

**THE BANKING BILL**  
(No.XXXVII of 2004)

**Explanatory Memorandum**

The object of this Bill is to amend and consolidate the laws relating to the business of banking and other financial institutions and to provide for related matters.

**P.K. JUGNAUTH**  
*Deputy Prime Minister,*  
*Minister of Finance and Economic Development*

27 August 2004

---

**THE BANKING BILL**  
(No.XXXVI of 2004)

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I - PRELIMINARY**

1. Short title
2. Interpretation
3. Application of the Act

**PART II - LICENSING OF BANKS AND OTHER FINANCIAL INSTITUTIONS**

4. Restriction on use of word "bank"
5. Application for banking licence
6. Determination of application
7. Grant or refusal to grant banking licence
8. Licence fees
9. Display of banking licence
10. Power to vary conditions of banking licence
11. Revocation and surrender of banking licence
12. Licensing of deposit taking business
13. Licensing of cash dealers
14. Granting of cash dealer licences
15. Display of licence
16. Variation, revocation and surrender of licence
17. Procedure in cases of urgency
18. Limitations on management and remuneration
19. Other restrictions

### **PART III - CAPITAL STRUCTURE, RESERVE ACCOUNT AND OTHER FINANCIAL PROVISIONS**

20. Minimum capital requirements of banks
21. Maintenance of Reserve Account of banks
22. Liquid assets of banks
23. Failure to maintain minimum holdings
24. Net-owned funds
25. Minimum liquid assets of foreign exchange dealers
26. Other prudential requirements

### **PART IV - LIMITATIONS ON OPERATIONS**

27. Restriction on payment of dividends
28. Limitation on advances or credits
29. Limitation on concentration of risk
30. Limitation on investments and non-banking operations
31. Acquisition of interest in a financial institution
32. Mergers

### **PART V - FINANCIAL STATEMENTS, AUDIT AND SUPERVISION**

33. Records
34. Financial statements
35. Monthly statements
36. Credit assessments and asset appraisals
37. Disclosure of information
38. Correction of disclosure statement
39. Appointment, powers and duties of auditors
40. Audit committee
41. Termination of services of auditor
42. Regular examinations
43. Special examinations
44. Powers of examiners and special examiners
45. Powers of central bank following examination

### **PART VI - RESPONSIBILITIES OF DIRECTORS AND OTHER OFFICERS OF FINANCIAL INSTITUTIONS**

46. Fit and proper person
47. Disqualification
48. Disclosure of interest
49. Indemnity insurance

## **PART VII - ELECTRONIC BANKING**

50. Automated teller machines
51. Computer access
52. Electronic Delivery Channel
53. Clearing house and payments system

## **PART VIII - ADMINISTRATION OF FINANCIAL INSTITUTIONS**

54. Internal control systems
55. Identity of customers
56. Validity of thumb print
57. Bank's obligations towards customers
58. Customer's duty to report unauthorised signature or alteration
59. Abandoned funds
60. Evidence in relation to banker's books
61. Control of advertisement
62. Hours of business
63. Bank holidays
64. Confidentiality

## **PART IX - CONSERVATORSHIP**

65. Appointment of conservator
66. Powers and duties of conservator
67. Term of office and remuneration of conservator
68. Resumption of office by directors upon conclusion of conservatorship
69. Rehabilitation or reorganisation of financial institution

## **PART X - VOLUNTARY LIQUIDATION**

70. Procedures to go into voluntary liquidation
71. Notice and publication of voluntary liquidation
72. Rights of depositors and creditors
73. Distribution of assets
74. Insufficient assets

## **PART XI - COMPULSORY LIQUIDATION**

75. Board to appoint a receiver
76. Notice of appointment of receiver
77. Duties of receiver
78. Powers of receiver
79. Powers of central bank under this Part
80. Receiver taking possession of financial institution
81. Execution against assets of a financial institution
82. Further powers of receiver
83. Inventory of assets
84. Safe deposit box
85. Receiver dealing with claims
86. Priority of claims
87. Submission of audited accounts to Bankruptcy Court
88. Liquidation of a financial institution
89. Civil and criminal actions

## **PART XII - WINDING UP OF FINANCIAL INSTITUTIONS GENERALLY**

90. Winding up of financial institutions
91. Priority of deposit liabilities
92. Priority of deposit and other liabilities in case of winding up of a bank

## **PART XIII - MISCELLANEOUS**

93. Deposit insurance scheme
94. Derogations from articles 1659, 1660, 1661, 1673, 2087 and 2088 of the Code Civil Mauricien for the purposes of repurchase transactions
95. Immunity
96. Ombudsperson for banks
97. Offences and penalties
98. Prosecution for offence
99. Compounding of offences
100. Guidelines or instructions
101. Regulations
102. Transitional provisions
103. Consequential amendments
104. Repeal and savings
105. Commencement

## **A Bill**

### **To amend and consolidate the laws relating to the business of banking and other financial institutions and to provide for related matters.**

ENACTED by the Parliament of Mauritius, as follows -

#### **PART I - PRELIMINARY**

##### **1. Short title**

This Act may be cited as the Banking Act 2004.

