

THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) BILL
(No. XVIII of 2006)

Explanatory Memorandum

The object of this Bill is to provide for a new legal framework which would -

- (a) allow businesses to start operations on the basis of self-adherence to comprehensive and clear guidelines and the authorities to check for compliance by exercising ex post control; and
- (b) facilitate doing of business and acquisition of properties, by foreigners; and
- (c) enable small enterprises to start their business activities within 3 working days.

21 July 2006

R. Sithanen
Deputy Prime Minister, Minister of Finance and
Economic Development

THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) BILL
(No. XVIII of 2006)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Building Act amended
3. Business Registration Act 2002 amended
4. Companies Act 2001 amended
5. Immigration Act amended
6. Investment Promotion Act amended
7. Local Government Act 2003 amended
8. Non-Citizens (Employment Restriction) Act amended
9. Non-Citizens (Property Restriction) Act amended
10. Registration Duty Act amended
11. Sugar Industry Efficiency Act 2001 amended
12. Town and Country Planning Act amended
13. Value Added Tax Act amended
14. Commencement

A Bill

To provide for a new legal framework which would allow businesses to start operations on the basis of self-adherence to comprehensive and clear guidelines and the authorities to check for compliance by exercising ex post control, facilitate doing of business and acquisition of properties by foreigners and enable small enterprises to start their business activities within 3 working days

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Business Facilitation (Miscellaneous Provisions) Act 2006.

2. Building Act amended

The Building Act is amended -

(a) in section 2 -

(i) by numbering the existing provision as subsection (1);

(ii) in subsection (1), as numbered -

(A) by deleting the definition of “Authority” and replacing it by the following definition -

“Authority” means the local authority referred to in section 98 of the Local Government Act 2003;

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

“Building and Land Use Permit” or “permit” means a Building and Land Use Permit issued under section 98 of the Local Government Act 2003;

(iii) by adding immediately after subsection (1), as numbered, the following new subsection -

(2) Reference in this Act or any other enactment to a building permit shall be construed as reference to a Building and Land Use Permit issued under section 98 of the Local Government Act 2003.

- (b) in section 7(1), by deleting the words “a permit so to do from the Authority” and replacing them by the words “a Building and Land Use Permit from a local authority under section 98 of the Local Government Act 2003”;
- (c) by repealing sections 15 and 77;
- (d) in section 18, by deleting the words “granted under section 15”;
- (e) by repealing the Schedule.

3. Business Registration Act 2002 amended

The Business Registration Act 2002 is amended by inserting immediately after section 9, the following new section -

9A. Online access to CBRD

(1) Subject to the Companies Act 2001, the Registrar of Businesses shall give, at all times, for the purposes of business facilitation, online access to the CBRD to -

- (a) the Board of Investment;
- (b) the Small Enterprises and Handicraft Development Authority;
- (c) any local authority;
- (d) the Mauritius Revenue Authority; and
- (e) the Ministry responsible for the subject of social security.

(2) In this section -

“Board of Investment” means the Board of Investment established under the Investment Promotion Act;

“local authority” has the same meaning as in the Local Government Act;

“Mauritius Revenue Authority” means the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act 2004;

“Small Enterprises and Handicraft Development Authority” means the Small Enterprises and Handicraft Development Authority established under the Small Enterprises and Handicraft Development Authority Act 2005;

4. Companies Act 2001 amended

The Companies Act 2001 is amended -

- (a) in section 23 -
 - (i) in subsection (1)(c)(vi), by inserting immediately after the words “proposed company”, the words “, if any”;
 - (ii) in subsection (2), by inserting immediately after paragraph (g), the following new paragraph -
 - (ga) such other information as may be required;

- (b) by repealing section 31 and replacing it by the following section -

31. Availability of Name

The Registrar shall not register a company under a name or register a change of the name of a company, unless the name is available.

- (c) in section 34(1), by deleting the words “shall be sent” and replacing them by the words “may be sent”;
- (d) in section 36(1)(b), by inserting immediately after the words “the name”, the words “, if any”;
- (e) in section 248(2)(d), by inserting immediately after the words “reserving the name”, the words “, if any”;
- (f) in section 275 -
 - (i) by deleting the heading and replacing it by the following heading -

Availability of name before carrying on business
 - (ii) in subsection (1), by deleting the words “has been reserved” and replacing them by the words “is available”;
 - (iii) in subsection (3), by deleting the words “has first been reserved” and replacing them by the words “is available”;

- (iv) in subsection (4), by deleting the words “reservation of the name of a foreign company, including reservation on a change of name” and replacing them by the words “reservation of the name, if any, of a foreign company, including reservation on a change of name, if any”.

