a licence referred to under section 29 or 30, shall solicit another person to enter in securities transactions.

(2) For the purposes of this section, a person shall be deemed to solicit another person under subsection (1) where he induces another person to buy, sell or exchange securities or to participate in transactions involving securities or offers persons services, recommendations or advice for those purposes by -

- (a) seeking to meet such person at his place of residence, work or public places;
- (b) contacting such person by telephone, letters, circulars, the internet or other electronic means or telecommunication system; or

- (c) publishing or causing an advertisement to be published or circulated.

Responsibility for conduct of representatives

32.(1) This section applies to conduct of a representative -

- (a) that relates to securities;
- (b) on which a third person (the “client”) could reasonably be expected to rely; and
- (c) on which the client in fact relied in good faith.

(2) The investment dealer or the investment adviser shall be responsible for the conduct of its representatives whether or not the representative was acting within his authority.

(3) Subsection (2) shall not apply where -

- (a) the conduct was not related to securities; and
- (b) the representative clearly disclosed that fact to the client before the client relied on the conduct.

Penalty for offences against this Sub-Part

33. Any person who contravenes any provision of this Sub-Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees together with imprisonment for a term not exceeding 8 years.

Applications for licences

34. An application for a licence under this Act shall be made in accordance with Part IV of the Financial Services Act 2007 and in such form and manner as may be specified in FSC Rules.

35. *Repealed*

36. *Repealed*

37. *Repealed*

38. *Repealed*

39. *Repealed*

40. *Repealed*

41. *Repealed*

42. *Repealed*

43. *Repealed*

- 44. *Repealed*
- 45. *Repealed*
- 46. *Repealed*
- 47. *Repealed*
- 48. *Repealed*
- 49. *Repealed*

Sub-Part F—Prudential rules and annual reports

Capital and liquidity requirements

50.(1) The FSC Rules may provide for capital and liquidity requirements and other prudential rules for investment dealers and investment advisers.

(2) In formulating rules for the purposes of subsection (1), the matters to which the Commission shall have regard include -

- (a) the nature of the activity authorised by the relevant licence; and
- (b) the nature and extent of the risks that those licensees are exposed to, and that they pose to their clients or to the integrity of the securities market.

Investment dealers—advances to clients

51.(1) No investment dealer shall make an advance to his client by way of loan, to be applied to buy securities unless -

- (a) before the advance is made, the client has executed a contract that sets out the terms on which the advance is made and such contract complies with the FSC Rules; and
- (b) the amount advanced does not exceed the percentage of the market value of the securities specified in FSC Rules made for the purposes of this paragraph.

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

Custody services

52. An investment dealer who satisfies such conditions relating to security and safety of physical securities as may be specified in FSC Rules may be authorised under its licence to offer custody services to his clients.

Underwriting

53. An investment dealer who satisfies such conditions relating to capital, infrastructure and security as

may be specified in FSC Rules may be authorised under its licence to offer underwriting services.

Credit balances

54.(1) Any credit balances in the accounts of a client of an investment dealer, not representing securities that are pledged, mortgaged, subject to a lien or other security interest or given to support a guarantee or similar arrangement, shall -

- (a) be payable on demand;
- (b) not be used or applied by the investment dealer without the express written authority of the client; and
- (c) not form part of the assets of the investment dealer for the purposes of the law relating to insolvency.

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

(3) An investment dealer shall be liable to pay its client interest, calculated in accordance with the market rate, on the credit balance in the securities accounts of the client maintained by the investment dealer.

Annual reports

55.(1) An investment dealer and a corporation licensed as an investment adviser shall file with the Commission, within 90 days of its balance sheet date, an annual report which shall include -

- (a) a report on the corporate governance policy of the licensee and any other information required by the Commission;
- (b) audited financial statements prepared in accordance with IFRS and such other standards as may be issued under the Financial Reporting Act 2004;
- (c) such other requirements as may be specified in FSC Rules; and
- (d) consolidated financial statements where the investment dealer or investment adviser is a holding company or a subsidiary.

(2) Any financial statement to be included in an annual report under subsection (1), shall be audited in accordance with International Standards on Auditing and such other standards as may be issued under the Financial Reporting Act 2004 by an audit firm approved by the Commission.

(3) The Commission shall not approve an audit firm under subsection (2) unless it is satisfied that the audit firm has adequate experience, expertise and resources to carry out such an audit.

(4) Where an investment adviser is an individual, he shall file with the Commission such returns at such intervals as may be specified in the FSC Rules.

(5) Any person who contravenes any of the provision of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

Sub-Part F - Dealing with clients

Securities transaction confirmations

56.(1) Where an investment dealer executes an order of a client to carry out a securities transaction, it shall send to its client without delay, a confirmation in such form as may be specified in the FSC Rules.

(2) Every investment dealer shall send to its client a statement of account in such form and at such intervals as may be specified in the FSC Rules.

(3) An investment dealer shall not trade as principal in securities listed or traded on a securities exchange except in accordance with the applicable rules of the securities exchange.

(4) Where, in respect of securities that are not listed on a securities exchange, an investment dealer deals as principal with a client, the investment dealer shall, before entering into the transaction, disclose to the client that he is entering into the transaction as principal.

(5) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

57. *Repealed*

58. *Repealed*

59. *Repealed*

60. *Repealed*

61. *Repealed*

62. *Repealed*

63. *Repealed*

64. *Repealed*

65. *Repealed*

66. *Repealed*

PART V - OFFERS AND ISSUES OF SECURITIES

Sub-Part A – Requirement of a prospectus

Offer or distribution of securities

67. For the purposes of this Act, a person shall be deemed to make an offer or distribution of securities where that person invites or solicits another person -

- (a) to purchase or subscribe to securities that have never been issued;
- (b) to enter into an agreement for the underwriting of securities;

- (c) to purchase securities underwritten;
- (d) to distribute securities previously offered without a prospectus; or
- (e) to purchase securities, other than securities acquired on a securities exchange in normal market operations, previously issued and held by a person, including an issuer, and where the offer or distribution is made from Mauritius, or received in Mauritius.

Requirement for a prospectus

68.(1) No person shall make an offer of securities to the public, unless -

- (a) the entity whose securities are being offered is in existence at the time of the offer;
- (b) the offer is made in a prospectus that complies with this Part; and
- (c) the Commission has given a provisional registration to the prospectus.

(2) Where an offer is made by -

- (a) an investment dealer acting for an issuer; or
- (b) any person holding securities on behalf of the issuer,

the prospectus shall be established by the issuer or the person holding the securities.

(3) No person shall distribute to the public an application form for an offer of securities unless the registration of the prospectus has become effective and the form is attached to or accompanies the prospectus.

Derogation under this Part for CIS

69.(1) This Part shall not apply to collective investment schemes authorised or recognised by the Commission under Part VIII.

(2) Notwithstanding subsection (1), no collective investment scheme shall make an offer of securities to the public unless such offer is made in a prospectus or simplified prospectus that complies with FSC Rules.

Prospectus not required

70.(1) A prospectus shall not be needed for -

- (a) an issue of securities of a company at or in connection with the formation of the company, where no solicitation is made for the purchase of the securities;
- (b) the transmission of securities by succession;
- (c) the vesting or transfer of securities by operation of law or by order of a court;
- (d) an offer or issue of securities that is a private placement;
- (e) an offer or issue of securities that is made only to sophisticated investors;

- (f) an offer or issue of securities only to related corporations of the issuer of the securities;
- (g) an offer by an issuer -
 - (i) to allow the exercise of an exchange, conversion, or subscription rights previously issued for securities held by a reporting issuer;
 - (ii) under a subscription plan, a share dividend plan or a dividend reinvestment plan; or
 - (iii) under an employee share plan or a similar plan and is made only to officers or employees of the issuer,

where the issuer has complied with its obligations under this Act, any regulations made under this Act or any FSC Rules as to disclosure in relation to the securities;
- (h) an offer of securities acquired under an offer referred to in subsection (1)(d) or (e) where -
 - (i) a sale of securities is made in normal market operations on a securities exchange;
 - (ii) the issuer has complied with its obligations under this Act, any regulations made under this Act or any FSC Rules and the rules of the securities exchange as to disclosure in relation to the securities; and
 - (iii) the person making the offer has held the securities for at least the period specified in FSC Rules;
- (i) an offer or issue of securities for the purpose of effecting an amalgamation of companies.

(2) An issuer shall not rely on subsection (1)(e) unless, not later than 10 days after the offer is made, the issuer notifies the Commission of the offer in accordance with FSC Rules.

(3) An issuer shall not rely on subsection (1)(g)(iii) where participation in the plan is a condition of appointment to office by, or employment with, the issuer.

(4) An issuer shall not rely on subsection (1)(d), (e), (f), (g) and (i) unless the provisions of the regulations and of FSC Rules relating to offers and issues of securities mentioned in the relevant provision are complied with.

(5) An issuer shall not rely on subsection (1)(i) unless -

- (a) the Commission is notified in accordance with the FSC Rules of the proposed offer or issue at least fifteen days before it takes place; and
- (b) the Commission has not objected, by written notice to the issuer, within 15 days from the date it received the notification under paragraph (a).

Sub-Part B—Contents of prospectuses

General requirements

71.(1) A prospectus shall provide full, true and plain disclosure of all material facts concerning the securities to be offered and the person offering the securities, without omitting anything that would be required to allow investors to make an informed assessment of -

- (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer of the securities; and
- (b) the rights and liabilities attaching to the securities.

(2) A prospectus shall contain -

- (a) the date of the prospectus, which shall be the date on which the prospectus is provisionally registered with the Commission;
- (b) a statement signed by all the directors of the issuer to the effect that they accept responsibility for the contents of the prospectus and that, to the best of their knowledge and belief, and after making reasonable inquiries, the prospectus complies with this Act, any regulations made under this Act or any FSC Rules;
- (c) such signatures as may be specified in FSC Rules; and
- (d) a statement to the effect that the Commission takes no responsibility for its contents.

(3) A prospectus, or a simplified prospectus, where so authorised by FSC Rules, shall contain all such facts, statements and information as may be specified by FSC Rules.

Consent to certain statements

72.(1) A prospectus shall not include any statement made by a person, or any statement said in the prospectus to be based on a statement made by a person, unless -

- (a) the person has consented to the statement being included in the prospectus in the form and context in which it appears or referred to in the prospectus;
- (b) the prospectus states that the person has given his consent;
- (c) the consent is filed with the Commission; and
- (d) the person has not withdrawn his consent before the date the prospectus is lodged for provisional registration with the Commission.

(2) For the purposes of this section, reference to “a statement by a person” shall include reference to any report, analysis or study made by such person or referred to in such statement.

Prospectuses to be up to date

73. An issuer shall not issue securities under a prospectus unless the prospectus is up to date at the time of issue of the securities.

Language of prospectuses

74. A prospectus shall be in the English or French language.

Prospectus valid for six months

75.(1) An issuer shall not issue securities under a prospectus more than 6 months after the date the prospectus is granted effective registration.

(2) A prospectus shall include a statement that securities shall not be issued under the prospectus more than 6 months after the date the prospectus is granted effective registration.

Sub-Part C—Registration and publication of prospectuses

Registration of prospectuses

76.(1) The Commission shall, on filing of a prospectus, issue an acknowledgment of filing on such terms and conditions as it may deem appropriate.

(2) The prospectus shall be accompanied by a true certified copy of the minutes of proceedings of the board resolution referred to in section 71(2)(b).

(3) No person shall publish, or cause to be published, a securities advertisement for which a prospectus is required unless -

- (a) a prospectus in respect of the offer has been issued with an acknowledgment of filing;
- (b) the advertisement states that applications for subscription may only be made after the prospectus has been issued with an acknowledgment of filing and on an application form attached to the prospectus;
- (c) the prospectus is available for public inspection; and
- (d) the advertisement gives the address of the place where the prospectus can be inspected or requested.

(4) The Commission may, after a review based on disclosure requirements and not on the merits of the offer, grant a registration where -

- (a) the person making the offer has made any required amendment to the prospectus;
- (b) the Commission is satisfied that the prospectus meets all disclosure requirements of the Act, any regulations made under this Act or the FSC rules;
- (c) consents mentioned in section 72 have been received; and
- (d) a prospectus in its final form as determined by the FSC Rules has been filed with the Commission.