##### **2. Interpretation**

In this Act -

“affiliate”, in relation to a body corporate, means a subsidiary of such body corporate or a company of which the body corporate is a subsidiary or a company that is under common control with the body corporate;

“approval” means an approval given in writing;

“assigned capital” in relation to a bank incorporated outside Mauritius and having a branch in Mauritius, means capital consisting of funds transferred from abroad and such other funds as may be determined by the central bank;

“auditor” means an auditor as stated in section 39 ;

“bank” means a company incorporated under the Companies Act 2001, or a branch of a company incorporated abroad which is licensed by the central bank to carry on banking business;

“banking business” means -

- (i) the business of accepting sums of money, in the form of deposits or other funds, whether or not such deposits or funds involve the issue of securities or other obligations howsoever described, withdrawable or repayable on demand or after a fixed period or after notice; and
- (ii) the use of such deposits or funds, either in whole or in part, for loans, advances, credit or investments, on the own account and at the risk of the person carrying on such business; and
- (iii) includes such services as are incidental and necessary to banking;

“banking laws” includes this Act, the Bank of Mauritius Act 2004 and any other enactment relating to banking;

“banking licence” means a banking licence granted under section 7;

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

“Board” means the Board of Directors of the central bank;

“body corporate” means an incorporated body wherever incorporated;

“cash dealer” means a person licensed by the central bank to carry on the business of foreign exchange dealer or money-changer;

“capital base” means capital as specified by the central bank from time to time;

“central bank” means the Bank of Mauritius established under the Bank of Mauritius Act 2004;

“company” has the same meaning as in the Companies Act 2001;

“constitution”, in relation to a company, has the same meaning as in the Companies Act 2001;

“control”, in relation to a financial institution, means control of any body corporate -

- (a) in which the financial institution, directly or indirectly or acting through one or more persons, owns, controls or has the right to vote 20 per cent or more of the voting securities of the body corporate to elect a majority of its directors; or
- (b) over which the financial institution, directly or indirectly, exercises a controlling influence, as the central bank may determine;

“credit” means any commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, any extension of the due date of a debt, any guarantee issued, and any commitment to acquire a debt security or other right to payment of a sum of money;

“crime” has the same meaning as in the Criminal Code;

“debt security” means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument, whether in certificated or book entry form, giving the right to acquire another negotiable debt security by subscription or exchange;

“demand liabilities” means the deposits in a bank which shall be repaid on demand;

“deposit” means a sum of money paid on terms -

- (a) that it is to be repaid in full, with or without interest or premium of any kind, and either on demand or at a time agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) that are not referable to the provision of property or services or the giving of security,

whether or not evidenced by any entry in a record of the person receiving the sum, or by any receipt, certificate, note or other document;

“deposit taking business” means the business of accepting deposits of money for the specific purpose of financing the activities of the non-bank deposit taking institution receiving such deposits, and not for lending, or for investment other than in Treasury Bills, Bank of Mauritius Bills under the Bank of Mauritius Act 2004 or government securities;

“director” means any person, by whatever name called, who performs substantially the same functions, in relation to the direction of a financial institution, as those performed by a director of a company;

“external auditor” means an auditor appointed under section 39;

“financial institution” means any bank, non-bank deposit taking institution or cash dealer licensed by the central bank;

“financial statements” has the same meaning as in the Companies Act 2001;

“foreign exchange dealer” means any person licensed as such by the central bank to carry on the business of -

- (a) buying and selling foreign currency, including spot and forward exchange transactions and wholesale money market dealings; and
- (b) a money-changer;

“group financial statements” has the same meaning as in the Companies Act 2001;

“group of closely-related customers” means -

- (a) two or more persons who, unless it is otherwise shown, constitute a single risk because one of them, directly or indirectly, has control over the other or others as defined in the Companies Act 2001;
- (b) two or more persons between whom there is no relationship of control as defined in paragraph (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties;

“independent director” means a director having no relationship with, or interest in, whether past or present, the financial institution or its affiliates, which could or could reasonably be perceived to materially affect the exercise of his judgment in the best interest of the financial institution;

“International Accounting Standards” has the same meaning as in the Companies Act 2001;

“licence” means any licence issued under the Act;

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

“money-changer” means any person licensed as such under this Act to carry on solely the business of -