5. Immigration Act amended

The Immigration Act is amended -

- (a) in section 2, by inserting in the appropriate alphabetical order, the following new definitions -

“Board of Investment” means the Board of Investment established under the Investment Promotion Act;

“investor” means -

- (a) a person who is not a citizen of Mauritius; or
- (b) an association or body of persons, whether corporate or incorporate, the control or management of which is vested in persons who are not citizens of Mauritius,

and registered as such with the Board of Investment;

“occupation permit” means a permit issued under section 9A;

“professional” means a non-citizen who is employed in Mauritius by virtue of a contract of employment and registered as such with the Board of Investment;

“retired non-citizen” means a retired non-citizen registered as such with the Board of Investment;

“self-employed non-citizen” means a non-citizen engaged in a professional activity and registered as such with the Board of Investment;

- (b) in section 5(1), by repealing paragraph (h) and replacing it by the following paragraph -
 - (h) he is an investor, a self-employed non-citizen, professional or retired non-citizen; or

- (c) in section 5A -
- (i) in subsection (1) -
- (A) by deleting the words “Subject to subsections (2) and (3)” and replacing them by the words “Subject to the other provisions of this section”;
- (B) by repealing paragraph (a) and replacing it by the following paragraph -
- (a) he is an investor, a self-employed non-citizen, or retired non-citizen;
- (ii) by repealing subsection (3) and replacing it by the following subsection -
- (3) The granting of the status of permanent resident to any person under subsection (1)(d) shall be subject to the person satisfying such requirements as may be prescribed.
- (iii) by repealing subsection (5) and replacing it by the following subsections -
- (5) Any investor or self-employed non-citizen referred to in subsection (1)(a) who is the holder of an occupation permit may, at the expiry of a period of 3 years of his occupation permit, upon satisfying the criteria specified in Part III of the Schedule to the Investment Promotion Act and on application made under this section, be granted the status of permanent resident.
- (5A) Any retired non-citizen referred to in subsection (1)(a) who is the holder of a residence permit may, at the expiry of a period of 3 years of his residence permit, upon satisfying continuously the criteria specified in Part I of the Schedule to the Investment Promotion Act and on application made under this section, be granted the status of permanent resident.
- (5B) A permanent residence permit granted under subsection (5) or (5A) shall, subject to section 6A, be for a period of 10 years as from the expiry date of his occupation permit or residence permit, as the case may be.
- (iv) by repealing subsection (6) and replacing it by the following subsection -
- (6) The spouse and dependents of a person to whom subsection (5) or (5A) applies may, on application made under this section, also be granted the status of permanent resident.

- (d) in section 6, by repealing subsection (1A) and replacing it by the following subsection -

(1A) Where a person has acquired the status of resident under section 5(1)(g) or (h), he shall cease to be resident where he is certified by the Board of Investment to have ceased to satisfy the requirements of the Integrated Resort Scheme, or the criteria and conditions of registration, under the Investment Promotion Act.

- (e) in section 6A(1)(b), by repealing subparagraph (i) and replacing it by the following subparagraph -

(i) who is an investor, a self-employed non-citizen or retired non-citizen is certified by the Board of Investment to have ceased to satisfy the criteria and conditions of his registration under the Investment Promotion Act;

- (f) in section 7 -

(i) in subsection (1), by deleting paragraph (e) and replacing it by the following paragraph -

(e) tourists or other visitors or persons coming for business;

(ii) by inserting immediately after subsection (1), the following new subsection -

(1A) Where a person is admitted under subsection (1)(e), the admission shall be for a period of 60 days as from the date of his admission.

- (g) by adding immediately after section 9, the following new sections -

9A. Occupation permit

(1) Notwithstanding section 5 and the Non-Citizens (Employment Restriction) Act, any investor or a self-employed non-citizen or the employer of a professional shall, through the Board of Investment, apply to the immigration officer for an occupation permit authorising the investor, self-employed non-citizen or the professional, as the case may be, to become a resident and -

(a) in the case of the investor or self-employed non-citizen, to carry on any occupation in Mauritius for reward or profit; or

(b) in the case of the professional to take up employment in Mauritius.

(2) The application under subsection (1) -

- (a) shall be made in such form and manner as may be approved by the immigration officer; and
- (b) shall include such information, documents and particulars as may be required and specified in the form of application; and
- (c) shall be accompanied -
 - (i) with the prescribed fee; and
 - (ii) in the case of an investor or a self-employed non-citizen, with a bank guarantee for the appropriate prescribed amount; or
 - (iii) in the case of a professional, with a written undertaking by the employer that he will meet any expense or charge likely to be incurred for the maintenance, support or the repatriation of the holder of the occupation permit.

(3) On receipt of the application under subsection (1), the immigration officer shall immediately issue to the Board of Investment an acknowledgement receipt in respect of the application.

(4) The immigration officer shall, within 2 working days of the date of receipt of the application, determine the application and where -

- (a) the application is approved, issue the occupation permit -
 - (i) in the case of an investor or a self-employed, for a period of 3 years;
 - (ii) in the case of a professional, for the period specified in his contract of employment or for a period of 3 years, whichever is the lesser;
- (b) the application is not approved, the immigration officer shall -
 - (i) give written notice thereof to the applicant with copy to the Board of Investment; and
 - (ii) at the same time, return to the applicant, the bank guarantee or written undertaking, as the case may be.

(5) Where the immigration officer has not approved the application within the specified period under subsection (4) and has notified the applicant

of his decision, he shall, within 7 working days of the notification, refund to the applicant such fee as may have been paid.

(6) Where, within 2 working days of the date of receipt of the application, the application is not determined in accordance with subsection (5), the application shall be deemed to have been approved and the acknowledgement receipt referred in subsection (3) shall be deemed to be an occupation permit issued under subsection (4)(a)(i) or (ii), as the case may be.

(7) On the working day immediately following the 2 working days referred in subsection (4), the Board of Investment shall, subject to subsection (4)(b), and after consultation with the immigration officer, issue the acknowledgement receipt to the applicant.