(5) Pending registration of the prospectus -

- (a) a copy of the prospectus may be transmitted free of charge to any prospective subscriber who requests it by the issuer or the investment dealer responsible for the offer;
- (b) no application form for subscription shall accompany the prospectus;

- (c) no offer for subscription shall be entertained by the issuer or any investment dealer;
 - (d) no indication of interest, other than an indication of interest without a firm commitment, shall be accepted from potential subscribers; and
 - (e) no indication of interest shall be accepted by a person other than a licensed investment dealer.
- (6) No action shall lie against the Commission or any member of the Commission for any damage or loss suffered as a result of any prospectus being acknowledged or registered by the Commission.

Requirement to make prospectuses available

77. The issuer of securities to which a registered prospectus relates shall make the prospectus available for public inspection free of charge at all times from the time the securities are first offered until the end of the period during which the offer of the securities remains open.

Material change

78.(1) Where a material change occurs after the registration is granted, the person making the offer shall file an amendment with the Commission.

- (2) The amendment in subsection (1) -
 - (a) shall not be filed more than 10 days after the change;
 - (b) shall be subject to the approval of the Commission;
- (3) Where an amendment has been approved by the Commission, the amendment shall be -
 - (a) published in a newspaper of widespread circulation as soon as practicable; and
 - (b) included with the prospectus when sent or given to a potential investor.

Subscription of securities

79.(1) No subscription for any securities offered to the public shall be effected unless -

- (a) registration of the prospectus is granted;
 - (b) the subscription is made on an application form for subscription accompanying the prospectus; and
 - (c) the subscription is effected through a licensed investment dealer who shall give a copy of the prospectus to each potential subscriber before subscription.
- (2) The offer shall terminate on the date of closing indicated in the prospectus, which, subject to subsection (3), shall not be later than 60 days from the date registration is granted.
- (3) The Commission may, on application, grant an extension for a period of 30 days for the offer to be terminated.

Sub-Part D—Enforcement

Criminal liability on defective prospectuses

80.(1) Any person who -

- (a) makes a misleading or deceptive statement in a prospectus; or
- (b) omits information or a statement from a prospectus that this Act, any regulations made under this Act or the FSC rules requires to be included,

shall commit an offence, whether or not the matter concerned arose before or after the prospectus is lodged with the Commission for registration, and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(2) Where the offence under subsection (1) is committed in circumstances where the person committing the offence either -

- (a) knows that -
 - (i) the statement is false or misleading; or
 - (ii) the matter is omitted and the omission is materially adverse from the point of view of an investor in the securities; or
- (b) the person is reckless as to whether -
 - (i) the statement is false or misleading; or
 - (ii) the omission of matter is materially adverse from the point of view of an investor in the securities,

that person shall, on conviction, be liable to a fine of not less than 500,000 rupees together with imprisonment for a term of not less than one year.

(3) For the purposes of this section -

- (a) a misleading statement includes a statement about a future matter made by a person having no reasonable grounds for making such statement;
- (b) reference to a prospectus includes reference to any document required by this Act, any regulations made under this Act or the FSC rules to accompany the prospectus;
- (c) where the misleading statement or material omission in the prospectus is either -
 - (i) made by a person whose consent was obtained under section 72; or
 - (ii) based on a statement made by a person whose consent was obtained under section 72,

only that person shall commit the offence.

(4) Subject to subsection (3)(c), a person specified in subsection (1) shall include, but shall not limited to, a person who signs the prospectus as required under section 71(2)(b) or the FSC Rules.

Defences to proceedings under section 80

81.(1) In proceedings for an offence under section 80 in respect of a statement, it shall be a defence where the defendant proves that he -

- (a) made all inquiries that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the statement was not misleading or deceptive.

(2) In proceedings for an offence under section 80, in respect of omission of matter, it shall be a defence where the defendant proves that he -

- (a) made all inquiries that were reasonable in the circumstances; and
- (b) believed on reasonable grounds that there was no omission in respect of that matter from the prospectus.

(3) Regulations made under this Act may prescribe additional defences to proceedings for an offence under section 80.

Civil liability on defective prospectuses

82.(1) Any person who suffers loss or damage because -

- (a) a prospectus in respect of securities includes a misleading or deceptive statement; or
- (b) there is an omission from a prospectus in respect of securities and the omission is materially adverse from the point of view of an investor in those securities, may recover the amount of the loss or damage from -
 - (i) the issuer or proposed issuer of the securities;
 - (ii) each director of the issuer or proposed issuer of the securities;
 - (iii) the maker of the statement, to the extent that it consented such statement being included or referred to in the prospectus;
 - (iv) any investment dealer acting as underwriter of the securities;
 - (v) any person who has signed the prospectus; or
 - (vi) any person knowingly concerned in making the misleading or deceptive statement in the prospectus or omitting the material from the prospectus.

(2) In proceedings under subsection (1) in respect of omission of any matter, it shall be a defence where the defendant proves that -

- (a) he made all inquiries that were reasonable in the circumstances; and
- (b) he believed on reasonable grounds that there was no omission in respect of that matter from the prospectus.

(3) For the purposes of this section, reference to a prospectus shall include any document accompanying a prospectus and any report, study or statement contained in a prospectus.

(4) Proceedings under subsection (1) shall not be commenced more than one year after the cause of action

arose but the Court in which the proceedings are commenced may extend the period, either before or after it has ended, on such terms as it thinks fit.

(5) This section shall not affect any liability that a person has under any other enactment.

Right to withdraw and have money returned

83.(1) Where securities are issued to a person without -

- (a) a prospectus or any other disclosure document required under this Part, or any regulations or any FSC Rules made for the purposes of this Part; or
- (b) otherwise than on an application form for subscription attached to the prospectus,

such issue of securities shall be void and the person shall have the right to return the securities and to have its application money repaid.

(2) The right shall be exercised by written notice to the issuer of the securities or the investment dealer who acted for the issuer within one month after the securities are issued.

(3) Where the issuer does not pay the application money or purchase price within 7 days after receiving the notice, the directors of the issuer shall be personally, or jointly and severally, liable for the repayment.

(4) This section shall apply to a sale of securities in the same way as it applies to an issue of securities, as if a reference to the issuer were a reference to the seller.

Commission may direct issues of securities to cease

84.(1) Where the Commission is satisfied that a prospectus or other disclosure document in relation to a distribution of securities filed with or registered by the Commission contravenes this Act, any regulations made under this Act or any FSC rules, it may give a direction that no offer, issue, or trade of the securities shall be made or that any offer, issue or trade of securities shall cease.

(2) Before giving the direction, the Commission shall give the issuer of the prospectus a reasonable opportunity to make written representations to the Commission on the matter.

(3) Where the Commission considers that a delay in making an order under subsection (1) would not be in the public interest, it may give an interim direction under subsection (1).

(4) Subsection (2) shall not apply to an interim direction, but an interim direction shall last for 21 days unless earlier revoked.

(5) The Commission may, at any time, revoke a direction or interim direction under this section.

(6) A direction and an interim direction shall be in writing and shall be served on the person ordered not to offer, issue, sell or transfer securities.

(7) Any person who refuses or fails to comply with a direction or an interim direction served on him under subsection (6) 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.

(8) Notwithstanding subsection (7), where any person fails to comply with a direction or an interim direction under this section, that person shall commit a separate offence for each day for which the direction or interim direction is not complied with, and shall, on conviction, be liable to a fine of 5,000 rupees per day.

Offences under this Part

85.(1) Any person who contravenes any provision of this Part shall commit an offence.

(2) Any person who commits an offence under this Part shall, on conviction, where no specific penalty is provided, be liable to a fine not exceeding one million rupees.

PART VI- DISCLOSURE

Persons subject to disclosure requirements

86.(1) In this Act, “reporting issuer” means an issuer -

- (a) who by way of a prospectus, has made an offer of securities either before or after the commencement of this Act;
- (b) who has made a takeover offer by way of an exchange of securities or similar procedure;
- (c) whose securities are listed on a securities exchange in Mauritius; or
- (d) who has not less than 100 shareholders.

(2) Every reporting issuer shall comply with the disclosure requirements under this Part.

(3) The Commission shall keep a register of reporting issuers, which shall -

- (a) be available for consultation by the public; and
- (b) indicate whether the reporting issuer is in default of the disclosure requirements.

Timely disclosure

87.(1) Where a material change occurs in the affairs of a reporting issuer that is likely to have a significant influence on the value or market price of its securities, the reporting issuer shall immediately issue a press release disclosing the change, unless such disclosure would amount to a criminal offence.

(2) The press release shall be made in plain ordinary language so that investors can understand.

(3) A copy of the press release shall be filed with the Commission forthwith.

(4) Where the securities of the reporting issuer are listed on an exchange -

- (a) a copy of the press release shall be filed with the exchange forthwith;
- (b) unless it is not possible to keep the information confidential, the press release shall be issued after the close of trading; and
- (c) where the information is released before the close of trading, the issuer may request a halt in trading from the exchange, pending the issue and dissemination of the information.

(5) Without limiting what amounts to a material change, the following changes shall require disclosure under this section -

- (a) any distribution of securities in Mauritius or in any other jurisdiction;
- (b) any change in the beneficial ownership of the issuer's securities that affects or is likely to affect the control of the issuer;
- (c) any change of name of the reporting issuer;
- (d) any reorganisation in capital, merger or amalgamation;
- (e) a takeover bid on its own securities or made on the securities of another issuer or issuer bid;
- (f) any significant acquisition or disposition of assets, property or joint venture interests;
- (g) any stock split, share consolidation, stock dividend, exchange, redemption or other change in capital structure; and
- (h) any other change that may be provided for in the FSC rules.

(6) For the purposes of subsection 5(f), an acquisition or disposition is significant when the value of the asset, property or interest acquired or disposed of exceeds 10 per cent of the net assets of the reporting issuer.

(7) A reporting issuer may choose not to issue a press release where -

- (a) the information concerns an incomplete proposal or negotiation;
- (b) the information comprises of matters of supposition or is insufficiently definite such that it would be misleading to the market for it to be disclosed;
- (c) the information is generated solely for the purposes of the internal management of the issuer and its advisers;
- (d) the information is a trade secret.

(8) The exemption in subsection (7) shall not apply where the board of the issuer reasonably believes that transactions in the securities have taken place or are likely to take place based on undisclosed information.

(9) Where the exemption in subsection (7) applies, the reporting issuer shall issue the press release under subsection (1) as soon as circumstances that justify non-disclosure end.

Periodical disclosure

88.(1) Every reporting issuer shall file with the Commission and make public comparative quarterly financial statements prepared in accordance with IFRS and such other standards as may be issued under the Financial Reporting Act 2004, as soon as possible, but not later than 45 days after the end of each quarter.

(2) The financial statements under subsection (1) need not be audited.

(3) Every reporting issuer shall file with the Commission and make public an annual report which includes audited comparative financial statements prepared in accordance with IFRS and audited in accordance with the International Standards on Auditing, and such other standards as may be issued under the Financial Reporting Act 2004, as soon as possible, but not later than 90 days of its balance sheet date.

(4) In the case of a company with a subsidiary, the financial statements shall be consolidated.

(5) The annual reports and the financial statements required under this section shall be in such form, and shall include such information, as may be specified in FSC Rules.

(6) Notwithstanding section 115(4) of the Companies Act 2001, the annual audited financial statements shall be approved by the board of directors.

(7) Section 224 of the Companies Act 2001 to the extent that it relates to exemptions from accounting and disclosure requirements, and section 356 of the Companies Act 2001 shall not be applicable to persons who are subject to the disclosure requirements under this Part.

(8) This section shall not apply to a collective investment scheme authorised or recognised under Part VIII.

Duties of auditors

89.(1) Where in the course of his work, the auditor of a reporting issuer, other than a collective investment scheme, becomes aware of any matter which is such as to give the auditor reasonable cause to believe that -

- (a) there has been a material adverse change in the risks inherent in the business of a reporting issuer with the potential to jeopardise the ability of the reporting issuer to continue as a going concern;
- (b) the reporting issuer may be in contravention of this Act, any regulations made under this Act, any FSC Rules or any directions issued by the Commission;
- (c) a financial crime has been, is being or is likely to be committed; or
- (d) serious irregularities have occurred,

the auditor shall report such matter in writing to the Commission.