- (a) buying and selling of foreign currency notes, coins and travellers’ cheques;
- (b) replacement of lost or stolen travellers’ cheques; and
- (c) encashment under credit cards;

“net-owned funds” means the aggregate of the amount paid as stated capital and free reserves of a cash dealer reduced by the amount of accumulated balance of loss, deferred revenue expenditure and other intangible assets, as disclosed in its latest audited balance sheet;

“non-bank deposit taking institution” means an institution other than a bank that has been authorised by the central bank to conduct deposit taking business;

“notice” means notice given in writing;



“related party” in relation to a financial institution means-

- (a) a person who has significant interest in the financial institution or the financial institution has significant interest in the person;
- (b) a director or senior officer of the financial institution or of a body corporate that controls the financial institution;
- (c) the spouse, a child, the parent or ascendant or descendant of a natural person covered in paragraphs (a) and (b);
- (d) an entity that is controlled by a person described in paragraphs (a) to (c); or
- (e) a person or class of persons who has been designated by the central bank as a related party because of its past or present interest in or relationship with the financial institution being such that it might be reasonably expected to affect the exercise of best judgment of the financial institution in respect of a transaction;

“Reserve Account” means the account specified in section 21;

“senior officer” of a financial institution means:

- (a) the chief executive officer, deputy chief executive officer, chief operating officer, chief financial officer, secretary, treasurer, chief internal auditor or manager of a significant business unit of the financial institution; or
- (b) a person with similar position and responsibilities as a person in paragraph (a);

“significant interest” means owning, directly or indirectly, 10 per cent or more of the capital or of the voting rights of a financial institution or, directly or indirectly, exercising a significant influence over the management of the financial institution, as the central bank may determine;

“stated capital” has the same meaning as in the Companies Act 2001;

“subsidiary” has the same meaning as in the Companies Act 2001;

“time liabilities” means all deposits, including savings deposits, which are not payable on demand;

“unsecured advance” or “unsecured credit” means -

- (a) any advance or credit, as the case may be, made without security; or
- (b) in relation to any advance or credit made with security -
  - (i) any part thereof which at any time exceeds the market value of the assets constituting the security; or
  - (ii) where the central bank is satisfied that there is no established market value, the unsecured value as determined on the basis of a valuation proposed by the interested party and approved by the central bank.

### **3. Application of the Act**

(1) This Act shall be the charter of, and shall apply to, each financial institution licensed under this Act.

(2) The Development Bank of Mauritius Ltd shall be deemed to be licensed under this Act and shall, subject to such terms and conditions as the central bank may determine, taking into account the developmental nature of its activities, be governed by this Act.

(3) Where a bank is also engaged in any of the financial services regulated by the Financial Services Development Act 2001, the bank shall not carry on business by virtue of its banking licence unless it is also licensed under that Act in respect of those financial services.

## **PART II - LICENSING OF BANKS AND OTHER FINANCIAL INSTITUTIONS**

### **4. Restriction on use of word “bank”**

(1) Except as otherwise provided for in this Act, no person, other than a bank, shall use the word “bank” or any of its derivatives in any language in the description or title under which that person is carrying on business in Mauritius, or make any such representation in any billhead, letter, paper, notice, advertisement or in any other manner whatsoever.

(2) Subject to subsection (3), no person, other than a bank, shall be incorporated or registered under the Companies Act 2001 using a name or title, and no person other than a bank shall change its name to a name or title, that includes the word “bank” or any of its derivatives in any language.

- (3) Nothing in this section shall apply to -
- (a) any institution established under any other enactment;
  - (b) any body whether incorporated or not, that is formed or registered in any country, other than Mauritius, under a name or title that includes the word “bank” or any of its derivatives which is authorised by the central bank to use such word or its derivatives in connection with the establishment or operation of a bank in Mauritius;
  - (c) any subsidiary of a licensed bank which is authorised by the central bank to use the word “bank” or any of its derivatives; and
  - (d) an association of banks or bank employees, formed for the protection of their common interest.

## **5. Application for banking licence**

(1) No person shall engage in banking business in Mauritius without a banking licence issued by the central bank.

(2) Subject to section 12, no person, other than a bank licensed by the central bank, shall engage in receiving deposits from the public.

(3) Any body corporate may apply to the central bank for a banking licence.