(8) The provisions of sections 6 and 6A shall apply to a person who has been issued with an occupation permit as they would have applied to a person who has acquired the status of resident.

9B. Residence permit for retired non-citizen

(1) Notwithstanding section 5 and the Non-Citizens (Employment Restriction) Act, any retired non-citizen shall, through the Board of Investment, apply to the immigration officer for a residence permit.

(2) The application under subsection (1) -

- (a) shall be made in such form and manner as may be approved by the immigration officer; and
- (b) shall include such information, documents and particulars as may be required and specified in the form of application; and
- (c) shall be accompanied with -
 - (i) the prescribed fee; and
 - (ii) a bank guarantee for the appropriate prescribed amount.

(3) The provisions of section 9A(2) to (7) shall apply to a retired non-citizen as they would have applied to an investor or a self-employed, with such modifications, adaptations and exceptions as may be necessary to bring them in conformity with this section.

6. Investment Promotion Act amended

The Investment Promotion Act is amended -

(a) in section 2 -

- (i) by deleting the definitions of “application”, “building permit”, “development permit”, “investment certificate”, “municipal licence”, “qualifying activity” and “relevant Ministry”;
- (ii) by inserting in the appropriate alphabetical order, the following new definitions -

“application” means an application for a freeport certificate or an IRS certificate under section 12;

“freeport certificate” means a freeport certificate under the Freeport Act 2004;

“investor” -

- (a) means any person carrying on or who intends to carry on any economic activity and satisfying the criteria referred to in item 1 of Part I of the Schedule; and
- (b) includes -
 - (i) a person who is not a citizen of Mauritius; or
 - (ii) an association or body of persons, whether corporate or incorporate, the control or management of which is vested in persons who are not citizens of Mauritius,

and registered as such under this Act; but

- (c) does not include a small enterprise or handicraft enterprise registered under the Small Enterprises and Handicraft Development Authority Act 2005;

“IRS certificate” means an IRS certificate under the Integrated Resort Scheme prescribed under the Investment Promotion Act;

“occupation permit” has the same meaning as in the Immigration Act;

“permanent residence permit” has the same meaning as in the Immigration Act;

“professional” means a non-citizen who is employed in Mauritius by virtue of a contract of employment and registered as such under section 12;

“qualifying activity” means any activity regulated by the enactments specified in Part II of the Schedule;

“registration certificate” means a certificate issued under section 12(4) or 13;

“retired non-citizen” means a retired non-citizen registered as such under section 12;

“self-employed person” includes a non-citizen engaged in a profession and registered as such under section 12;

- (b) by repealing sections 5, 6 and 7 and replacing them by the following sections -

5. Objects of the Board of Investment

The objects of the Board of Investment shall be -

- (a) to stimulate the development, expansion and growth of the economy by promoting Mauritius as an international investment, business and service centre;
- (b) to promote and facilitate the development of all forms of investment and business activities;
- (c) to formulate investment promotion policies and plans and marketing strategies and undertake promotion to attract foreign and local investments; and
- (d) to advise Government on strategies for investment policies, national investment marketing and investment after care, economic and industrial planning and country image building.

6. Functions of the Board of Investment

The Board of Investment shall have such functions as, in its opinion, are necessary to further most effectively its objects, and in particular -

- (a) to improve investment and business environment and undertake such other activities as may be necessary to promote Mauritius as an attractive base for investments and as an international financial centre;
- (b) to prepare, fund, implement and monitor programmes relating to strategies for promoting investments in Mauritius;

- (c) to conduct research and studies in identifying investment opportunities;
- (d) to maximise opportunities and arrangements for the development of all forms of investments and business activities in Mauritius;
- (e) to act as a think tank in highlighting policy issues and making policy recommendations to Government to boost investment and attain Government economic objectives;
- (f) to co-ordinate multi-sectoral promotional activities and be the focal point for all investment-related promotional and marketing activities for Mauritius;
- (g) to consider and register investment proposals from investors and self-employed and provide necessary assistance for implementation of projects;
- (h) to provide support services to investors and self-employed, including assistance to procure authorizations and permits required for establishment and operation of enterprises and to lease or purchase real estate, for activities promoted by the Board of Investment;
- (i) to ensure co-ordination and cooperation between the public sector and the private sector on matters of investments and for policy decisions impacting on investment;
- (j) to act as the single interface with all investors and liaise with relevant authorities for the granting of occupation permits, residence permits and other relevant permits required by the investor to operate in Mauritius;
- (k) to provide all relevant information to potential investors on any matter relating to investments; and
- (l) to do such things as are incidental or conducive to the performance of any of its functions under this section.

7. Powers of the Board of Investment

The Board of Investment may –

- (a) periodically carry out surveys to assess the socio-economic impact of investments registered with the Board and the general investment climate prevailing in Mauritius;
 - (b) act as Government's representative in coordinating, facilitating and implementing public private partnership projects;
 - (c) engage the services of any consultant, or other person, suitably qualified to provide such services to the Board as it thinks fit on such terms and conditions as the Board may determine;
 - (d) set up such technical committees as it deems fit to assist it in the discharge of its functions under this Act; and
 - (e) do such acts and things as are incidental or conducive to the attainment of its objects.
- (c) in section 8, by repealing subsection (1) and replacing it by the following subsection -

(1) The Board shall meet as often as is necessary but at least once every three months and at such time and place, and may use such medium, as the Chairperson thinks fit.