(2) No duty to which an auditor of a reporting issuer may be subject shall be regarded as breached by reason of his communicating in good faith to the Commission any information under subsection (1).

Notification of insiders' interests

90.(1) Where, at the commencement of this Act, an insider of a reporting issuer or any of his associates, has an interest in the securities of the reporting issuer or of an associate of the reporting issuer, that insider shall give written notice of the interest to the reporting issuer in such form as may be specified in FSC Rules.

(2) Where an insider of a reporting issuer or any of his associates acquires an interest in the securities of the reporting issuer or of an associate of the reporting issuer, that insider shall within one month, give written notice of such acquisition to the reporting issuer in such form as may be specified in FSC Rules.

(3) Subsection (2) shall apply to a person who, not being an insider, becomes an insider as a result of acquiring such interest in securities.

Notification of changes in insiders' interests

91.(1) An insider of a reporting issuer shall, within 14 days, notify the issuer of any change of his interest or that of any of his associates in the securities of the reporting issuer or of any associate of the reporting issuer in such form as may be specified in FSC Rules.

(2) Subsection (1) applies to a person who, being an insider of a reporting issuer, ceases to be an insider as

a result of such change.

Notification to securities exchanges and Commission

92.(1) Where an issuer is given a notice under section 90 or 91, the issuer shall, before the end of the day following the day of notification, give a copy of the notice to -

- (a) the Commission;
- (b) the exchange where the securities of the reporting issuer are listed on a securities exchange.

(2) The notice specified in subsection (1) may be published in accordance with the FSC Rules or rules made by the exchange.

Offences under this Part

93.(1) Any person who contravenes any provision of this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

(2) Notwithstanding subsection (1), where under any provision in this Part, a time period for compliance is specified, the person shall commit a separate offence for each day the provision is not complied with after the time period has elapsed and shall, on conviction, be liable for each offence, to a fine of 5,000 rupees per day.

PART VII—TAKEOVERS

Regulating takeovers

94.(1) Regulations made under this Act may provide for -

- (a) the making of takeovers; and
- (b) the rights and obligations of persons when a takeover is made.

(2) For the purposes of subsection (1), a “takeover” means an offer made by or on behalf of a person (“offeror”) to acquire such securities of the offeree which will result in the offeror acquiring effective control of the offeree, either at one time or over a period of time.

(3) For the purposes of this Part, an offeror acquires effective control of a company where a dealing or dealings in securities of the company results in the offeror and its associates together having the right to exercise, or control the exercise of, more than the prescribed percentage of the rights attached to the voting shares of the company.

(4) In subsection (3), “associate” includes a person acting in concert with individuals or companies who, pursuant to an agreement or understanding, whether formal or informal, cooperate, through the acquisition by any of them of shares in a company, to obtain or consolidate effective control of that company.

Issuer bids or buybacks

95.(1) Notwithstanding the Companies Act 2001, a reporting issuer who intends to acquire securities issued by it, other than debt securities not convertible into shares, shall proceed in accordance with this Act, any regulations made under this Act and any FSC Rules.

(2) A reporting issuer shall be exempt from subsection (1) where -

- (a) the issuer purchases securities in the normal course in the open market, through a securities exchange recognised by the Commission for the purpose of this section;
- (b) the aggregate number, or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired by the issuer within a period of 12 months in reliance on this exemption does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of this period; and
- (c) the issuer publishes a notice of intention in the form and manner required by the rules of a securities exchange or as may be prescribed.

Penalty for contravention of regulations or FSC Rules

96.(1) Any person who contravenes or fails to comply with any regulations or any FSC Rules made for the purposes of this Part shall commit an offence and on conviction shall be liable to a fine not exceeding 1,000,000 rupees.

(2) Notwithstanding subsection (1), where under any provision of the regulations, a time period for compliance is specified, the regulations may -

- (a) provide that the contravention of the provision may constitute a separate offence for each day the contravention continues after the time period for compliance has elapsed.
- (b) prescribe the daily monetary penalty that shall be applicable for the breach of the provision

PART VIII—COLLECTIVE INVESTMENT SCHEMES

Sub-Part A—Authorisation and licensing

Authorisation of collective investment schemes and closed-end funds

97.(1) No person shall promote or operate a collective investment scheme or any closed-end fund which is not authorized or recognised by the Commission.

(2) The assets of the collective investment scheme shall not be held for safekeeping by a person other than a person licensed as a custodian and who shall be independent from the CIS manager.

(3) The authorisation of a collective investment scheme or of a closed-end fund may be subject to such conditions as may be prescribed.

(4) Without prejudice to subsection (3), the Commission may make FSC Rules in relation to the categorisation of schemes for the purposes of this Act and regulations made under this Act.

(5) Where the Commission is satisfied that a collective investment scheme or closed-end fund meets the requirements prescribed or specified in FSC Rules, as may be applicable, it shall grant the authorisation.

(6) An authorisation given by the Commission in accordance with this Act shall not be interpreted as an undertaking as to the merits of a scheme.

(7) A closed-end fund shall comply with such other requirements as may be prescribed.

CIS managers

98.(1) No person shall act as a CIS manager for a collective investment scheme or hold himself out to act as a CIS manager for a collective investment scheme unless the person holds and is complying with the conditions of a CIS manager licence.

(2) The Commission shall not grant a CIS manager licence to an applicant unless -

- (a) the applicant is a body corporate;
- (b) the Commission is satisfied that the applicant will be able, if licensed, to comply with the requirements of the FSC Rules as to the financial and other resources requirements needed by the investment manager for the collective investment scheme; and
- (c) the applicant and each of its officers meet the requirements relating to eligibility, fit and proper, duties and obligations, rules of ethics and other such conditions as may be specified in FSC Rules.

CIS administrators

99.(1) No person shall, by way of business, provide administration services to a collective investment scheme unless the CIS manager or the collective investment scheme, as the case may be, seeks the prior approval of the Commission.

(2) The Commission shall not give its approval for a person under subsection (1) unless -

- (a) the person is a body corporate and meets the requirements in relation to CIS administrators as may be prescribed or specified in FSC Rules; and
- (b) the Commission is satisfied that the person, and each of its officers are fit and proper persons.

(3) For the purposes of this Part -

- (a) “administration services” means services with respect to the operations and administrative affairs of a collective investment scheme including -
 - (i) accounting, valuation or reporting services; or
 - (ii) the provision of the principal office of a collective investment scheme; but
- (b) does not include -
 - (i) the provision of a registered office to a collective investment scheme where the usual corporate, secretarial and related services are provided;

- (ii) the maintenance of any register of shareholders or participants or the registration and payment of fees; and
- (iii) the provision of investment advice or investment management or trading execution services.

Custodian licence

100.(1) No person shall hold the assets of a collective investment scheme for safekeeping unless the person holds a custodian licence.

(2) The Commission shall not grant a custodian licence for the purposes of this section unless the applicant

- (a) is a bank or is a trust company that is a subsidiary of a bank; and
- (b) meets the requirements relating to duties and obligations, use of sub-custodians and other conditions as may be prescribed or specified in FSC Rules.

(3) Nothing in this section shall prevent a trustee of a trust set up under the repealed Unit Trust Act 1989 or the Trusts Act 2001 from acting as custodian in relation to the property of the trust provided that the trustee complies with the requirements for custodians under this Act, any regulations made under this Act, and any FSC rules.

Recognition of foreign schemes

101.(1) The Commission may, on application, recognise a collective investment scheme established in a foreign country.

(2) Recognition may be subject to such conditions that the Commission considers necessary or desirable for the protection of participants in the scheme.

Application of licensing provisions

102. An application for a licence, approval, authorization and recognition under this Sub-Part shall be made in accordance with Part IV of the Financial Services Act 2007 in such form and manner as may be specified in FSC Rules.

Company managing its own scheme

103.(1) Subject to subsections (2) and (3), section 98 of this Act shall not apply to a company that manages its own scheme.

(2) Any company wishing to manage its own scheme shall seek the prior approval of the Commission.

(3) Any company wishing to manage its own scheme shall, in relation to that scheme, be subject to all the duties and obligations, conditions and requirements that apply to a CIS manager under this Act or as may be prescribed or specified in FSC Rules.

Offences under this Part

104.(1) Any person who operates a collective investment scheme in contravention of the provisions under this Part shall commit an offence.

(2) Any person who acts as a CIS manager for a collective investment scheme or holds himself out to act as CIS manager for a collective investment scheme without a CIS manager licence shall commit an offence.

(3) Any person who provides administration services to a collective investment scheme or holds himself out to provide administration services to a collective investment scheme without the approval of the Commission shall commit an offence.

(4) Where the assets of a collective investment scheme is held for safekeeping by a person who does not hold a custodian licence, both that person and the CIS manager of the scheme shall commit an offence.

(5) An offence under this section shall be punishable by a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

Sub-Part B—Duties of CIS managers and their officers

Duties of CIS managers and officers

105.(1) Notwithstanding any other obligation arising under the Companies Act 2001 or under a contract with respect to the duties of a director, the CIS manager and its officers shall, in exercising their powers and duties -

- (a) act honestly;
- (b) exercise the degree of care and diligence that would be reasonably expected of a person in that position;
- (c) act in the best interests of the participants in the scheme and, where there is a conflict between the interests of the participants and their own interests, give priority to the participant's interests;
- (d) treat the participants who hold interests of the same class equally and participants who hold interests of different classes fairly;
- (e) not make use of information acquired through being CIS manager or officer to -
 - (i) gain an improper advantage for themselves or another person; or
 - (ii) cause detriment to the participants in the scheme;
- (f) ensure that all payments out of the scheme property are made in accordance with the constitutive documents of the scheme, this Act, any regulations made under this Act and any FSC rules; and
- (g) report to the Commission, as soon as practicable after it becomes aware of any breach of -
 - (i) this Act, any regulations made under this Act or any FSC rules; or
 - (ii) the scheme's constitutive documents that has had, or is likely to have, a materially adverse effect on the interests of participants.

- (2) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees together with imprisonment for a term not exceeding 5 years.
- (3) Notwithstanding section 103, this section shall apply to a company managing its own scheme.
- (4) Regulations made under this Act and FSC Rules may provide for additional duties of CIS managers, their officers and employees.

Sub-Part C- Disclosure

Disclosure by CIS and CIS managers

106.(1) Every collective investment scheme shall file with the Commission and make public interim financial statements prepared in accordance with IFRS and such other standards as may be issued under the Financial Reporting Act 2004, as soon as possible, but not later than 45 days after the closing date of the interim period specified in FSC Rules.

(2) A CIS manager shall file with the Commission interim financial statements prepared in accordance with IFRS and such other standards as may be issued under the Financial Reporting Act 2004, as soon as possible, but not later than 45 days after the closing date of each interim period specified in FSC Rules.

(3) The interim financial statements specified in subsections (1) and (2) need not be audited.

(4) Every collective investment scheme shall, as soon as possible, but not later than 90 days of its balance sheet date, file with the Commission and make public an annual report which shall include audited financial statements prepared in accordance with IFRS and audited in accordance with the International Standards on Auditing, and such other standards as may be issued under the Financial Reporting Act 2004, by an audit firm approved by the Commission.

(5) Every CIS manager shall, as soon as possible, but not later than 90 days of its balance sheet date, file with the Commission an annual report which shall include audited financial statements prepared in accordance with IFRS and audited in accordance with the International Standards on Auditing, and such other standards as may be issued under the Financial Reporting Act 2004, by an audit firm approved by the Commission.

(6) The annual reports and the financial statements required under this section shall be in such form, and shall include such other information, as may be specified in FSC Rules.

(7) Further provisions about auditing in relation to collective investment schemes may be specified in FSC Rules.

(8) Every collective investment scheme shall file with the Commission a prospectus or other disclosure document as may be specified in FSC Rules.

(9) Any collective investment scheme or CIS manager that contravenes any provision of this section shall commit an offence and shall on conviction, be liable to a fine not exceeding 500,000 rupees.

(10) Where a collective investment scheme is constituted as a trust, the offence in subsection (9) shall be committed by the trustee and the CIS manager.

Appointment and duties of auditors

107.(1) The Commission shall not approve an audit firm under section 106(4) or (5) unless it is satisfied that the audit firm has adequate experience, expertise and resources to carry out such an audit.

