

THE SECURITIES (AMENDMENT) BILL
(No. IX of 2021)

Explanatory Memorandum

The main object of this Bill is to amend the Securities Act with a view to –

- (a) allowing, in addition to the Stock Exchange of Mauritius Ltd, other securities exchanges to establish, maintain or operate securities exchanges in Mauritius, whether physically, electronically or otherwise;
- (b) allowing, in addition to the Central Depository and Settlement Co. Ltd, other clearing and settlement facilities to provide, whether physically, electronically or otherwise, services in Mauritius with respect to the deposit, clearing or settlement of securities transactions;
- (c) introducing therein the concept of “retail investors”, being investors, other than sophisticated investors, and thereby recognising foreign funds whose securities are marketed to retail investors in or from Mauritius; and
- (d) waiving the requirement for foreign reporting issuers to be registered with the Financial Services Commission.

2. The Bill further provides for matters connected, incidental and related thereto.

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*Minister of Financial Services
and Good Governance*

21 May 2021

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
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4. Part III of principal Act amended
5. Section 69 of principal Act amended
6. Section 70 of principal Act amended
7. Section 78 of principal Act amended
8. Section 86 of principal Act amended
9. Section 88 of principal Act amended
10. Section 101 of principal Act amended
11. Section 106 of principal Act repealed
12. Section 138 of principal Act amended
13. Section 154 of principal Act amended
14. Schedule to principal Act amended
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SCHEDULE

A BILL

To amend the Securities Act with a view to allowing other securities exchanges and clearing and settlement facilities to operate in Mauritius, and to provide for matters connected, incidental and related thereto

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Securities (Amendment) Act 2021.

2. Interpretation

In this Act –

“principal Act” means the Securities Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) in the definition of “associate”, by deleting the word “Schedule” and replacing it by the words “First Schedule”;
- (b) by deleting the definition of “CDS”;
- (c) in the definition of “collective investment scheme”, in paragraph (c), by deleting the word “Schedule” and replacing it by the words “First Schedule”;
- (d) in the definition of “officer”, by deleting the word “CIS” and replacing it by the words “collective investment scheme”;
- (e) by deleting the definition of “SEM”;
- (f) by deleting the definition of “sophisticated investor” and replacing it by the following definition –

“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 of 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 collective investment scheme;
- (g) a CIS manager;
- (h) a pension fund or its management company;
- (i) a closed-end fund;

- (j) an insurer;
- (k) an investment adviser;
- (l) an investment dealer;
- (m) an investor that warrants, at the time of entering into a securities transaction, that –
 - (i) its ordinary business or professional activity includes the entering into securities transactions, whether as principal or agent;
 - (ii) in case he is a natural person, his individual net worth or joint net worth with his spouse exceeds one million USD, or its equivalent in another currency; or
 - (iii) it is an institution with a minimum amount of assets under discretionary management of 5 million USD, or its equivalent in another currency; or
- (n) a person declared by the Commission to be a sophisticated investor;
- (g) by inserting, in the appropriate alphabetical order, the following new definitions –

“Official Clearing and Settlement Facility” means a company listed in the Second Schedule;

“Official Exchange” means a company listed in the Third Schedule;

“permitted CIS activities” means the marketing to a sophisticated investor in Mauritius of units or shares of an entity that carries out the activities of a collective scheme and that is established in a foreign country where such marketing is undertaken –

- (a) by a CIS manager established in Mauritius;
- (b) by a person carrying out the activities of an investment dealer outside Mauritius; or
- (c) in accordance with such other provisions as the Commission may determine;

“retail investor” means such category of investors, other than sophisticated investors, as specified in FSC Rules;

4. Part III of principal Act amended

Part III of the principal Act is amended –

(a) by deleting the following subheading –

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

and replacing it by the following subheading –

Sub-Part B – The Official Exchanges of Mauritius

(b) in section 23, by deleting the words “The SEM” and replacing them by the words “Every Official Exchange”;

(c) in section 24 –

(i) in subsection (1), by deleting the words “the SEM” and replacing them by the words “an Official Exchange”;

(ii) in subsection (2), by deleting the words “the SEM” and replacing them by the words “an Official Exchange”;

(iii) in subsection (3), by deleting the words “the SEM” and replacing them by the words “the Official Exchange”;

(iv) in subsection (4), by deleting the words “The SEM” and replacing them by the words “Every Official Exchange”;

(v) in subsection (5), in the definition of “internal controls”, by deleting the words “the SEM” and replacing them by the words “an Official Exchange”;

(d) in section 25 –

(i) by deleting the words “The SEM” and replacing them by the words “Every Official Exchange”;

(ii) in subsection (2), by deleting the words “the SEM” and replacing them by the words “an Official Exchange”;