- (d) by repealing Parts III and IV and replacing them by the following Parts-

PART III –REGISTRATION OF INVESTOR, SELF-EMPLOYED, PROFESSIONAL AND RETIRED NON-CITIZEN

12. Registration of investor, self-employed, professional and retired non-citizen

(1) Any investor or a self-employed person who is registered with the Registrar of Businesses under the Business Registration Act 2002 or any professional or retired non-citizen may register with the Board of Investment provided he satisfies the appropriate criteria specified in Part I of the Schedule.

(2) Every application to register with the Board of Investment shall be made in such form and manner as may be approved by the Managing Director and shall include the following information -

- (a) in the case of an investor or a self-employed person, where applicable -
 - (i) the proposed investment;
 - (ii) the amount of investment to be transferred to Mauritius; and
 - (iii) estimated annual turnover or gross income;
 - (iv) the nature of the professional activity;
- (b) in the case of a professional, his monthly salary;
- (c) in the case of a retired non-citizen -
 - (i) the annual amount to be transferred to Mauritius;
 - (ii) the bank through which the transfer is to be effected; and
- (d) any other information as may be specified in the form of application.

(3) Where the Board of Investment is satisfied that the applicant qualifies for registration under this section or section 13, the Managing Director shall register the applicant and issue a registration certificate on such terms and conditions as may be determined by the Board.

13. Registration of companies manufacturing goods for export

Notwithstanding the repeal of the Industrial Expansion Act by section 33(1)(d) of the Finance Act 2006, where a company manufactures goods for export, it may, for the purposes of section 20 of the repealed Industrial Expansion Act, register with the Board of Investment by submitting an application in a form approved by the Managing Director.

14. Registration of investors in freeport and IRS

Where an investor is registered under section 12 and intends to apply for a freeport certificate or an IRS certificate in respect of activities regulated under the enactments specified in Part II of the Schedule, the Board of Investment may request for such other information, documents or particulars as may be specified in guidelines issued by the Board of Investment.

15. Deregistration of persons

(1) Where the Board has reason to believe that a person registered under section 12 or 13 -

- (a) has given in his application for registration, any information, document or particulars which is false or misleading in any material particular;
- (b) has contravened the Immigration Act under which an occupation permit, residence permit or permanent residence permit has been issued to him;
- (c) no more satisfies the criteria and conditions of his registration;
- (d) has acted in such a way as to tarnish the good repute of Mauritius;
- (e) is acting or has acted in contravention to any laws of Mauritius,

the Board may, by written notice, require the person to show cause, within 30 days of the date of service of the notice, why he should not be deregistered and his occupation permit, residence permit or permanent residence permit, as the case may be, should not be revoked, and where the Board is satisfied that, having regard to all the circumstances of the case, it is expedient to do so, it shall deregister the person and notify the immigration officer to cancel the occupation permit, residence permit or permanent residence permit, as the case may be, of the person.

(2) Where a registered investor or self-employed non-citizen intends to cease his activities in Mauritius, he shall immediately give notice in writing thereof to the Managing Director for deregistration.

(3) Where a registered investor or self-employed non-citizen is deregistered under subsection (1), the occupation permit, residence permit or permanent residence permit, as the case may be, shall lapse immediately.

(4) Any investor or self-employed non-citizen who fails to comply with subsection (2) shall commit an offence.

PART IV – IRS CERTIFICATE AND FREEPORT CERTIFICATE

16. Application for IRS certificate

(1) Every investor registered under section 12 and who intends to engage in activities regulated under the Integrated Resort Scheme prescribed under the Investment Promotion Act shall apply to the Managing Director for an IRS certificate, in such form and manner as may be approved by the Board.

(2) Where the Managing Director receives an application under subsection (1), he shall -

- (a) apprise the Board of the application;
- (b) communicate a copy of the application to the relevant Ministries and keep the Ministries concerned informed of any matter concerning the consideration and outcome of the application; and
- (c) cause the application to be processed in accordance with this Part.

17. Technical Committee

(1) The Board may set up such technical committee as may be necessary to examine and report on an application for an IRS certificate and facilitate its implementation.

(2) The members of the technical committee shall, when appropriate, include one or more officers of a public sector agency qualified, or having experience in the subject matter of the application.

(3) A technical committee-

- (a) shall meet as often as may be necessary and at such time and place as the Chairperson of the committee thinks fit;
- (b) shall meet when required to do so by the Board; and
- (c) shall, subject to the other provisions of this section, regulate its meetings in such manner as it thinks fit.

(4) A technical committee shall submit its report within such time as may be fixed by the Board and the report shall contain the observations, comments and recommendations of the technical committee on any matter referred to it by the Board.

18. Issue of IRS certificate

Where the Board considers that the investor has satisfied the requirements of the Integrated Resort Scheme prescribed under this Act for the issue of an IRS certificate, it shall, within 30 days of the date of receipt of the application under section 16, approve the scheme and issue an IRS certificate on such terms and conditions as the Board may determine.

18A. Application for freeport certificate

(1) Every investor registered under section 12 and who intends to engage in activities regulated under the Freeport Act 2004 shall apply to the Managing Director for a freeport certificate, in such form and manner as may be approved by the Board.