(2) The Commission may require the auditor of a CIS manager or collective investment scheme to submit such additional information in relation to his audit as the Commission considers necessary.

(3) Where in the course of his work, the auditor of a CIS manager or of a collective investment scheme becomes aware of any matter which is such as to give the auditor reasonable cause to believe that -

- (a) there has been a material adverse change in the risks inherent in the business of a CIS manager or a collective investment scheme, as the case may be, with the potential to jeopardise the ability of the CIS manager or the collective investment scheme to continue as a going concern;
- (b) the CIS manager or the collective investment scheme may be in contravention of this Act, any regulations made under this Act, any FSC Rules or any directions issued by the Commission;
- (c) a criminal offence involving fraud or other dishonesty has been, is being or is likely to be committed; or
- (d) serious irregularities have occurred,

the auditor shall report such matter in writing to the Commission.

(4) No duty to which an auditor of a CIS manager or of a collective investment scheme may be subject shall be regarded as breached by reason of his communicating in good faith to the Commission any information under subsection (3).

Termination of appointment of auditor

108.(1) Subject to subsection (2), the Commission may direct a CIS manager or a collective investment scheme, as the case may be, to terminate the appointment of an audit firm which contravenes any requirements of this Act, any regulations made under this Act or any FSC Rules or which no longer qualifies to provide an independent auditing service to that CIS manager or collective investment scheme.

(2) The Commission shall not issue a direction under subsection (1) unless -

- (a) the reasons for the termination of the appointment have been disclosed; and
- (b) the auditor, the CIS manager or collective investment scheme are given the opportunity to make representations on the matter.

Sub-Part D—Terminating collective investment schemes

Arrangements for terminating and winding up collective investment schemes

109.(1) A purported termination of a collective investment scheme shall not be effective unless approved by the Commission.

(2) The CIS manager of a collective investment scheme shall not wind up the scheme except in accordance with a plan for the winding up approved by the Commission.

(3) The Commission shall not approve a plan for the winding up of a collective investment scheme unless it is satisfied that the interests of the participants are properly protected.

- (4) This section shall apply subject to any orders of the Court under section 110.

Terminating and winding up collective investment schemes – powers of the Court

110.(1) The Court may, on application, make orders terminating the operation of a collective investment scheme.

(2) Where the Court makes an order under subsection (1), it may also make any order it thinks fit for the winding up of the scheme.

(3) An application under subsection (1) may be made by -

- (a) the Commission; or
- (b) a participant in the scheme.

(4) Where an application under subsection (1) is presented by any person other than the Commission, the Commission shall be entitled to be heard by the Court on the application.

(5) The Court shall not make an order under subsection (1) unless satisfied that -

- (a) the scheme is being operated in contravention of this Act, any regulations made under this Act or any FSC Rules or its constitutive documents and it is in interests of the participants in the scheme, or the public interest, to terminate the scheme; or
- (b) it is just and equitable to make the order.

(6) An application under this section shall be made in the presence of the Commission.

PART IX - MARKET ABUSES

Insider dealing prohibited

111.(1) No person who has inside information about securities of a reporting issuer shall -

- (a) in reliance of such information, buy, sell or otherwise deal in securities of that reporting issuer or in securities that give a right to buy, sell or exchange the securities of the reporting issuer;
- (b) counsel, procure or cause another person to deal in the securities mentioned in paragraph (a);
- (c) disclose the information, otherwise than in the proper performance of that person's employment, office or profession, to another person, where the person knows or ought to have known that the information was inside information.

(2) A person informed of the investment programme established by a collective investment scheme by the CIS manager of that scheme, or an investment adviser acting for that scheme, is deemed to have acted in contravention of this section where he uses such information for his own benefit in trading in securities of a reporting issuer included in the programme.

(3) In a prosecution for an offence under subsection (1), it shall be a defence if the person establishes that he reasonably believed that the information was generally known to the public.

(4) Where a person is convicted of an offence of insider dealing, he shall, on conviction, be liable to a fine of not less than 500,000 rupees and not more than one million rupees, or a fine under subsection (5) whichever is higher, together with imprisonment for a term not exceeding 10 years.

(5) A fine under this subsection shall be an amount of not more than 3 times the amount of any profit gained or loss avoided by any person as a result of the offence.

(6) For the purposes of subsection (5), the profit gained or loss avoided shall be -

(a) in the case of a person who committed the offence by trading in securities relying on inside information -

(i) the difference between the price at which the initial trade was effected and the average market price of the security in the 10 trading days following general disclosure of the information; or

(ii) where the securities position has been liquidated within those 10 trading days, the difference between the price at which the initial trade has been effected and the price actually obtained to the extent that the price yields a greater profit than what would be obtained at the average market price.

(b) in the case of a person who committed the offence of communicating inside information, the consideration received for having communicated the information.

Disgorgement

112.(1) Where the Court finds, on application by the Commission, that a person has done an act of insider dealing, the Court may make an order requiring that person to pay to the Commission, an amount determined by the Court.

(2) The maximum amount that may be ordered to be paid under subsection (1) shall be an amount equal to the amount found by the Court to be the amount of the profit that may have been realised or loss avoided by the offender because of the offence.

(3) In making an order under this section, the Court shall have due regard to any administrative penalty imposed under section 129.

(4) Any amount recovered under this section shall be paid into a compensation fund for the purpose of compensating investors that suffer a loss by the insider dealing.

(5) For the purposes of this section, the profit that may have been realised or the loss that may have been avoided by the offender because of the offence shall be computed in accordance with section 111(6).

(6) For the purposes of this section, proceedings before the Court shall be civil proceedings.

False trading in securities

113.(1) No person shall do or omit to do anything, that has the effect, or is likely to have the effect, of creating a false or misleading appearance on a securities exchange -

(a) of active trading in securities;

(b) in relation to the market for securities; or

(c) in relation to the price of securities.

(2) Without prejudice to subsection (1), a false or misleading appearance of active trading in securities is created where a person carries out or offers to carry out, directly or indirectly, a sale or purchase of securities that does not involve a change in the beneficial ownership of the securities.

(3) For the purposes of subsection (2), where a person taken together with any one of his associates,

- (a) had an interest in the securities before the transaction; and,
- (b) has substantially the same interest in the securities after the transaction,

the sale or purchase does not involve a change in their beneficial ownership.

(4) It shall be a defence to a prosecution for an offence under this section where it is established that the person charged did not know, and could not reasonably have known, that the relevant act or omission has the effect, or is likely to have the effect, mentioned in subsection (1).

Market rigging

114.(1) No person shall engage in, or carry out, directly or indirectly a transaction that, by itself or in conjunction with another transaction, creates or sustains, or is likely to create or sustain, an artificial price for securities on a securities exchange in Mauritius.

(2) No person shall enter into, or carry out, a fictitious or artificial transaction or device that affects the price of securities on a securities market in Mauritius.

(3) It shall be a defence to a prosecution for an offence under subsection (1) where the defendant proves that he did not know, and could not reasonably have known, that the transaction has the effect, or is likely to have the effect, mentioned in subsection (1).

(4) Subject to the conditions that may be specified in FSC Rules, the fixing and stabilising of the market price of a security by an investment dealer during an underwriting in accordance with the rules of the exchange and the FSC rules shall not be an offence under this section.

Fraud in relation to securities

115. No person shall, directly or indirectly, in connection with a securities transaction or proposed securities transaction -

- (a) employ a device, scheme or artifice to defraud another person; or
- (b) engage in an act, practice or course of business that operates as a fraud or deception, or is likely to operate as a fraud or deception, on another person.

False or misleading conduct in relation to securities

116.(1) Any person who engages in conduct in relation to securities that is misleading or deceptive or is likely to mislead or deceive shall commit an offence.

(2) Where a person engages in conduct in relation to securities -

- (a) that the person knows is misleading or deceptive or is likely to mislead or deceive; or
- (b) where the person is reckless as to whether the conduct is misleading or deceptive or

is likely to mislead or deceive,

he shall commit an offence and shall, on conviction, be liable to a fine of not less than 500,000 rupees together with imprisonment for a term of not less than one year.

(3) For the purposes of this section, “conduct” includes making a statement that is false or misleading or omitting a material fact.

Offences under this Part

117. Any person who contravenes any provision of this Part shall commit an offence and, except where specifically provided, shall, on conviction, be liable to a fine not exceeding one million rupees together with imprisonment for a term not exceeding 5 years.

Recovery of benefit and compensation

118.(1) A person who is convicted of an offence under this Part shall be liable to compensate any person for any loss or damage incurred wholly or partly as a result of the offence.

(2) Subsection (1) shall not apply where the other person was a party to or knowingly concerned in the offence.

Validity of securities transactions not affected

119. A securities transaction shall not be void or unenforceable merely because of an offence under this Part has been committed.

PART X— POWERS OF THE COMMISSION

Interpretation under this Part

120.(1) For the purposes of this Part -

- (a) any reference to a “licensee” shall include -
 - (i) any person who has been a licensee;
 - (ii) any person who is a present or past officer, partner or controller of the licensee;
 - (iii) any person who ought to have been licensed under this Act;
 - (iv) a collective investment scheme;
 - (v) an SRO;
- (b) any reference to the “Chief Executive” shall include any person designated by the Chief Executive or the Commission.

(2) For the purposes of this Part and sections 42 to 47 and 53 of the Financial Services Act 2007, reference to a licensee shall include a reporting issuer, a member of an exchange and their officers.

(3) The Commission shall have, in addition to such powers as are contained in this Part, all the powers conferred on it by virtue of Part VIII and Sub-Part A and Sub-Part B of Part IX of the Financial Services Act 2007.

121. *Repealed*

Information relating to securities transactions

122.(1) For the purposes of ensuring compliance with any relevant Act, any regulations made under a relevant Act or any FSC rules or rules approved by the Commission and without prejudice to his powers under the Financial Services Act, the Chief Executive may, in relation to any securities transaction or where required under an agreement or arrangement for the exchange of information, give directions to -

- (a) a person registered as the holder of securities;
- (b) a person whom the Commission has reasonable grounds to suspect holds securities;
- (c) a person whom the Commission has reasonable grounds to suspect has a beneficial interest in securities; and
- (d) a person whom the Commission has reasonable grounds to suspect has acquired or disposed of securities, whether directly or through a nominee, trustee or agent,

to furnish information which the Chief Executive may give to any securities exchange, clearing and settlement facility, public sector agency, international organization, foreign supervisory institution or law enforcement agency in furtherance of the objects and functions of the Commission.

(2) The information under subsection (1) may include -

- (a) the name, address, contact details and occupation of, and other particulars that are capable of establishing the identity of, any other party to the securities transaction;
- (b) the nature, amount and other details relating to the investment transaction;
- (c) any instructions given to or by another party to the securities transaction; or
- (d) information prescribed in regulations or specified in FSC Rules.

(3) Any person who, without reasonable cause, fails to comply with a direction under this section shall commit an offence.

123. *Repealed*

Investigations

124. Without prejudice to his powers under the Financial Services Act 2007, where the Chief Executive has reasonable cause to believe that a person has engaged or is engaging in conduct in relation to securities that is not in the interest of the investing public or the public interest, the Chief Executive may order that an

investigation be conducted under section 44 of the Financial Services Act 2007.

125. *Repealed*

Power to give directions

126. Without prejudice to his powers under the Financial Services Act 2007, the Chief Executive may, in relation to activities governed by this Act, direct a person, *inter alia* –

- (a) to do a specific act or refrain from doing a specific act for the purpose of compensating persons who have suffered loss because of a contravention of this Act, any regulations made under this Act or any FSC Rules by the person;
- (b) to comply with the rules of a securities exchange, a clearing and settlement facility or an SRO.

127. *Repealed*

128. *Repealed*

129. *Repealed*

130. *Repealed*

131. *Repealed*

132. *Repealed*

Cease trade order

133.(1) Subject to subsections (2) and (3), the Commission may order that a securities exchange be closed for securities transactions.

(2) The Commission may make an order under subsection (1) where it is of the opinion that the orderly transaction of business on the securities exchange is being or is likely to be adversely affected due to the occurrence of -

- (a) an emergency or a natural disaster; or
- (b) an economic or financial crisis.

(3) In the exercise of its power under subsection (1), the Commission shall consult the securities exchange in relation to which the order is made before making the order, unless it is impracticable, undesirable or inexpedient to do so.