- (e) by deleting the following subheading –

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

and replacing it by the following subheading –

Sub-Part C – The Official Clearing and Settlement Facilities of Mauritius

- (f) in section 26, by deleting the words “The CDS” and replacing them by the words “Every Official Clearing and Settlement Facility”;
- (g) in section 27, by deleting the words “The CDS” and replacing them by the words “Every Official Clearing and Settlement Facility”;
- (h) in section 28 –
 - (i) in subsection (1) –
 - (A) by deleting the words “deposited in the CDS” and replacing them by the words “deposited in an Official Clearing and Settlement Facility”;
 - (B) by deleting the words “procedures of the CDS” and replacing them by the words “procedures of the Official Clearing and Settlement Facility”;
 - (ii) in subsection (2) –
 - (A) by deleting the words “between the records of the CDS” and replacing them by the words “between the records of an Official Clearing and Settlement Facility”;
 - (B) by deleting the words “securities deposited in the CDS” and replacing them by the words “securities deposited in the Official Clearing and Settlement Facility”;
 - (C) by deleting the words “the records of the CDS shall” and replacing them by the words “the records of the Official Clearing and Settlement Facility shall”;
- (i) in section 31 –

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

(1) No person, other than the holder of a licence referred to in section 29 or 30 or his agent, shall solicit a retail investor in Mauritius to enter into securities transactions.

- (ii) in subsection (2) –

- (A) by deleting the words “solicit another person” and replacing them by the words “solicit a retail investor”;

- (B) by deleting the words “induces another person” and replacing them by the words “induces the retail investor”;

- (C) in paragraph (a), by deleting the words “such person” and replacing them by the words “the retail investor”;

- (D) in paragraph (b), by deleting the words “such person” and replacing them by the words “the retail investor”;

- (iii) in subsection (3), by inserting, after the words “not apply”, the words “to a sophisticated investor and”;

- (j) in section 53, by adding the following new subsection, existing provision being renumbered as subsection (1) –

(2) This section shall not apply to a foreign investment dealer and to a foreign investment bank that is not soliciting a retail investor in Mauritius.

5. Section 69 of principal Act amended

Section 69 of the principal Act is amended, in subsection (1), by deleting the words “Part VIII” and replacing them by the words “Part VIII and to permitted CIS activities.

6. Section 70 of principal Act amended

Section 70 of the principal Act is amended –

- (a) in subsection (1) –

(i) by repealing paragraph (j) and replacing it by the following paragraph –

(j) an offer or issue of securities by a corporation holding a Global Business Licence;

(ii) by adding the following new paragraph –

(k) an offer or issue of securities by an insurer to persons residing outside Mauritius.

(b) by repealing subsections (2) and (4).

7. Section 78 of principal Act amended

Section 78 of the principal Act is amended, in subsection (3) –

(a) by deleting the words “shall be” and replacing them by the word “shall”;

(b) in paragraph (a), by deleting the words “published in a newspaper of widespread circulation as soon as practicable” and replacing them by the words “as soon as practicable, be published on the website of the issuer and the appropriate securities exchange”;

(c) in paragraph (b), by deleting the word “included” and replacing it by the words “be made available along”.

8. Section 86 of principal Act amended

Section 86 of the principal Act is amended –

(a) in subsection (1), by repealing paragraphs (c) and (d), the semicolon at the end of paragraph (b) being deleted and replaced by a full stop and the word “or” being added at the end of paragraph (a);

(b) in subsection (2), by inserting, after the words “reporting issuer”, the words “, other than a reporting issuer not incorporated in Mauritius,”.

9. Section 88 of principal Act amended

Section 88 of the principal Act is amended, in subsection (8), by deleting the words “Part VIII” and replacing them by the words “Part VIII and to permitted CIS activities”.

10. Section 101 of principal Act amended

Section 101 of the principal Act is amended, in subsection (1), by deleting the words “foreign country” and replacing them by the words “foreign country whose securities are marketed to retail investors in or from Mauritius”.

11. Section 106 of principal Act repealed

Section 106 of the principal Act is repealed.

12. Section 138 of principal Act amended

Section 138 of the principal Act is amended, in the heading, by deleting the words “CDS,” and replacing them by the words “**Clearing and Settlement Facility**”.

13. Section 154 of principal Act amended

Section 154 of the principal Act is amended, in subsection (1)(b), by deleting the word “Schedule” and replacing it by the word “Schedules”.

14. Schedule to principal Act amended

The Schedule to the principal Act is amended by deleting the following word –

SCHEDULE

and replacing it by the following words –

FIRST SCHEDULE

15. New Second and Third Schedules added to principal Act

The principal Act is amended by adding the Second and Third Schedules set out in the Schedule to this Act.

16. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 15]

SECOND SCHEDULE
[Section 2]

OFFICIAL CLEARING AND SETTLEMENT FACILITY

1. Central Depository and Settlement Co. Ltd approved under the Securities (Central Depository, Clearing and Settlement) Act
2. Afrinex Clearing House Ltd

THIRD SCHEDULE
[Section 2]

OFFICIAL EXCHANGE

1. Stock Exchange of Mauritius Ltd established under the repealed Stock Exchange Act
 2. Afrinex Ltd
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