(2) Every application under subsection (1) shall be dealt with in accordance with the Freeport Act 2004.

PART IVA – BUSINESS FACILITATION AND PUBLIC-PRIVATE PARTNERSHIP

18B. Facilitation by Board of Investment

(1) Any registered investor or self-employed non-citizen may request the Board of Investment to provide assistance, support, coordination and cooperation with public sector agencies to facilitate and implement its project or business.

(2) On receipt of a request under subsection (1), the Board of Investment -

- (a) may give such directions as may be required to expedite the processing of applications, to relevant public sector agencies in accordance with relevant guidelines;
- (b) shall ensure that any application made for a permit or authorisation is processed within the time limit set by the public sector agency;
- (c) may convene committees and meetings with public sector agencies to facilitate and coordinate the implementation of projects by registered investors or self-employed non-citizens.

- (3) The guidelines referred to in subsection (2)(a) shall be –
 - (a) available for consultation at the office of the public sector agency and the Board of Investment; and
 - (b) posted on the website of the Board of Investment.

18C. Public-private partnerships

Notwithstanding the Public-Private Partnership Act 2004, the Board of Investment may act as a coordinator and facilitator between the Public-Private Partnership Unit and the private sector for the assessment of a public-private partnership project, its implementation, development and monitoring.

- (e) in section 23(3), by repealing paragraph (b) and replacing it by the following paragraph -
 - (b) of the particulars of an IRS certificate or freeport certificate.
- (f) in section 24, by deleting the words “an investment certificate -” and replacing them by the words “a certificate under this Act or the Freeport Act 2004 -”;
- (g) in section 25(1)(a), by deleting the words “an investment certificate under section 12” and replacing them by the words “any application for a certificate under this Act or the Freeport Act 2004 and the issue of any such certificate”;
- (h) by adding immediately after section 28A, the following new section -

28B. Savings

(1) Any investment certificate issued under the repealed Part III and in force on the date immediately before the coming into operation of the Business Facilitation (Miscellaneous Provisions) Act 2006 shall be deemed to be a registration certificate issued under Part III of this Act.

(2) Any investment certificate in respect of an Integrated Resort Scheme issued under this Act, or a freeport certificate issued under the Freeport Act 2004, and in force on the date immediately before the coming into operation of the Business Facilitation (Miscellaneous Provisions) Act 2006 shall be deemed to be an IRS certificate or a freeport certificate under this Act.

- (i) by repealing the First and Second Schedules and replacing them by the Schedule set out in the First Schedule to this Act.

7. Local Government Act 2003 amended

The Local Government Act 2003 is amended -

- (a) in section 2 -
- (i) in the definition of “classified trade”, by deleting the words “Part I of”;
- (ii) by deleting the definition of “Permits and Licences Committee” and replacing it by the following definition -
- “Permits and Business Monitoring Committee” or “Committee” means the Permits and Business Monitoring Committee established under section 97;
- (iii) by inserting in the appropriate alphabetical order, the following new definitions -
- “Building and Land Use Permit” means the Building and Land Use Permit issued under section 98;
- “development”, in relation to land, has the same meaning as in the Town and Country Planning Act;
- “economic activity” means an activity specified in the Eleventh Schedule;
- “effective date”, in relation to an application, means the date by which all the information, particulars and documents specified in the application form are submitted;
- “EIA licence”, “preliminary environmental report” and “undertaking” have the same meaning as in the Environment Protection Act 2002;
- “Town and Country Planning Board” means the Town and Country Planning Board established under the Town and Country Planning Act;
- (iv) by adding immediately after subsection (2), the following new subsection -
- (3) Reference in this Act or in any other enactment to a building permit or a development permit shall be construed as reference to a Building and Land Use Permit under this Act.
- (b) in Part VI, in Sub-Part F, by deleting the words “Permits and Licences Committee” wherever they appear and replacing them by the words “Permits and Business Monitoring Committee”;

(c) by repealing section 98 and replacing it by the following section -

98. Application for Building and Land Use Permit

(1) The authority for execution and enforcement of the Building Act and Town and Country Planning Act shall be the local authority of the respective town or district where the relevant building, structure or tenement is to be found or where the land is to be developed.

(2) Every person who intends to -

- (a) commence the construction of a building, or effect extensive alterations, additions or repairs to an existing building; or
- (b) carry out development of land,

shall apply to the local authority for a Building and Land Use Permit.

(3) Every application for a Building and Land Use Permit shall be in accordance with guidelines issued under -

- (a) the Building Act;
- (b) the Town and Country Planning Act; and
- (c) the Planning and Development Act 2004.

(4) Every application made under subsection (2) shall be forwarded by the Chief Executive of the local authority to the Permits and Business Monitoring Committee.

(5) The Permits and Business Monitoring Committee shall process every application for a Building and Land Use Permit and shall, in processing the application, have regard to the provisions of the Building Act, the Town and Country Planning Act and the Planning and Development Act 2004 and the guidelines issued under those Acts.

(6) Subject to subsection (7), the Permits and Business Monitoring Committee shall, under the authority of the Chief Executive, within 2 weeks of the effective date of receipt of the application -

- (a) issue to the applicant a Building and Land Use Permit where it is satisfied -
 - (i) that the application is in accordance with the Acts and the guidelines referred to in subsection (5); and

(ii) in the case of an application relating to an undertaking, that there is in relation to that undertaking, an approved preliminary environmental report or EIA licence; or

(b) notify the applicant in writing that the application has not been approved and give the reasons therefor.