(4) The order issued under subsection (1) shall remain in force for such period as the Commission thinks fit and in any case, for as long as, in the view of the Commission, the securities exchange continues to be affected by the events specified in subsection (2).

(5) During the period the order under subsection (1) is in force, the Commission may give such directions to the securities exchange as it thinks fit.

(6) Any investment dealer or licensed representative of an investment dealer who deals in securities listed on an exchange in relation to which an order under subsection (1) is in force shall commit an offence and shall, on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(7) Subject to subsection (8), the Commission may order any person to -

- (a) cease any activity in respect of trading in securities; or
- (b) cease any activity in respect of any securities.

(8) The Commission may order any person to cease trading in securities where the Commission has reasonable suspicion that a breach of this Act, any regulations made under this Act, or any FSC rules has been or is likely to be committed and such breach is likely to adversely affect the interest of investors.

(9) The order shall be effective -

- (a) from the time the person concerned is notified by registered mail or becomes aware of it;
- (b) for the period specified in the order.

(10) Any person who issues or trades in securities to which an order under subsection (7) applies shall commit an offence, and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

Offences under this Part

134. Any person who contravenes any provision of this Part shall commit an offence and, except where specifically provided, shall, on conviction, be liable to a fine not exceeding one million rupees together with imprisonment for a term not exceeding 5 years.

PART XI—DUE PROCESS

Notification of decisions

135.(1) Unless otherwise provided under this Act, the Financial Services Act 2007, any regulations made under these Acts or any FSC rules, the Commission or the Chief Executive, as the case may be, shall give notice of, and publish, any decision in such form and manner and as it or he thinks fit.

(2) Where an SRO, a securities exchange or a clearing and settlement facility or a trading facility makes a decision under its rules, it shall give written notice of the decision to each person whose interests are affected by the decision.

(3) A notice under subsection (1) or (2) shall -

- (a) set out the decision;
- (b) set out the reasons for the decision;
- (c) set out the findings on material questions of fact relevant to the decision;
- (d) refer to the evidence or other material on which those findings were based; and

- (e) where the Financial Services Act provides that the person to whom the notice is given may apply to the Review Panel for review of the decision, state that right.

136. *Repealed*

137. *Repealed*

PART XII – MISCELLANEOUS OFFENCES

False statements to securities exchanges, CDS, or SRO

138.(1) No person shall make a statement or give information to a SRO, a securities exchange or a clearing and settlement facility, being a statement or information that the person is required to give under this Act, any regulations made under this Act, any FSC Rules or SRO rules, or rules of a securities exchange or a clearing and settlement facility, as applicable, where the person knows or ought reasonably to have known that the statement or information is false or misleading.

(2) No person shall omit to state any matter, in or in connection with any application to a SRO, a securities exchange or a clearing and settlement facility, being a matter required by this Act, any regulations made under this Act, any FSC Rules or SRO rules, or rules of a securities exchange or clearing and settlement facility, as may be applicable, where the person knows or ought reasonably to have known that, because of the omission, the application is misleading in a material respect.

(3) Any person who contravenes this section 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.

Failure to furnish information

139. Any person who refuses or fails, without reasonable excuse, to furnish information or a document that the person is required to furnish under this Act, any regulations made under this Act or any FSC rules, 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.

Obstructing the Commission

140. Any person who hinders or obstructs the Commission, the Chief Executive or any person authorised by the Commission or the Chief Executive, in the performance of their duties under this Act, any regulations made under this Act or any FSC Rules, 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.

Offences committed partly in and partly out of Mauritius

141.(1) Where this Act or any regulations made under this Act provides that a person commits an offence where the person does a particular act, the offence is committed even where the act is done partly outside Mauritius.

(2) Where this Act or any regulations made under this Act provides that a person commits an offence

where the person does 2 or more particular acts, the offence is committed even if some of those acts is done outside Mauritius.

Continuing offences

142.(1) Where under of this Act -

- (a) an act is required to be done within a particular period or before a particular time;
- (b) failure or refusal to comply with the provision is an offence; and
- (c) the obligation to do the act continues after the period has ended or the time has passed,

the person shall commit a separate offence for each day on which the failure or refusal continues, and shall be liable on conviction for each further offence.

(2) The Commission may, by rules, in relation to a provision referred to in subsection (1), provide for a penalty for each day that the offence continues.

PART XIII—COOPERATION IN SECURITIES REGULATION

Exchange of information

143.(1) Notwithstanding section 83 of the Financial Services Development Act 2007, the Commission may give a securities exchange, a clearing, and settlement facility or any SRO any information relevant to the enforcement of this Act, any regulations made under this Act or any FSC Rules for the purpose of discharging their respective functions.

(2) Any information given under subsection (1) may be given subject to conditions specified by the Commission, including conditions restricting the use and disclosure of the information imparted.

144. *Repealed*

PART XIV - MISCELLANEOUS

Control of advertisements

145.(1) The Commission may make rules in respect of the publication, form and content of securities advertisements.

(2) Rules made under subsection (1) may -

- (a) prohibit the publication of advertisements of any description, whether by reference to their contents, to the persons by whom they are published or otherwise;
- (b) make provision as to the matters which should or should not be included in such

advertisements;

- (c) provide for any exemptions from any requirement imposed by any FSC Rules;
- (d) provide for offences and penalties for the breach of any requirement under the FSC Rules.

(3) Where, it appears to the Commission that a securities advertisement -

- (a) does not comply with any requirement imposed in any FSC Rules; or
- (b) is false or misleading,

the Commission shall issue such directions to the persons who have published or caused to be published the securities advertisement as it deems appropriate in the circumstances.

(4) A direction under subsection (1) may -

- (a) require a person to modify, in whole or in part, the advertisement;
- (b) require the publication of securities advertisement to cease.

(5) Nothing in this section shall prejudice any remedy that an aggrieved person may have against a person who published or caused to be published an advertisement contrary to the requirements in the FSC Rules or which is false or misleading.

Exemptions and modifications

146. (1) The Commission may, by a decision or by rules, exempt a person or any class of persons from any provision under Parts V, VI, VII and VIII.

(2) The Commission may, by a decision or by rules, modify the application of any provision specified in subsection (1) in relation to any person or class of persons.

(3) Where, under this Act, any regulations made under this Act or any FSC Rules, a person is required to do or may do a particular thing by a particular time or within a particular period, the Commission may, on application, extend the period for doing the thing, and may do so either before or after the period has ended.

(4) An exemption or modification may be made subject to such conditions as the Commission thinks fit.

Winding up of licensees

147.(1) Notwithstanding any other enactment, a person shall not take a step in connection with the winding up of a person holding a securities exchange licence, a clearing and settlement facility licence or a securities trading system licence without the approval of the Commission.

(2) The Commission shall not give its approval under subsection (1) unless it appears to the Commission that the interests of the users of the exchange, facility or system, will be properly protected in the winding up.

(3) The Commission may make an application to the Court for the winding up of a licensee where it is satisfied that it is necessary in the interest of investors or clients of the licensee, as the case may be.

(4) Where an application for the winding up of a licensee is presented by a person other than the Commission, a copy of the application, shall, at the same time, be served on the Commission and the Commission shall be entitled to be heard by the Court on the application.

Compensation fund

148.(1) There shall be established and maintained in such manner as may be prescribed, one or more compensation funds, for such purposes as may be prescribed.

(2) Without prejudice to subsection (1), a compensation fund may provide for the compensation of investors who suffer pecuniary loss as a result of -

- (a) the inability of a licensee under this Act or any collective investment scheme to satisfy claims arising from civil liability by it in connection with services provided;
- (b) fraud or defalcation by a licensee, a collective investment schemes or any of its officers or employees; or
- (c) the insolvency or bankruptcy of any licensee or collective investment scheme.

(3) A compensation fund shall be administered in accordance with such regulations as may be prescribed.

(4) Without prejudice to subsection (3), regulations made under this Act may provide for -

- (a) the management of the fund by such committee as may be set up by the Commission;
- (b) the levying of contributions from licensees and collective investment schemes and other means of financing the fund;
- (c) the power to subscribe to insurance policies;
- (d) the mode of determining the right to compensation payable under the fund and the circumstances in which such right may be excluded or modified;
- (e) the power to settle claims,
- (f) specifications as to the quantum of the compensation;
- (g) the right of subrogation to the fund in order to recover from any person whose liability is extinguished or reduced by the payment of the compensation;
- (h) the terms and conditions on which compensation is to be payable; and
- (i) accounts to be kept in respect of the fund.

(5) Nothing in this section shall prevent any SRO, securities exchange or clearing and settlement facility from establishing such compensation fund under their rules for such purpose as may be approved by the Commission.

Representative proceedings

149.(1) A person (the “applicant”) who commences proceedings in any court for damages or other relief under Part V, regulations made under Part VII, Part VIII, or under Part IX may, with the leave of the court, commence and maintain those proceedings in the name of the applicant and for all persons who have a claim against the defendant in the proceedings (the “claimants”), being a claim in which substantially the same questions of fact or law arise.

(2) In representative proceedings, the court may make any appropriate order for the conduct of the proceeding, including orders -

- (a) for advertising the commencement of the proceeding;
- (b) for the identification of claimants; and
- (c) in respect of claimants who do not wish to pursue their claims through the proceeding.

(3) Where a claimant, either before or after the representative proceedings are commenced but before they are determined, commences another set of proceedings in respect of the same loss, the claimant shall not be entitled to recover in the representative proceedings, and the court may make any appropriate order for the conduct of the relevant proceedings.

(4) The applicant shall conduct representative proceedings to the exclusion of the claimants concerned, and may withdraw, abandon or compromise the proceedings, but an agreement or compromise of the proceedings shall be subject to the approval of the court.

(5) In giving judgment in representative proceedings, or in approving a compromise or agreement in relation to such proceedings, the court shall make orders for the publication of the judgment and any related matter in the *Gazette* and otherwise as the court may direct.

(6) A judgment or order in representative proceedings binds all claimants other than -

- (a) those that the court has by order excluded from the proceedings under subsection (2)(c) or otherwise; and
- (b) claimants mentioned in subsection (3).

(7) The Commission may, with the leave of the court, commence representative proceedings as applicant even though it has not suffered any loss or damage, but may only recover for itself its costs incurred in the proceeding.

Publicity

150.(1) Subject to this section, any person may, on request, review or copy any document lodged with the Commission under this Act, any regulations made under this Act or any FSC rules.

(2) The Commission may, by rules, specify reasonable procedures for requests, and reasonable terms and fees, for the purposes of subsection (1).

(3) The Commission may refuse to permit a document to be reviewed or copied, in whole or part, where it is satisfied that -

- (a) information in the document is confidential to the person lodging the document, and has a real commercial value to the person that would be seriously and unreasonably prejudiced if the information were to be made generally available; or
- (b) information in the document is personal information about a person and it is in the public interest that the information should not be generally available.

Power to grant relief

151.(1) Where, in civil proceedings against a person for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the Court that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly and that, having regard to all the circumstances, the person ought fairly to be excused, the Court may make an order relieving the person, wholly

or partly, from liability on such terms as the Court thinks fit.

(2) The Supreme Court may, on application by a person who has reason to believe that a claim under or in connection with this Act, any regulation made under this Act or any FSC Rules will or might be made against him in respect of negligence, default, breach of trust or breach of duty in a capacity as such a person, make an order under subsection (1).

(3) Any application under this section shall be made in the presence of the Commission.

Derivative contract not a contract of wager

152. A derivative contract shall not be construed as a contract of wager and any obligation arising from such contract shall, notwithstanding Article 1965 of the Code Civil Mauricien, be enforceable in any court of law.

Immunity

153.(1) No action shall lie against any person who makes a report in good faith to the Commission that is required or permitted under this Act, any regulations made under this Act or any FSC Rules, or that relates to a matter in respect of which the Commission has functions under this Act, the regulations or the FSC rules whether or not the person is required to make the report.

(2) No person shall be subjected to any prejudice in his employment, or penalised in any way, on the ground that the person has reported, in good faith a suspected breach of this Act, any regulations made under this Act or any FSC rules, even where there was no obligation to report.

Regulations

154.(1) The Minister may –

- (a) make such regulations, as he thinks fit for the purposes of this Act;
- (b) by regulations, amend the Schedule.