(4) Every application for a banking licence shall be made in such medium and in such form as the central bank may determine and shall be accompanied by -

- (a) a copy of the certificate of incorporation of the applicant;
- (b) in the case of a foreign company registered in Mauritius, a copy of the certificate of registration and a written confirmation from the banking supervisory authority in the applicant’s country of incorporation that the supervisory authority has no objection to the applicant’s proposal to carry on banking business in Mauritius;
- (c) a copy of the constitution of the applicant;
- (d) a certified list of the full names and address of the directors, beneficial owners, chief executive officer and managers of the applicant and a list of its shareholders owning 10 per cent or more of its shares;
- (e) a copy of the financial statements of the applicant, as of a date within 60 days preceding the date of application;

- (f) a business plan giving the nature of the planned business, organisational structure and internal control, projected financial statements including cash flow statements for each of the next 3 financial years;
- (g) in respect of the directors, chief executive officer, managers and shareholders holding a significant interest, of the applicant, an identification and a certificate of good conduct, in such form as may be specified by the central bank, from a competent authority or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy;
- (h) payment of the appropriate non-refundable processing fee as may be determined by the central bank by regulations made by the central bank, with the approval of the Minister; and
- (i) such other information or document as the central bank may specify in the form of application.

(5) The documents specified under subsection (4)(a), (b) and (c) shall be authenticated copies, and where the originals are not in English language, certified translations in English.

(6) Where a shareholder of the applicant is a body corporate, the application shall, in addition, be accompanied by the information required under subsection (4) that may be relevant and applicable to the body corporate.

(7) The central bank shall, within 30 days of the receipt of an application under subsection (4), notify the applicant in writing whether or not the application is complete.

(8) Where the application under subsection (4) is not complete, the central bank shall, immediately after the expiry of the delay of 30 days specified in subsection (7), call for such supplementary information or documents as it may require for the purpose of determining the application.

(9) An application under this section may be withdrawn by notice to the central bank at any time before it is determined.

## **6. Determination of application**

(1) The central bank may, on an application duly made in accordance with section 5 and after being provided with all such information and documents as it may require under that section, determine the application.

(2) The central bank shall give notice of its determination to the applicant under subsection (1), within 60 working days of receipt of a complete application under section 5(4), or of the supply of any supplementary information called for by the central bank under section 5(8), as the case may be.

## 7. Grant or refusal to grant banking licence

(1) The central bank may, following its determination of an application under section 5, grant or refuse the application.

(2) No banking licence shall be granted by the central bank unless it is satisfied -

(a) that the applicant has -

(i) demonstrated that the directors or senior officers of the applicant have technical knowledge, experience in banking or finance and are fit and proper persons to carry on the proposed banking business;

(ii) sufficient financial resources and an adequate capital structure to serve as a continuing source of financial support for the proposed bank;

(iii) demonstrated the soundness and feasibility of the applicant's plans for the future conduct and development of the business of the proposed bank, including accounting and internal control systems ;

(iv) the ability and willingness to comply with such other conditions as the central bank may impose under the banking laws;

(b) as to the history and character of the business and management of the applicant;

(c) as to the convenience and needs of the community or market to be served; and

(d) as to the fitness and suitability of the applicant's shareholders, particularly shareholders holding a significant interest.

(3) Where the applicant is the branch incorporated abroad and is making an application either singly or in joint venture with a bank incorporated in Mauritius, the central bank shall satisfy itself that the bank incorporated abroad is a reputable international bank, having operated as a bank in the jurisdiction of its head office for at least 5 years, and is subject to consolidated supervision by competent foreign regulatory authorities.

(4) The central bank may refuse to grant a banking licence where the applicant intends to operate under a name which -

- (a) so resembles that of an existing financial institution in Mauritius or elsewhere as to be likely to mislead the public;
- (b) is calculated to suggest falsely a connection with a person or authority outside Mauritius;
- (c) is calculated to suggest falsely a special status in relation to the Government of Mauritius, any foreign Government or any public body in or outside Mauritius, or that the applicant enjoys the official support or patronage thereof.

(5) Where the central bank grants a banking licence, it shall notify the applicant in writing within 7 days of its decision, and shall, upon payment of the annual licence fee, issue a banking licence to the applicant.

(6) A banking licence granted under subsection (5) –

- (a) shall specify -
  - (i) the name of the licensee;
  - (ii) any financial activity which the bank may be authorised to conduct; and
  - (iv) the place or places at which the licensee is authorised to conduct such business; and
- (b) shall be subject to such conditions as the central bank may impose, including a condition that the licensee shall pay any penalty imposed under section 45(2)(c);

(7) No bank shall carry on banking business in any branch or office, other than its principal place of business, unless the bank has obtained the prior approval of the central bank.

(8) No bank shall open or keep open a new place of business or close or keep closed an existing place of business, or change the location of its business, without the approval of the central bank.

(9) No bank shall be engaged in any business other than the business specified in the licence granted to it under this section.

(10) A banking licence granted under this section shall not *de facto* or *de jure* be transferable without the prior approval of the central bank.