(7) Where the application for a Building and Land Use Permit is made by a small enterprise or handicraft enterprise under the Small Enterprises and Handicraft Development Authority Act 2005, the Permits and Business Monitoring Committee shall, within 3 working days of the effective date of receipt of the application -

(a) issue to the applicant a Building and Land Use Permit where it is satisfied -

(i) that the application is in accordance with the Acts and the guidelines referred to in subsection (5); and

(ii) in the case of an application relating to an undertaking, that there is in relation to that undertaking, an approved preliminary environmental report or EIA licence; or

(b) notify the applicant in writing that the application has not been approved and give the reasons therefor.

(8) Every Building and Land Use Permit shall be issued subject to such conditions as the local authority may deem appropriate and on payment of such fee as may be prescribed by the local authority.

(9) Any person aggrieved by a decision of a local authority under subsection (6)(b) or (7)(b) may, within 21 days of receipt of the notification, appeal to the Town and Country Planning Board, and the appeal shall be dealt with in accordance with section 7(6) to (8) of the Town and Country Planning Act.

(10) Any application for a development permit under the Town and Country Planning Act, or a building permit under the Building Act, pending immediately before the commencement of this section, shall, on the commencement of this section, be deemed to be an application for a Building and Land Use Permit and shall be dealt with in accordance with this Act.

(11) Any appeal pending before the Judge in Chambers on the date immediately before the commencement of this section, shall, on the commencement of this section, be referred by the Master and Registrar of the Supreme Court to the Town and Country Planning Board and shall be dealt with in accordance with section 7(6) to (8) of the Town and Country Planning Act.

- (d) by repealing sections 100 to 106 and replacing them by the following sections -

100. Obligations of holder of Building and Land Use Permit

Where a person has been issued with a Building and Land Use Permit, he shall, before starting any classified trade and at all times in the course of carrying on his classified trade, comply with such guidelines as may be issued by the Fire Services, Sanitary Authority and the Ministry responsible for the subject of environment.

101. Clustering of economic activities

(1) Every Building and Land Use Permit which has been granted in respect of an economic activity shall indicate the cluster to which the economic activity belongs, as specified in the Eleventh Schedule.

- (2) Where there is a proposed change in economic activity -
- (a) within a cluster, no fresh Building and Land Use Permit shall, subject to the Eleventh Schedule, be required; or
 - (b) from one cluster to another, a fresh Building and Land Use Permit shall be required.

102. Fees leviable by local authority

(1) A local authority may, by regulations, provide for the payment of -

- (a) fees, dues or other charges in respect of classified trades; and
- (b) fees on the issue of a Building and Land Use Permit.

(2) The publication in the *Gazette* of regulations made by a local authority for the purposes of this Part shall not require the approval of the Minister.

(3) No person shall carry out any classified trade specified in Part II of the Eighth Schedule -

- (a) unless he has obtained the authorisation of the Permits and Business Monitoring Committee, which shall act under the authority of the Chief Executive; and
- (b) on payment of the prescribed fee.

(4) Where a person carries out any classified trade within the administrative area of a local authority, he shall pay to the local authority in respect of the classified trade such fees as may be prescribed by the Council.

(5) Any fee payable under subsection (4) in respect of any financial year shall be due on 1 July of that year and shall be paid by the person -

- (a) within 15 days after start of the classified trade; and
- (b) not later than 15 July in respect of every subsequent financial year.

(6) A surcharge of 50 per cent shall be leviable on any amount not paid within the period specified in subsection (5).

(7) Any person who fails to pay any fee under this section or any regulations made under this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(e) by repealing section 107 and replacing it by the following section -

107. Conditions for conduct of classified trade

(1) The conduct of any classified trade shall be subject to such conditions as may be specified in the guidelines issued by the local authority and the guidelines referred to in sections 98(5) and 100.

(2) Where a person carrying on a classified trade dies, the heirs of the deceased person may continue to carry on the classified trade during the period for which the fee under section 102 has been paid.

(3) Every person carrying on a classified trade shall display in a conspicuous place at each of his business premises the receipt acknowledging payment of the fees under section 102 in respect of the current financial year.

(4) Every hawker of such goods as may be authorised by the local authority shall, at all times, carry his receipt acknowledging payment of the fees under section 102 in respect of the current financial year.

- (f) in section 108 -
- (i) in subsections (1) and (2), by deleting the words “licence or permit” and replacing them by the words “receipt acknowledging payment of the fees under section 102”;
 - (ii) in subsection (2) -
 - (A) in paragraph (a), by deleting the words “a licence or permit” and replacing them by the words “his receipt acknowledging payment of the fees under section 100”;
 - (B) by repealing paragraphs (b) and (c) and replacing them by the following paragraphs -
 - (b) uses the premises for conducting an economic activity in a cluster other than that for which he has been authorised;
 - (c) fails to comply with any of the conditions referred to in section 107,
- (g) in section 109 -
- (i) by repealing subsection (1) and replacing it by the following subsection -
 - (1) The Chief Executive, or any officer authorised by him in writing, may make a provisional closing order in respect of any premises where he is satisfied that -
 - (a) the premises have been used for the purpose of an economic activity in a cluster other than that in respect of which the person has been authorised to conduct the activity;
 - (b) the person has failed to comply with any of the conditions referred to in section 107; or
 - (c) the economic activity of a person has been conducted in such a way as to be a danger to public health, public order or public safety.