(2) Regulations made under subsection (1) may provide for -

- (a) matters required or permitted by this Act;
- (b) criteria for declaring companies to be SROs;
- (c) requirements in relation to takeovers;
- (d) the duties and obligations of the offeror and the offeree in the case of takeovers;
- (e) prudential rules and rules of ethics for the members of the Board of the Commission and the staff of the Commission;
- (f) in relation to collective investment schemes -
 - (i) the rights and obligations of the participants;
 - (ii) the powers, duties and liabilities of CIS managers and custodians;
 - (iii) the redemption or repurchase of interests;

- (iv) the investment or application of scheme property;
- (v) borrowing for the purposes of or in connection with the scheme;
- (vi) criteria for authorisation and recognition of collective investment schemes;
- (vii) disclosures by schemes and licensees;
- (viii) the keeping of books and records;
- (ix) insurance for licensees;
- (x) capital requirements for CIS manager and custodians;
- (xi) the appointment and removal of custodians, CIS managers and CIS administrators; and
- (xii) remuneration of CIS managers, custodians and CIS administrators;
- (g) fees payable to the Commission in connection with this Act;
- (h) requirements on closed-end funds;
- (ha) types of securities that may be listed or traded on an exchange;
- (i) penalties to be imposed, not exceeding 2 million rupees for breaches of regulations.

FSC Rules

155.(1) The Commission may, for the purposes of this Act, make rules to be known as FSC Rules and such rules shall be published in the *Gazette*.

(2) Rules made under subsection (1) may provide for -

- (a) matters necessary or convenient to be specified by FSC Rules;
- (b) accounting and auditing matters;
- (c) the contents and form of prospectuses, financial statements, annual reports and other documents required or provided for in this Act, any regulations made under this Act or the FSC Rules;
- (d) requirements for the display and use of the unique numbers allocated for licences;
- (e) requirements in respect of offers and issues of securities, including requirements prohibiting or restricting an issuer from commencing or carrying out business or applying funds raised in the offering;
- (f) the procedure for the transfer or transmission of securities;
- (g) categories of securities that shall be dematerialised;
- (h) exemptions under this Act;
- (i) the determination as to whether a person is a fit and proper person for the purposes of this Act, or any regulations made under this Act;

- (j) the formulation and publication of codes of conduct for licensees, their officers and employees;
- (k) applications for the grant and renewals of licences;
- (l) criteria for granting licences;
- (m) conditions to be imposed to licences;
- (n) the categorisation of collective investment schemes for the purposes of this Act or any regulations made under this Act;
- (o) requirements for licensees to make reports to the Commission, to securities exchanges, to their clients or to participants in the schemes, either regularly or on the occurrence of specified events or circumstances;
- (p) requirements for reports to the Commission by -
 - (i) licensees;
 - (ii) officers and former officers of licensees,
 and the contents of those reports and the publication or dissemination of the contents of those reports;
- (q) prudential rules including rules as to capital, assets and other resources for licensees;
- (r) prospectuses and offers and issues of securities, including the obligations of issuers in connection with offers and issues of securities;
- (s) disclosures to be made by licensees;
- (t) the offer of securities through the internet;
- (u) requirements for licensees to keep books and records;
- (v) the registration, operation and control of the activities of investment clubs;
- (w) the transfer of business, contracts or other engagements of a licensee on its insolvency or winding up;
- (x) administrative penalties to be imposed, which may include administrative penalties of an amount not exceeding 2 million rupees for breaches of the FSC Rules; and
- (xa) the taking of fees and the levying of charges;
- (xb) any form of trading of securities including turnaround trading and short selling, and of lending and borrowing of securities; and
- (y) such other matters as the Commission thinks fit.

(3) Before making FSC Rules, the Commission shall publish proposals for the rules in a way that it considers will bring them to the attention of persons likely to be affected by them, and the public in general, and shall, where reasonable, take into account any representations made to it about the proposals.

(4) The Commission shall not be bound to comply with subsection (3) where it considers that the delay involved would be unreasonably prejudicial to the interests of investors in securities or clients of licensees.

Consequential amendments

156.(1) The Companies Act 2001 is amended -

- (a) in section 2 -
- (i) by deleting the definitions of “Stock Exchange”, and “stock exchange”;
- (ii) by deleting the definitions of “authorised mutual fund”, “listed company”, “open-ended fund”, “securities” and “Stock market” and replacing them by the following definitions respectively -
- “authorised mutual fund” means a company set up as a collective investment scheme as defined in the Securities Act 2005;
- “listed company” means a company the shares or class of shares of which are listed on a securities exchange licensed under the Securities Act 2005;
- “open-ended fund” means a collective investment scheme under the Securities Act 2005;
- “securities” has the same meaning as in the Securities Act 2005;
- “Stock Market” means a securities market operated by a securities exchange;
- (iii) by inserting the following new definitions in the appropriate alphabetical order -
- “collective investment scheme” has the same meaning as in the Securities Act 2005;
- “investment company” means a company set up as a collective investment scheme as defined in the Securities Act 2005;
- “reporting issuer” has the same meaning as in the Securities Act 2005;
- “securities exchange” has the same meaning and in the Securities Act 2005;
- “SEM” means the securities exchange operated by Stock Exchange of Mauritius Ltd;
- (b) in section 52(1), by inserting immediately after the words “Subject to this Act” the words “and the Securities Act 2005”;
- (c) in section 69(3), by -
- (i) deleting the words “stock exchange” and replacing them by the words “securities exchange”;
- (ii) inserting immediately after the words “as may be prescribed”, the words “under the Securities Act 2005”;
- (d) in section 70 -
- (i) in subsection (1)(d), by deleting the words “the Official List of a Stock Exchange established under the Stock Exchange Act 1988 or on any other stock exchange outside Mauritius” and replacing them by the words “any securities exchange whether within or outside Mauritius in accordance with

- the rules of the exchange or as required under the Securities Act 2005”;
- (ii) by adding immediately after subsection (3), the following new subsection -
- (4) A reporting issuer may issue or transfer shares held by the reporting issuer itself subject to the provisions of the Securities Act 2005.
- (e) in section 74, by deleting subsection (3) and replacing it by the following subsection -
- (3) A company shall not make an offer to sell any share it holds in itself or enter into any obligations to transfer such a share where the company has received notice in writing of a take-over scheme.
- (f) in section 87(5), by deleting the words “the Stock Exchange” and replacing them by the words “a securities exchange”;
- (g) in section 110(9), by deleting the words “listed on a Stock Exchange or traded on a stock market” and “Stock Exchange or stock market” and replacing them by the words “listed on a securities exchange” and “securities exchange”, respectively;
- (h) in section 155 -
- (i) in subsection (1)(b), by deleting the words “a stockbroker and that person is a member of a stock exchange” and replacing them by the words “licensed investment dealer”;
- (ii) in subsection (2), by deleting the words “an approved investment institution under the Stock Exchange Act 1988, an investment company or a unit trust” and replacing them by the words “a collective investment scheme authorised under the Securities Act 2005”;
- (i) in section 157(6), by deleting the words “to which section 46 of the Stock Exchange Act 1988 applies”;
- (j) in section 332(2), by deleting paragraph (d) and replacing it by the following paragraph –
- (d) a securities exchange or an officer of a securities exchange.
- (k) in section 337, adding immediately after paragraph (c), the following new paragraph, the comma at the end of paragraph (c) being deleted and replaced by a semicolon -
- (d) a person has been convicted of an offence under Part IX of the Securities Act 2005,
- (l) in section 338(1)(c)(i), by deleting the words “the Companies Act 1984 or the Stock Exchange Act 1988” and replacing them by the words “the Companies Act 2001 or the Securities Act 2005”;
- (m) in section 356, by adding after subsection (2), the following new subsection –
- (3) This section shall not apply to holders of securities of a reporting issuer under the Securities Act 2005.
- (n) in the Tenth Schedule, in paragraph 10, by deleting the words “a stock exchange” and replacing them by the words “a securities exchange”;
- (o) in the Fourteenth Schedule, by deleting paragraph 9;

- (p) in the Fifteenth Schedule, by deleting -
 - (i) in item 2, the words “authorised mutual fund”, “minimum subscription”, “offer”, “offeree company”, “offeror”, “prospectus”, “securities”, “take-over offer” and “take-over scheme”;
 - (ii) items 4, 5, 6, 7, 15, 16 and 17;
 - (iii) in item 12, the words “and 325”;
 - (iv) in item 19, the words “20, 21.”.

(2) The Financial Intelligence and Anti-Money Laundering Act 2002 is amended, in section 2, by deleting the definition of “financial institution” and replacing it by the following definition –

“financial institution” means -

- (a) an institution or a person licensed or required to be licensed under the Insurance Act 2005 or the Securities Act 2005; and
- (b) a management company or registered agent licensed or required to be licensed under the Financial Services Act 2007;”.

(3) The Income Tax Act is amended -

(a) in section 2 -

- (i) by deleting the definitions of “equity fund”, “listed company” and “Official List”;
- (ii) by deleting the definitions of “authorised mutual fund”, “securities”, “share”, “Stock Exchange”, “trustee”, “unit”, “unitholder”, “Unit Trust Fund” and “unit trust scheme” and replacing them by the following definitions respectively –

“authorised mutual fund” means a collective investment scheme under the Securities Act 2005;

“securities”, in item 1 of Part IV of the Second Schedule, has the same meaning as in the Securities Act 2005 but does not include Treasury Bills and Bank of Mauritius Acts;

“share” –

- (a) in relation to a company, includes an interest in the capital of the company; and
- (b) in relation to a collective investment scheme, means an interest in the scheme

as defined in the Securities Act 2005;

“stock exchange” means a securities exchange licensed under the Securities Act 2005;

“trustee”, in relation to a unit trust scheme, means the person holding property as trustee in relation to the scheme;

“unit”, in relation to a unit trust scheme, means a unit into which the

beneficial interest of the Unit Trust Fund for the scheme is divided;

“unitholder” means a person who holds a unit in a unit trust scheme;

“Unit Trust Fund” means the fund comprising the income and other property held by the trustee for the scheme;

“unit trust scheme” has the same meaning as a unit trust in the Securities Act 2005;

(iii) by inserting, in the appropriate alphabetical order the following new definitions -

“collective investment scheme” has the same meaning as in the Securities Act 2005;

“CIS manager” means a person holding a CIS manager licence under the Securities Act 2005;

“listed company” means a company the securities of which are listed on a securities exchange;

(b) in section 36(1) -

(i) in paragraph (b), by adding immediately after subparagraph (ii), the following new subparagraph -

(iii) in a collective investment scheme authorised or recognised by the Financial Services Commission; and

(ii) in paragraph (c), by deleting subparagraph (ii) and replacing it by the following subparagraph, the full stop at the end of subparagraph (ii) being deleted and replaced by a semi-colon -

(ii) an investment club registered as such under rules made by the Financial Services Commission or taken to be so registered under the Securities Act 2005.; and

(c) in section 43, by inserting immediately after the word “trusts”, the words “, collective investment schemes”;

(d) in Part IV, in the heading to Sub-Part A, by inserting immediately after the word “trusts”, the words “, collective investment schemes”;

(e) in section 45, by adding immediately after subsection (3), the following new subsection -

(4) This section shall not apply in respect of the year of assessment 2005-2006 or subsequent years.

(f) by adding immediately after section 45 the following new section -

45A. Collective investment schemes — year of assessment 2005-2006 and subsequent years

(1) This section shall apply in respect of the year of assessment 2005-2006 and subsequent years.

(2) Every collective investment scheme authorised under the Securities Act

2005 shall pay income tax on its chargeable income at the rate specified in Part II of the First Schedule.

(3) Any gains derived by such a scheme on the realisation of any investments of the scheme shall be deemed not to be income derived by the CIS manager provided that at least 70 per cent of the gains -

- (a) is not distributed as income to the participants in the scheme;
- (b) is appropriated to meet realised losses; or
- (c) is applied towards a capital purpose only.

(4) Any distribution to a participant in the scheme out of the net income derived by the schemes shall be deemed to be a dividend to a participant.