## **8. Licence fees**

The holder of a banking licence shall pay to the central bank such annual licence fee as may be determined by the central bank by regulations made by the central bank, with the approval of the Minister.

## **9. Display of banking licence**

Every bank shall at all times display, in a conspicuous place in the public part of its principal place of business, the licence granted to it under this Part and an authenticated copy of the licence shall be displayed in each branch or office of the bank.

## **10. Power to vary conditions of banking licence**

(1) The central bank may, at any time, amend, vary or cancel, vary or cancel any condition attached to, or impose new conditions on, the licence of a bank.

(2) Where the central bank proposes to act under subsection (1), it shall notify the bank in writing thereof.

(3) The bank may, within 7 days of receipt of a notice under subsection (2), make representations in writing to the central bank.

(4) The central bank shall, after considering any representations made under subsection (3), take a decision on the action proposed in the notice and notify the bank in writing within 7 days of its decision.

## **11. Revocation and surrender of banking licence**

(1) Subject to the other provisions of this section, the central bank may revoke a banking licence issued under this Act where the bank -

- (a) fails to commence business within a period of 12 months from the date the licence is issued;
- (b) is carrying on business in a manner which is contrary or detrimental to the interests of its depositors or the public;
- (c) has insufficient assets to cover its liabilities to its depositors or the public;
- (d) fails to comply with any directive or instruction issued by the central bank under the banking laws;
- (e) contravenes any provision of the banking laws;

- (f) has been convicted by a court in Mauritius, a court of the Commonwealth or a court of such other countries as may be prescribed, of an offence under any enactment relating to anti-money laundering or prevention of terrorism or the use, laundering in any manner, of proceeds or funding of terrorist activities or other illegal activities or is the affiliate or subsidiary or parent company of a financial institution which has so been convicted, provided the conviction is a final conviction;
- (g) ceases to carry on banking business;
- (h) goes into receivership or liquidation, is wound up or otherwise dissolved; or
- (i) in the case of a branch of a bank incorporated abroad, such bank has lost its banking licence in the jurisdiction where its head office is located.

(2) Subject to subsection (3), where the central bank decides to revoke a banking licence, it shall serve on the bank a notice of its decision to do so, specifying a date, which shall be not less than 30 days of the date of the notice, on which the revocation shall take effect.

(3) The central bank may, where subsection (1)(h) applies, revoke the banking licence forthwith without being required to serve the notice under subsection (2).

(4) The bank may, within 14 days of service of a notice under subsection (2), make representations to the central bank.

(5) The central bank shall, after considering any representations made under subsection (4), take a final decision on the revocation and shall notify the bank in writing of its decision.

(6) Where the banking licence of a company is revoked, the banking laws shall continue to apply to the banking business of that company, to such extent as the central bank may direct.

(7) A bank may, with the prior permission of the central bank and subject to such conditions as may be specified by the central bank, surrender its licence at any time.

(8) The central bank may, before or after the revocation or surrender of a banking licence, make such inquiry and give such directions as it thinks fit, so as to ensure that the interests of depositors and of the public are preserved.

(9) Where a banking licence is revoked or surrendered under this section, the central bank shall give public notice thereof in the *Gazette* and in at least 3 daily newspapers in wide circulation in Mauritius.



## **12. Licensing of deposit taking business**

(1) No person other than a non-bank deposit taking institution in operation at the coming into force of this Act shall carry on deposit taking business in Mauritius.

(2) Every non-bank deposit taking institution in operation at the coming into force of this Act, shall take out a licence of deposit taking business granted by the central bank.

(3) The licence under subsection (2) shall be granted on such terms and conditions as the central bank deems appropriate.

(4) Where the central bank grants a licence under this section, it shall notify the applicant thereof in writing and upon payment of the appropriate annual licence fee as may be prescribed by regulations made by the central bank, with the approval of the Minister, the central bank shall issue the licence.

(5) A non-bank deposit taking institution shall be subject to the same prudential regulation as a bank, including the provisions of Part III, Part IV, Part V and Part VI and any guidelines and instructions issued thereunder and the existing terms and conditions of non-bank deposit taking institutions shall stand amended to that effect.

(6) The central bank shall encourage proposals to sell or merge the deposit taking business of an existing non-bank deposit taking institution to -

- (a) another non-bank deposit taking institution, with the object of establishing a bank; or
- (b) a bank.

## **13. Licensing of cash dealers**

(1) No person shall, subject to subsection (2), engage in the business of cash dealer in Mauritius without an appropriate licence granted by the central bank.

(2) No person, other than a company, shall be granted a licence under section 14.

(3) No person, other than a bank, shall engage in foreign exchange business in Mauritius without a foreign exchange dealer licence issued by the central bank or in money-changer business in Mauritius without a money-changer licence issued by the central bank.