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

(4) In addition to any penalty or fine, the Court may order the closing of any premises -

- (a) in respect of which no fees under section 102 have been paid;
 - (b) where there has been a contravention of the conditions referred to in section 107; or
 - (c) where the economic activity of the person has been conducted in such a way as to be a danger to public health, public order or public safety.
- (h) in section 110 -
 - (i) in the heading, by inserting immediately after the word “**trade**”, the words “**or economic activity**”;
 - (ii) by inserting immediately after the words “a classified trade”, the words “or an economic activity”;
 - (i) by repealing section 111;
 - (j) in section 112, by deleting the words “and return all his licences and permits”;
 - (k) by adding immediately after the Tenth Schedule, the Eleventh Schedule set out in the Second Schedule to this Act.

8. Non-Citizens (Employment Restriction) Act amended

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

- (a) in section 3, by repealing subsection (6);
- (b) in section 4, by repealing subsection (3) and replacing it by the following subsection -
 - (3) (a) This section shall not apply to an investor, a self-employed or the employer of a professional who has applied for an occupation permit under section 9A of the Immigration Act.
 - (b) For the purposes of paragraph (a), “investor”, “self-employed” and “professional” have the same meaning as in the Immigration Act.

9. Non-Citizens (Property Restriction) Act amended

The Non-Citizens (Property Restriction) Act is amended in section 3(3)(c), by deleting subparagraph (iii) and replacing it by the following subparagraphs, the word “or” at the end of subparagraph (ii) being deleted -

- (iii) purchases or otherwise acquires any luxury villa, apartment, penthouse or other similar properties used, or available for use, as residence with or without attending services or amenities from a company holding a certificate under the Integrated Resort Scheme, prescribed under the Investment Promotion Act;
- (iv) being an investor purchases or otherwise acquires an immovable property, a right to immovable property or part of a building, for business purposes, upon production of a certificate from the Board of Investment established under the Investment Promotion Act;
- (v) being an investor, a self-employed or a retired non-citizen, and having been granted a permanent residence permit under the Immigration Act, purchases an immovable property or right to immovable property, villa, apartment, penthouse, flat or tenement, used or available for use, as residence, upon production of a certificate from the Board of Investment.

10. Registration Duty Act amended

The Registration Duty Act is amended -

- (a) in section 36 -
 - (i) in paragraph (a), by repealing subparagraph (i) and replacing it by the following subparagraph -
 - (i) his full names;
 - (ii) in paragraph (b), by repealing subparagraph (viii);
 - (iii) by repealing paragraphs (c), (f) and (g);
- (b) in section 36C -
 - (i) in paragraph (a), by repealing subparagraph (i) and replacing it by the following subparagraph -
 - (i) his full names;
 - (ii) in paragraph (b), by repealing subparagraph (iv);
- (c) in the Sixth Schedule, in item 10, by deleting the words “15 days” and replacing them by the words “10 days”.

11. Sugar Industry Efficiency Act 2001 amended

The Sugar Industry Efficiency Act 2001 is amended in section 29(1)(a) -

- (a) by repealing paragraph (iv);
- (b) in paragraphs (vi) and (vii), by deleting the words “approved by” and replacing them by the words “by the holder of a registration certificate issued by”;
- (c) in paragraph (viii), by deleting the words “as approved by” and replacing them by the words “by the holder of a registration certificate issued by”;
- (d) by repealing paragraphs (x) and (xi) and replacing them by the following paragraphs -
 - (x) the relocation, expansion or setting up of an industrial enterprise by the holder of a registration certificate issued by the Board of Investment or the Small Enterprises and Handicraft Development Authority established under the Small Enterprises and Handicraft Development Authority Act 2005, as the case may be;
 - (xi) the setting up of an agro-based industry by the holder of a registration certificate issued by the Board of Investment or the Small Enterprises and Handicraft Development Authority established under the Small Enterprises and Handicraft Development Authority Act 2005, as the case may be;
- (e) in paragraph (xiii), by repealing the words “an investment certificate” and replacing them by the words “a registration certificate”.

12. Town and Country Planning Act amended

The Town and Country Planning Act is amended -

- (a) in section 2, by adding immediately after subsection (2), the following new subsection -
 - (3) Reference in this Act or any other enactment to a development permit shall be construed as reference to a Building and Land Use Permit under the Local Government Act 2003.

(b) in section 7 -

(i) by deleting the heading and replacing it by the following heading -

Building and Land Use Permit

(ii) by repealing subsections (3) and (4) and replacing them by the following subsection -

(3) Every person who intends to develop land shall apply for a Building and Land Use Permit under section 98 of the Local Government Act 2003.

(iii) in subsections (5), (6) and (7)(a), by deleting the words “this section” and replacing them by the words “section 98 of the Local Government Act 2003”;

(iv) by adding immediately after subsection (8), the following new subsections -

(9) The Board shall, for the purposes of this Act, issue guidelines relating to land development and planning.

(10) The guidelines referred to in subsection (9) shall be -

(a) available for consultation at the office of the Board; and

(b) posted on the website of the Ministry responsible for the subject of lands.