(g) in the First Schedule, in Part IV -

(i) by deleting items 10, 11 and 12 and replacing them by the following items -

- 10. An approved investment trust company listed on a securities exchange or designated as an approved investment institution under section 50A of the Stock Exchange Act 1988.
- 11. A trustee of a collective investment scheme.
- 12. A collective investment scheme authorised under the Securities Act 2005.
- 12A. A person holding any of the following licences under the Securities Act 2005 -
 - (a) investment dealer licence;
 - (b) an investment adviser licence;
 - (c) a custodian licence;
 - (d) a CIS manager of a collective investment scheme authorised or recognised by the Financial Services Commission under the Securities Act 2005.

(ii) by deleting items 38 and 39 and replacing them by the following items -

- 38. The Stock Exchange of Mauritius Ltd., so long as it operates a securities exchange under a securities exchange licence under the Securities Act 2005.
- 39. The Central Depository and Settlement Co. Ltd., so long as it operates a depository, clearing and settlement facility licence under the Securities Act 2005.

(h) in the Second Schedule, in Part I, by deleting item 22 and replacing it by the following item -

- 22. An investment club registered as such under rules made by the Financial Services Commission or taken to be so registered under the Securities Act 2005.

- (4) The Securities (Central Depository, Clearing and Settlement) Act 1996 is amended -
- (a) by deleting the words “Stock Exchange Company”, wherever they appear and replacing them by the words “Stock Exchange of Mauritius Ltd”;
 - (b) in section 2 -
 - (i) by deleting the definition of “Stock Exchange”;
 - (ii) in the definition of “derivative instrument”, by deleting the words “and such other instrument as may be prescribed” and replacing them by the words “and any other instrument that is a derivative or a security for the purposes of the Securities Act 2005”;
 - (iii) in the definition of “listed securities”, by deleting the words “the Official List” and replacing them by the words “a securities exchange”;
 - (iv) in the definition of “transaction”, by deleting the words “the Stock exchange” and replacing them by the words “a securities exchange”;
 - (v) by deleting the definitions of “listed issuer”, “rules of the CDS” and “securities” and replacing them by the following definitions -
 - “listed issuer” means an issuer where the securities are listed securities;
 - “rules of the CDS” means rules made by the CDS and in force under the Securities Act 2005;
 - “securities” has the same meaning as in the Securities Act 2005;
 - (vi) by inserting the following new definitions in the appropriate alphabetical order -
 - “investment dealer” means a licensed investment dealer under the Securities Act 2005;
 - “securities exchange” has the same meaning as in the Securities Act 2005;
 - “SEM” means the securities exchange operated by the Stock Exchange of Mauritius Ltd;
 - (c) in section 3 -
 - (i) in subsection (3) -
 - (A) in paragraph (a), by deleting the words “stock broking companies” and replacing them by the words “investment dealers”;
 - (B) in paragraph (b), by inserting immediately after the words “eligible securities”, the words “on any securities exchange”;
 - (ii) in subsection (5) -
 - (A) in paragraph (a)(i), by deleting the words “Stock Exchange” and replacing them by the words “securities exchange”;
 - (B) by deleting paragraph (b);
 - (d) by inserting immediately after section 3, the following new section -

3A. Provision of services

The Central Depository and Settlement Co. Ltd may, notwithstanding section 91 (4) of the Companies Act 2001, provide services relating to the register of shareholders and transfer of shares for companies in accordance with the rules of the CDS.

- (e) in section 18(3) -
 - (i) by deleting the words “under the Stock Exchange Act”;
 - (ii) by inserting, immediately after the words “an inquiry into any breach of this Act”, the words “or any other Act or regulation.”
 - (f) in section 23(h), by deleting the words “Stock Exchange Act” and replacing them by the words “Securities Act 2005”;
- (5) The Trusts Act 2001 is amended in section 2, in the definition of “immovable property” -
- (a) in paragraph (a), by deleting the word “and” appearing at the end;
 - (b) by deleting paragraph (b) and replacing it by the following paragraph -
 - (b) securities of a body corporate (wherever incorporated), if the majority by value of the property of the body corporate (whether held directly, indirectly or through the interposition of other body corporate, firm, partnership or person) is immovable property or interests in immovable property; and
 - (c) by adding immediately after paragraph (b), the following new paragraph -
 - (c) interests (however described) in a collective investment scheme or similar scheme (whether operated in Mauritius or not), if the majority by value of the property of the scheme (whether held directly, indirectly or through the interposition of other body corporate, firm, partnership or person) is immovable property or interests in immovable property;
- (6) The Banking Act 2004 is amended, in section 30(7), by deleting the words “quoted on the Official List of the Stock Exchange established under the Stock Exchange Act”, and replacing them by the words “listed on a securities exchange licensed under the Securities Act 2005”.
- (7) The Brokers Act is amended in section 2 -
- (a) by deleting the definition of “business of a broker” and replacing it by the following definition -

“business of a broker” means business of negotiating any trading transaction, other than a securities transaction, on behalf of a principal and includes the exchange and sale of negotiable instruments, Acts of exchange and promissory notes;
 - (b) in the definition of “principal”, by deleting the full stop appearing at the end and replacing it by a semi-colon;
 - (c) by adding the following new definition in the appropriate alphabetical order -

“securities transaction” has the same meaning as in the Securities Act 2005.
- (8) The Mutual Assistance in Criminal and Related Matters Act 2003 is amended in the First Schedule by deleting the words “Stock Exchange Act” and replacing them by the words “Securities Act 2005”.

(9) The Prevention of Corruption Act 2002 is amended, in section 2, in the definition of “financial institution”, by deleting paragraph (e) and replacing it by the following paragraph -

(e) the securities Act 2005;

(10) The Prevention of Terrorism Act 2002 is amended, in the First Schedule, by deleting the words “Stock Exchange Act” and replacing them by the words “Securities Act 2005”.

(11) The Protected Cell Companies Act is amended, in section 3 -

(a) in paragraph (a), by deleting the word “and”;

(b) in paragraph (b), by deleting the comma appearing at the end and replacing it by a semi-colon;

(c) by adding immediately after paragraph (b), the following new paragraph -

(c) the Securities Act 2005 in so far as it relates to such class or classes of company as may be prescribed,

(12) The Stock Exchange (Brokerage) Regulations 1989 are amended -

(a) in regulation 2 -

(i) by deleting the definition of “SEM”;

(ii) by deleting the definition of “Act” and replacing it by the following definition -

“Act” means the Securities Act 2005;

(iii) by inserting the following new definitions in the appropriate alphabetical order -

“investment dealer” means a person licensed under section 29 of the Securities Act 2005;

“securities exchange” means a securities exchange licensed under the Securities Act 2005.

(b) in regulation 3 -

(i) by deleting the words “stockbroking company” wherever they appear and replacing them by the words “investment dealer”;

(ii) in paragraph (1), by deleting the word “the Stock Exchange” and replacing it by the words “a securities exchange”;

(iii) in paragraph (3)(b), by deleting the word “SEM” and replacing it by the words “securities exchange”;

(c) in regulation 4, by deleting the words “stockbroking company” and replacing them by the words “investment dealer”;

(d) in the Schedule, by deleting -

(i) the word “SEM” and replacing it by the words “securities exchange”;

(ii) the words “Stockbroking Company” and replacing them by the words

“investment dealer”.

(13) The Stock Exchange (Brokerage Fee for Debentures) Regulations 1999 are amended -

(a) in regulation 2 -

- (i) by deleting the definition of “SEM”;
- (ii) by deleting the definition of “Act” and replacing it by the following definition -

“Act” means the Securities Act 2005;

- (iii) by inserting the following new definitions in the appropriate alphabetical order -

“investment dealer” means a person licensed under section 29 of the Act;

“securities exchange” means a securities exchange licensed under the Act;

(b) in regulation 3 –

- (i) by deleting the words “stockbroking company” wherever they appear and replacing them by the words “investment dealer”;
- (ii) in paragraph(1), by deleting the words “the Stock Exchange” and replacing them by the words “a securities exchange”;
- (iii) in paragraph (2), by deleting the word “SEM” and replacing it by the words “securities exchange”;

(c) in the Schedule, by deleting -

- (i) the words “Stockbroking Company” and replacing them by the words “investment dealer”;
- (ii) the word “SEM” and replacing it by the words “securities exchange”.

(14) The Stock Exchange (Brokerage Fee for Government of Mauritius Securities and Bank of Mauritius Acts) Regulations 2003 are amended -

(a) in regulation 2 -

- (i) by deleting the definition of “SEM”;
- (ii) by deleting the definition of “Act” and replacing it by the following definition -

“Act” means the Securities Act 2005;

- (iii) by inserting the following new definitions in the appropriate alphabetical order -

“securities exchange” means a securities exchange licensed under the Securities Act 2005;

“investment dealer” means a person licensed under section 29 of the Securities Act 2005;

- (b) in regulation 3 –
 - (i) by deleting the words “stockbroking company” wherever they appear and replacing them by the words “investment dealer”;
 - (ii) in paragraph (1), by deleting the words “Stock Exchange” and replacing them by the words “securities exchange”;
 - (iii) in paragraph (2), by deleting the word “SEM” and replacing it by the words “securities exchange”;
- (c) in the Schedule, by deleting -
 - (i) the words “Stockbroking Company” and replacing them by the words “investment dealer”;
 - (ii) the word “SEM” and replacing it by the words “securities exchange”.

(15) The Stock Exchange (Over the Counter Market) Regulations 1990 are amended -

- (a) in regulation 2 -
 - (i) by deleting the definition of “Act” and replacing it by the following definition -

“Act” means the Securities Act 2005;
 - (ii) by inserting the following new definition in the appropriate alphabetical order -

“SEM” means the securities exchange established under the repealed Stock Exchange Act 1988 and deemed to be licensed under the Act;
- (b) in regulation 3(2), by deleting the words “Stock Exchange” and replacing them by the word “SEM”;
- (c) in regulation 4, by deleting the words “Stock Exchange Company” and replacing them by the word “SEM”.

(16) The Stock Exchange (Prescribed Securities) Regulations 2002 are amended in regulation 2 by deleting the definition of “Act” and replacing it by the following definition -

“Act” means the Securities Act 2005.

(17) The Stock Exchange (Register of Interests in Securities) Rules 1989 are amended -

- (a) in regulation 2, by deleting the definitions of “Act” and “relevant person” and replacing them by the following definitions -

“Act” means the Securities Act 2005;

“relevant person” means -

 - (a) an investment dealer;
 - (b) a representative of an investment dealer;
 - (c) an officer or employee of an investment dealer;

- (d) an officer or a member of staff of a securities exchange.
 - (b) in the Schedule, by deleting the words “Stockbroking Company” wherever they appear and replacing them by the words “Investment Dealer”.
- (18)** The Stock Exchange (Investment by Foreign Investors) Rules 1994 are amended -
- (a) in regulation 2 -
 - (i) by deleting the definitions of “licensed stockbroking company” and “SEM”;
 - (ii) by deleting the definition of “Mauritian company” and replacing it by the following definition -

“Mauritian company” means a company, partnership, société or any other body corporate or unincorporated association which is listed on a securities exchange licensed under the Securities Act 2005 other than -

 - (a) any such entity which has been designated as an approved investment institution under section 50A of the Stock Exchange Act 1988; and
 - (b) any other such entity as the Commission may designate;
 - (iii) by inserting the following new definitions in the appropriate alphabetical order -

“investment dealer” means a person licensed under section 29 of the Securities Act 2005;

“securities exchange” means a securities exchange licensed under the Securities Act 2005;
 - (b) in regulation 3(2), by deleting the words “licensed stockbroking company” wherever they appear and replacing them by the words “investment dealer”;
 - (c) in regulation 4 -
 - (i) by deleting the words “licensed stockbroking company” wherever they appear and replacing them by the words “investment dealer”;
 - (ii) by deleting the word “SEM” wherever it appears and replacing it by the words “securities exchange”;
 - (iii) in paragraph (1), by deleting the words “listed on the Official List or admitted to any Second Market operated by the SEM” and replacing them by the words “listed on a securities exchange”;
 - (iv) in paragraph (5), by deleting the words “the Official List and on the Second Market” and replacing them by the words “a securities exchange”;
 - (d) in regulation 5(4), by deleting the words “Stock Exchange” and replacing them by the words “securities exchange”.
- (19) The Insurance Regulations 1988 are amended in regulation 6(1)(d), by deleting the words “quoted on Official List of the Stock Exchange of Mauritius” and replacing them by the words “listed on a securities exchange licensed under the Securities Act 2005”.
- (20) The Bearer and Premium Bonds Regulations 1989 are amended in regulation 12 by deleting the words

“the Mauritius Stock Exchange” and replacing them by the words “a securities exchange licensed under the Securities Act 2005”.