## **14. Granting of cash dealer licences**

(1) Any body corporate desirous of carrying on business of cash dealer in Mauritius shall, before commencing any such business, apply to the central bank, for a cash dealer licence.

(2) Any application under subsection (1) shall be made in such medium and in such form as the central bank may determine and shall be accompanied by -

- (a) such information or document as may be required for the purposes of determining the application; and
- (b) payment of the appropriate non-refundable processing fee as may be prescribed by regulations made by the central bank, with the approval of the Minister.

(3) The central bank may request the applicant to furnish such additional information or document as it may require to process the application.

(4) The central bank shall, within 30 days of the receipt of the application, or the supply of any additional information or document requested under subsection (3), determine whether to grant or refuse the application and inform the applicant within 7 days of its decision.

(5) Where the central bank determines to grant a licence under this section, it shall, upon payment of the annual licence fee as may be prescribed by regulations made by the central bank, with the approval of the Minister, issue the licence on such terms and conditions as it may deem fit to impose.

## **15. Display of licence**

Every cash dealer licensed under section 14 and every non-bank deposit taking institution licensed under section 12 shall at all times display, in a conspicuous place at its principal place of business, the licence granted to it and an authenticated copy of the licence shall be displayed in each branch or office of the cash dealer or the non-bank deposit taking institution.

## **16. Variation, revocation and surrender of licence**

The provisions of sections 10 and 11 shall apply, with such modifications and adaptation as may be necessary, to a licence granted to a non-bank deposit taking institution under section 12 and to a cash dealer under section 14.

## **17. Procedure in cases of urgency**

(1) Notwithstanding section 10, 11 or 16, the central bank may, in cases of urgency and in the public interest -

- (a) amend, vary or cancel any condition attached to a licence or impose a condition on a licence; or
- (b) revoke a licence.

(2) Any amendment, variation, cancellation or imposition of a condition of a licence or any revocation of a licence specified in subsection (1) shall be notified to the financial institution and shall have immediate effect and bind the financial institution accordingly.

(3) The financial institution may, within 7 days of the notification under subsection (2), make representations to the central bank.

(4) The central bank shall, within 14 days of any representations made under subsection (3) and after considering those representations, notify the financial institution of its final decision.

(5) Where a licence is revoked under this section, the central bank shall give public notice in the *Gazette* and in at least 3 daily newspapers in wide circulation in Mauritius.

## **18. Limitations on management and remuneration**

(1) No financial institution incorporated in Mauritius shall be managed by any person other than the persons on its board of directors or by any person other than persons appointed by the board of directors.

(2) Any branch of a foreign financial institution shall be managed by persons appointed by the parent financial institution, which appointment shall be subject to the approval of the central bank.

(3) No financial institution which is incorporated in Mauritius shall, subject to subsection (4), have a board of directors composed of less than -

- (a) 7 natural persons; and
- (b) 40 per cent independent directors.

(4) The central bank may, having regard to the scope of the activities undertaken by a financial institution, require that its board of directors be composed of such higher number of persons or, where the financial institution is a subsidiary or an associate of a foreign banking group of companies, 40 per cent non-executive directors instead of 40 per cent independent directors, as the central bank may direct.

(5) No financial institution shall employ any person whose remuneration is linked to the income of the financial institution or to the level of activities on customers' accounts.

(6) Without limiting the generality of subsections (1) and (2), the directors of a financial institution shall -

- (a) establish such committees of the board as the board may deem necessary to discharge its responsibilities effectively;
- (b) establish such procedures as may be necessary to resolve conflicts of interest, including techniques for the identification of potential conflict situations and for restricting the use of confidential information;

- (c) take into account the requirements of the banking laws, establish such procedures as may be necessary to provide disclosure of information to customers and other parties having a direct interest in the financial institution; and
- (d) approve major policies of the financial institution, including, as applicable, investment, lending and risk management policies and standards and procedures in respect of such policies.

(7) Every director or senior officer of a financial institution shall, in exercising any of his powers and discharging any of his duties -

- (a) act honestly and in good faith and in the best interest of the financial institution; and
- (b) exercise care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.

(8) Every director or senior officer of a financial institution shall comply with the banking laws, guidelines and instructions issued by the central bank and the financial institution's constitution and by-laws.

(9) Every former director or senior officer of a financial institution shall remain accountable for his obligation to have met the standards of conduct in accordance with subsection (7) and the compliance requirements of subsection (8) during his term of office.

(10) No provision in any contract or in the constitution of a company or any resolution of a company shall relieve any director or senior officer from the duty to act in accordance with the banking laws or from liability for breach thereof.