(c) in section 8(1), by deleting the words “section 7” and replacing them by the words “section 98 of the Local Government Act 2003”.

13. Value Added Tax Act amended

The Value Added Tax Act is amended in the Ninth Schedule, in item 13, by deleting the words “holding an Investment Certificate (Polyclinic)” and replacing them by the word “registered”.

14. Commencement

This Act shall come into operation on 1 October 2006.

FIRST SCHEDULE*(section 6(i))***SCHEDULE***(sections 2, 12, 13 and 14)***PART I – Criteria for registration**

1. Investor	Annual turnover exceeding 3 million rupees
2. Self-employed non-citizen	Annual income exceeding 600,000 rupees
3. Professional	Monthly salary exceeding 30,000 rupees
4. Retired non-citizen	Annual transfer of at least 40,000 US dollars or its equivalent in convertible foreign currency

PART II – Enactments

1. Freeport Act 2004
2. Investment Promotion (Integrated Resort Scheme) Regulations 2002

PART III – Criteria for eligibility for Permanent Residence Permit

1. Investor	Annual turnover exceeding 15 million rupees
2. Self-employed non-citizen	Annual income exceeding 3 million rupees

SECOND SCHEDULE*(section 7(k))***ELEVENTH SCHEDULE***(sections 2 and 101)***Clusters****1. Commercial cluster**

- (a) Commercial activities relate to the provision of goods and services within building premises, such as shops, showrooms, post offices, hairdressers' salons, undertakers' parlours, ticket and travel agencies and cafés.
- (b) A change of economic activity within the building premises in respect of which a Building and Land Use Permit has been granted for commercial development will not require a fresh permit if the change of economic activity does not result in -
 - (i) direct or indirect dangerous or congested traffic conditions on any nearby street or road;
 - (ii) adverse external nuisance such as noise, dust, smell, fumes, soot, ash, vibration or any other similar nuisance;
 - (iii) loading and unloading causing disruption to the amenity of the surrounding neighbourhood;
 - (iv) inadequate parking on site for staff and visitors; or
 - (v) unsafe storage of materials.

2. Industrial cluster

- (a) Industrial activities relate to the manufacture or processing of goods within any premises and include light industry and general industry.
- (b) Extractive industry and special industry (noxious) will be *sui generis*, that is standing on its own (see item 4).
- (c) A change of economic activity within the building premises in respect of which a Building and Land Use Permit has been granted for industrial development shall require a fresh permit if the proposed change results in -
 - (i) detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust, grit, water, waste products, oil, power supply or otherwise;

- (ii) direct or indirect dangerous or congested traffic conditions on any nearby street or road;
- (iii) loading and unloading, causing disruption to the amenity of the surrounding neighbourhood;
- (iv) inadequate parking on site for staff and visitors; or
- (v) unsafe storage of materials.

3. Services cluster

- (a) Service activities relate to the provision of financial and professional services and include banks and other financial services and professional services such as estate agents and employment agencies.
- (b) A change of use within the building premises in respect of which a Building and Land Use Permit has been granted for development of services shall require a fresh permit if the proposed change of use results in -
 - (i) direct or indirect dangerous or congested traffic conditions on any nearby street or road;
 - (ii) adverse external nuisance such as noise, dust, smell, fumes, soot, ash, vibration or such other similar nuisance;
 - (iii) loading and unloading, causing disruption to the amenity of the surrounding neighbourhood;
 - (iv) inadequate parking on site for staff and visitors; or
 - (v) unsafe storage of materials.

4. Sui Generis activities

- (a) Certain economic activities cannot be specifically categorised within one of the 3 clusters. These activities are classified as *sui generis* or “standing on their own”.
- (b) A fresh permit is required for any change of economic activity from or to a *sui generis* activity.
- (c) Economic activities expressly excluded from the 3 clusters referred to above are -
 - (i) extractive industry;
 - (ii) special industry (polluting and noxious industry);
 - (iii) builders’ yard;

- (iv) scrap yard;
- (v) petrol filling station;
- (vi) hypermarket;
- (vii) theatre;
- (viii) amusement centre; and
- (ix) nightclub.

Note 1: For the purposes of item (c)(i), “extractive industry” means an industry carried on by -

- (a) extracting sand, gravel, soil, rock, stone or other similar materials from the land, beds of watercourses, the seabed; or
- (b) the getting, dressing or treatment of minerals and mineral stone.

Note 2: The following industries are to be treated as not falling within any cluster -

- (a) sugar manufacture from sugar cane and associated industries including distilleries using molasses for the production of rum and alcohol, pelletisation of bagasse, production of bagasse cubes, manufacture of chipboard and particle board;
 - (b) stone crushing plants and associated activities including the primary and secondary crushing of rocks and boulders premixing of concrete, block making (unless being carried out as an individual operation), the making of precise slabs, and floor and wall tiles;
 - (c) the manufacture of textiles and other wearing apparel involving continuous spinning or bleaching and dyeing processes;
 - (d) the manufacture of wearing apparel from rubber products;
 - (e) breweries;
 - (f) dry cleaning;
 - (g) tanneries;
 - (h) cement plants;
 - (i) pulp and paper manufacture excluding mechanical pulping of waste paper into recycled material, not involving chemical processes;
 - (j) foundries;
 - (k) the manufacture of “table salt” from sea water; and
 - (l) sawmills.
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