(21) The Finance and Audit (Permanent Resident Investment Fund) Regulations 2000 are amended -

(a) in regulation 2 -

- (i) by deleting the definitions of “Official list” and “Stock Exchange”;
- (ii) by inserting the following new definition in the appropriate alphabetical order -

“securities exchange” means a securities exchange licensed under the Securities Act 2005.

(b) in regulation 4 –

- (i) in paragraph (1)(b)(i), by deleting the words “quoted on the Official List of the Stock Exchange” and replacing them by the words “listed on a securities exchange”;
- (ii) in paragraph (5), by deleting the words “quoted on the Official List of the Stock Exchange” and replacing them by the words “listed on a securities exchange”.

(22) The Investment Promotion (Permanent Resident Scheme) Regulations 2002 are amended -

(a) in regulation 2 -

- (i) by deleting the definition of “Official list” and “Stock Exchange”;
- (ii) in the definition of “investor”, by deleting the words “quoted on the Official List of the Stock Exchange” and replacing them by the words “listed on a securities exchange”;
- (iii) by inserting the following new definition in the appropriate alphabetical order -

“securities exchange” means a securities exchange licensed under the Securities Act 2005.

(b) in regulation 12 -

- (i) in the heading, by deleting the words “Stock Exchange” and replacing them by the words “securities exchange”;
- (ii) in paragraphs (1) and (3), by deleting the words “quoted on the Official List of the Stock Exchange” and replacing them by the words “listed on a securities exchange”;

(c) in regulation 14, by deleting the words “quoted on the Official List of the Stock Exchange” and replacing them by the words “listed on a securities exchange”;

(d) in the Schedule, in Part I, in paragraph 13, by deleting the words “Securities quoted on Official List of the Stock Exchange” and replacing them by the words “securities listed on a securities exchange”.

Repeal and savings

157.(1) The following enactments are repealed -

- (a) the Stock Exchange Act;
the Unit Trust Act;
- (b) the Transfer of Shares and Debentures Act;
- (c) the following provisions of the Companies Act 1984, in so far as they continue in force by virtue of the Fifteenth Schedule to the Companies Act 2001 -
 - (i) sections 35, 36, 146, 177 to 182 and 325; and
 - (ii) Sub-Part II of Part IV;
- (e) the Stock Exchange (Dealer's Representatives' Examinations) Regulations 1992;
- (f) the Stock Exchange (Stockbrokers' Examinations) Regulations 1993;
- (g) the Stock Exchange (Licensing) Regulations 1989;
- (h) the Stock Exchange (Listing Committee) Regulations 1993;
- (i) the Companies (Purchase of Own Shares) Regulations 2001.

(2) Notwithstanding the repeal effected by subsection (1) -

- (a) the Stock Exchange of Mauritius Ltd established under the Stock Exchange Act shall continue in existence subject to Part III, Sub-Part B of this Act and the Companies Act 2001;
- (b) the Stock Exchange established by the Stock Exchange Act shall continue in existence subject to this Act; and
- (c) the Over the Counter Market established under the Stock Exchange (Over the Counter Market) Regulations 1990 shall continue in existence subject to this Act.

Transitional provisions – Rules of SEM and CDS

158.(1) Rules made by the SEM under the Stock Exchange Act and in force immediately before the commencement of this Act, shall remain in force until new rules as approved by the Commission are issued.

(2) Within 3 months of the commencement of this Act, or any longer period that may be agreed between SEM and the Commission, the SEM shall submit to the Commission amendments to its constitutive documents and rules as are necessary to ensure conformity with this Act, any regulations made under this Act and the FSC Rules.

(3) The rules of the CDS shall remain in force to the extent that they are not inconsistent with this Act, any regulations made under this Act or the FSC rules.

(4) Within 3 months of the commencement of this Act or such longer period as may be agreed between the Commission and the CDS, the CDS shall submit to the Commission amendments to its constitutive documents and rules as are necessary to ensure conformity with this Act, any regulations made under this Act and the FSC Rules.

Transitional provisions – Licensees

159.(1) Subject to subsection (5), where -

- (a) a person is licensed or deemed to be licensed as a stock broker or dealer's representative under the Stock Exchange Act; and
- (b) this licence is valid immediately before the commencement of this Act,

that person shall continue to be so licensed under the terms of the licence, except that, he shall, within one year of the commencement of this Act, apply to the Commission for a license as an investment dealer or a representative of an investment dealer under this Act, as may be applicable, in accordance with such requirement as may be specified in FSC Rules.

(2) Subject to subsection (5), where -

- (a) a person was appointed or approved under the Stock Exchange Act as a dealer's authorised clerk;
- (b) such person carries out activities within the definition of a representative under this Act; and
- (c) such appointment or approval was effective immediately before the commencement of this Act,

that appointment or approval shall remain valid except that the investment dealer, shall within one year of the commencement of this Act apply for a licence, in relation to any such person, as its representative under this Act in accordance with requirements that may be specified in FSC Rules.

(3) Subject to subsection (5), any person who, immediately before the commencement of this Act, was performing the duties of an investment adviser as defined in this Act, whether licensed under any other enactment, shall, within one year of the commencement of this Act apply for a license as investment adviser or representative thereof as may be applicable subject to the requirements of this Act, any regulations made under this Act and the FSC Rules.

(4) Subject to subsection (5), any person who, immediately before the commencement of this Act was performing the duties of a CIS manager, whether licensed under any other Act or not, shall, within one year of the commencement of this Act apply for a license as CIS manager subject to the requirements of this Act, any regulations made under this Act and the FSC Rules.

(5) When dealing with an application under this section, the Commission shall determine -

- (a) the terms and conditions;
- (b) any new requirement;
- (c) any exemption to be granted from any requirement;
- (d) any restriction of activities;
- (e) any fee payable;
- (f) any period of time to be given to comply with new requirements,

that shall apply to such licence.

(6) Subject to subsection (7), approved investment institutions designated under section 50A of the Stock

Exchange Act shall, notwithstanding the repeal in section 157(1)(a) continue to operate subject to the conditions of the Stock Exchange (Approved Investment Institution) Rules 1992.

(7) Approved investment institutions in existence immediately before the commencement of this Act shall, within 3 years of the commencement of such regulations as may be prescribed, apply for authorisation as collective investment schemes according to conditions and subject to such exemptions as may be specified in FSC Rules.

Transitional provisions - unit trusts schemes and authorised mutual funds

160.(1) Notwithstanding the repeals in section 157(1)(b) and (d)(i) and subject to subsection (2), a mutual fund authorised under section 35 of the Companies Act 1984 or any unit trust scheme authorised under the Unit Trust Act shall continue its activities in accordance with its authorisation and shall be governed by the applicable enactments as if they have not been repealed.

(2) Authorised mutual funds and unit trusts schemes in existence immediately before the commencement of this Act, shall within 5 years of the commencement of this Act, apply for authorisation according to conditions and subject to such exemptions as may be specified in FSC Rules.

(3) Notwithstanding the repeal in section 157(1)(b) and subject to subsection (4), a person authorised as manager and a person authorised as trustee of a unit trust scheme shall continue to be so authorised and shall be governed by the applicable enactment as if it has not been repealed.

(4) A manager of a unit trust scheme shall within 3 years of the commencement of this Act apply for a licence as CIS manager.

Transitional provisions – reporting issuers and insiders of reporting issuers

161.(1) Reporting issuers in existence immediately before the commencement of this Act, shall meet the requirements of -

- (a) filing of annual report as from the end of the financial year ending 6 months after the commencement of Part VI;
- (b) filing quarterly financial reports as from the first quarter of the financial year that starts 6 months after the commencement of Part VI.

(2) Persons subject to the requirement of reporting under sections 90, 91 and 92 of this Act shall file the required reports as from 3 months of the commencement of this Act.

Transitional provisions – Holders of Category 1 Global Business Licence

162.(1) Subject to subsection (2), a collective investment scheme which holds a Category 1 Global Business Licence immediately before the commencement of this Act, shall be deemed to be authorised for the purposes of this Act for a period of 3 years as from the commencement of this Act.

(2) Where it is intended that the collective investment scheme shall continue its operation beyond 3 years, the person responsible for the operation of the scheme shall, 3 months before the expiry of the 3 year period, apply for authorisation of the scheme in such form and manner as may be provided for under the FSC Rules.

(3) Subject to subsection (4), a company which holds a Category 1 Global Business Licence and conducts business as a CIS manager immediately before the commencement of this Act, shall be deemed to be licensed for the purposes of this Act for a period of 3 years as from the commencement of this Act.

(4) Where the CIS manager intends to continue its operation beyond 3 years, the CIS manager shall, 3 months before the expiry of the 3 year period, apply for a CIS manager licence in such form and manner as may be provided for under the FSC Rules.

(5) Subject to subsection (6), a company which holds a Category 1 Global Business Licence and conducts business as an investment dealer or investment adviser immediately before the commencement of this Act, shall be deemed to be licensed for the purposes of this Act for a period of one year as from the commencement of this Act.

(6) Where the investment dealer or investment adviser, as the case may be, intends to continue its operation beyond the one year period, the investment dealer or investment adviser, as the case may be, shall, 3 months before the expiry of the one year period, apply for an investment dealer licence or an investment adviser licence, as the case may be, in such form and manner as may be provided for under the FSC Rules.

Commencement

163.(1) This Act shall, come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for different sections of this Act.

SCHEDULE

(section 2)

Part I

Definition of “associate”

“associate” means -

- (a) in relation to a relationship with an individual -
 - (i) a spouse, a person living “en concubinage” under the common law, any child or stepchild or any relative residing under the same roof as that person;
 - (ii) a succession in which the person has an interest;
 - (iii) a partner of that person;
- (b) in relation to a relationship with any person -
 - (i) any company in which the person owns securities assuring him of more than 10 per cent of a class of shares to which are attached voting rights or an unlimited right to participate in earnings and in the assets upon winding up;
 - (ii) any controller of that person;
 - (iii) any trust in which the person has a substantial ownership interest or in which he fulfils the functions of a trustee or similar function;
 - (iv) any company which is a related company.

Part II

Schemes which are not collective investment schemes

1. A contract of insurance, other than an insurance policy traded on the secondary market
2. A cheque, order for the payment of money, Act of exchange or promissory note
3. A scheme or arrangement operated by a person otherwise than by way of business
4. A scheme or arrangement that each participant enters into merely as incidental to some other business (other than a business of investment) that the participant carries out
5. A scheme or arrangement where each participant is a related corporation of the operator
6. A scheme or arrangement where each participant is -
 - (a) a bona fide employee or former employee of the operator of the scheme or arrangement or of a related corporation of the operator; or
 - (b) a close relative of such an employee or former employee
7. A franchise
8. An arrangement under which -

- (a) money is received by a law practitioner from clients, whether as stakeholder or otherwise, the law practitioner acting in a professional capacity in the ordinary course of practice; or
 - (b) money is received by a statutory body as a stakeholder in the carrying out of its statutory functions
- 9. An arrangement made by a co-operative society registered under the Cooperative Societies Act in accordance with its objects for the benefit of its members
- 10. An arrangement out of a life policy under the Insurance Act
- 11. An occupational pension scheme, including the National Pension Fund
- 12. A clearing or settlement facility operated by a person in accordance with a clearing or settlement facility licence
- 13. A debenture
- 14. A time-sharing scheme, that is, a scheme, undertaking or enterprise, whether in Mauritius or elsewhere, where -
 - (a) the participants are or may become entitled to use, occupy or possess, for 2 or more periods, property to which the scheme, undertaking or enterprise relates; and
 - (b) that is to operate for a period of not less than 3 years
- 15. A document issued or executed by a bank or deposit taking non-bank financial institution licensed or authorised under the Banking Act 2004, being a document issued or executed in the ordinary course of its banking or deposit taking business, that acknowledges the indebtedness of the bank or institution arising in the ordinary course of that business
- 16. A foreign exchange contract as defined in the Banking Act 2004
- 17. A scheme or arrangement that the regulations or the Commission, by notice, declare not to be a collective investment scheme