## **19. Other restrictions**

No financial institution shall -

- (a) be amalgamated with any other bank or other financial institution except in accordance with section 32;
- (b) cause or permit any person -
  - (i) to hold any significant interest in any class of shares in its stated capital, except with the prior approval of the central bank; or
  - (ii) to acquire, directly or indirectly, any interest in any class of shares in its stated capital in contravention of section 31;
- (c) make, except with the prior approval of the central bank, any alteration to its constitution or instrument of incorporation; or

- (d) with a view to engaging in non-competitive market practices detrimental to consumers of financial services, make an agreement or arrangement with another financial institution with respect to -
- (i) the rate of interest on a deposit;
  - (ii) the rate of interest or the charges on a loan or other forms of credit;
  - (iii) the amount or kind of any charge for a service provided to a customer;
  - (iv) the amount or kind of credit to a customer;
  - (v) the kind of service to be provided to a customer, or
  - (vi) the classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld.

**PART III - CAPITAL STRUCTURE, RESERVE ACCOUNT  
AND OTHER FINANCIAL PROVISIONS**

**20. Minimum capital requirements of banks**

(1) The central bank shall not grant, and no bank shall hold, a banking licence unless it maintains and continues to maintain in Mauritius, an amount paid as stated capital or an amount of assigned capital of not less than 200 million rupees or the equivalent amount in any freely convertible currency held in assets in or outside Mauritius, as may be approved by the central bank or such higher amount as may be prescribed, after deduction of the accumulated losses of the bank.

(2) Subject to subsection (3), every bank shall maintain, in Mauritius, capital of not less than 10 per cent, or such higher ratio as may be determined by the central bank, of such of that bank's risk assets and of other types of risks, as may be specified by the central bank, the basis of computation, including the definition of capital and risk assets and other types of risks, being specified by the central bank.

(3) The central bank may require a higher percentage or ratio from a bank taking into account the requirement of subsection (4).

(4) In determining the percentage specified in subsection (3) for different banks, the central bank shall have regard to -

- (a) the nature, scale and risks of the bank's operations;
- (b) other financial resources available to the bank; and
- (c) the amount and nature of capital required, in the central bank's opinion, to protect the interests of depositors and potential depositors and the public.

(5) Notwithstanding subsection (2), in the case of a bank in receivership or in an action contemplated under Part IX of this Act, the central bank may temporarily set a different percentage or ratio.

## **21. Maintenance of Reserve Account of banks**

(1) Subject to subsection (2), every bank shall maintain a Reserve Account and shall transfer each year to the Reserve Account out of the net profits of that year, after due provision has been made for income tax, a sum equal to not less than 15 per cent of the net profits until the balance in the Reserve Account is equal to -

- (a) in the case of a bank incorporated in Mauritius, the amount paid as stated capital;
- (b) in the case of a bank incorporated outside Mauritius and having a branch in Mauritius, the amount of its assigned capital.

(2) Where a bank makes a loss, the net loss shall be set off against any profit made in subsequent years until a position of net cumulative profit is reached and the transfer to the Reserve Account specified in subsection (1) shall be calculated and made on the net position.

(3) No profit shall be transferred and no dividend shall be declared unless the transfer specified in subsection (1) has been made, but the central bank may, where it considers the balance held in the Reserve Account of the bank to be adequate, declare, by order in writing directed to the bank, that subsection (1) shall not apply to that bank for such period and subject to such conditions as may be specified in the order.

## **22. Liquid assets of banks**

(1) Every bank shall maintain in Mauritius, adequate and appropriate forms of liquidity and comply with any guidelines or instructions issued by the central bank in relation thereto.

(2) The level of liquidity to be maintained by a bank may be expressed as a percentage of such of that bank's deposits and other liabilities, including contingent liabilities, as may be determined by the central bank, averaged on a basis to be fixed by the central bank.

(3) Notwithstanding any guidelines or instructions issued under subsection (1), the central bank may, by order in writing, direct a bank to provide additional liquidity in such form and amounts and within such time frame as may be determined by the central bank.

(4) In determining the additional liquidity referred to in subsection (3), the central bank shall in each case have regard to -

- (a) the nature, scale and risks of the bank's operations;
- (b) other financial resources available to the bank;
- (c) the relationship between the bank's liquid assets and its actual or contingent liabilities;
- (d) the times at which the liabilities shall or may fall due and the assets mature.

(5) For the purposes of this section, "liquid assets" includes cash, balances with banks in Mauritius, balances with foreign banks and freely tradable securities denominated in freely convertible currencies as may be specified by the central bank and notified to the bank, Bank of Mauritius Bills, Treasury Bills and other securities issued by the Government of Mauritius, and such other assets, of such classes and maturities and for such other aggregate figures, as may be specified by the central bank and notified to the bank.

### **23. Failure to maintain minimum holdings**

(1) Every bank shall furnish, within a reasonable time and in any event not later than 7 days from the date of a request to that effect made by the central bank, such information as may be required by the central bank to indicate whether the bank has complied with section 22.

(2) No bank shall -

- (a) allow its holding of liquid assets to be less than the percentage, level or proportion which is determined by the central bank under section 22;
- (b) grant or permit, for the period during which liquid assets are less than the percentage level or proportion determined by the central bank under section 22, any increase in its outstanding loans, overdrafts or investments.

### **24. Net-owned funds**

(1) Every cash dealer shall at all times maintain such amounts of net-owned funds as may be determined by the central bank.

(2) No cash dealer shall declare, credit or pay any dividend or make any other transfer from profits until -

- (a) its net-owned funds requirement has been met;
- (b) adequate provision has been made for existing or contingent liabilities.

**25. Minimum liquid assets of foreign exchange dealers**

Every foreign exchange dealer shall at all times maintain such minimum liquid assets, equivalent to not less than 10 per cent of its liabilities, as may be determined by the central bank.

**26. Other prudential requirements**

(1) Sections 7, 10, and 33 of this Act shall apply to any cash dealer.

(2) Every cash dealer shall at all times comply with such other prudential requirements as may be specified by the central bank.

**PART IV - LIMITATIONS ON OPERATIONS****27. Restriction on payment of dividends**

(1) Notwithstanding the Companies Act 1984 and Companies Act 2001, no bank shall declare, credit or pay, or transfer abroad, any dividend or make any other transfer from profits until -

- (a) the central bank is satisfied that the payment of dividend or any other transfer from profits will not cause the bank to be in contravention of the capital adequacy requirements of section 20 or liquidity requirements of section 22, or likely to impair the future capital adequacy or liquidity of the bank.
- (b) any impairment in its amount paid as stated capital or assigned capital has been made good; and
- (c) adequate provision, to the satisfaction of the central bank, has been made in respect of impaired credits.

(2) For the purposes of this section, an issue of bonus shares out of profits shall be deemed to be a payment of dividends.

(3) Every bank shall make quarterly reports to the central bank on the matters specified in subsection (1) in such form and in such manner as may be approved by the central bank.



**28. Limitation on advances or credits**

- (1) No bank or non-bank deposit taking institution shall -
  - (a) grant any advance, or credit against the security of its own shares;
  - (b) grant to, or permit to be outstanding from, its officers or employees unsecured advances or unsecured credit which, in the aggregate and in relation to any officer or employee, exceed the annual emoluments of that officer or employee; or
  - (c) grant credits to, or permit to be outstanding from, or purchase securities issued by or the assets of, an affiliate in an amount which exceeds such maximum limit as may be determined by the central bank.

(2) The central bank may determine the maximum limits of credits and off-balance sheet commitments, which a bank or non-bank deposit taking institution may grant to a related party and to all related parties.

(3) Any transaction with any related party involving credit, or off balance sheet commitments and the acquisition of securities and other assets shall be made on substantially the same terms, including interest rates and collateral required, as those prevailing at the time for comparable transactions with other persons and may not involve more than the normal risk of repayment or present other unusual features.

(4) The central bank may issue guidelines governing related party transactions including limitation on such transactions, their approval process and their public disclosure.

**29. Limitation on concentration of risk**

(1) The central bank shall by way of guidelines set out regulatory credit concentration limits related to the capital base of a bank in respect of –

- (a) individual large credit exposure, including off balance sheet commitments, to any one customer or group of closely-related customers; and
- (b) aggregate amount of large credit exposure to all customers and groups of closely-related customers.

(2) The central bank may issue instructions to banks clarifying who is deemed a customer or group of closely-related customers under subsection (1).

(3) Any instructions issued by the central bank shall be in writing and binding on the banks.

(4) The central bank may exempt from compliance with this section as it deems fit, the part of a bank's banking business or investment banking business that is conducted in currencies other than Mauritius currency.

### 30. Limitation on investments and non-banking operations

(1) Subject to the other provisions of this section, no financial institution shall, except in the course of the satisfaction of debts due to it by the default of the debtor -

- (a) engage, whether on its own account or on the basis of a commission, in the wholesale or retail trade, including the import or export trade, or in any business other than the business for which the financial institution is licensed under this Act;
- (b) acquire or hold any interest in the capital of any financial, commercial, agricultural, industrial or other undertaking other than in respect of -
  - (i) a purchase, for the account of a customer and without recourse, of shares or stock;
  - (ii) subject to the approval of the central bank, a shareholding in any undertaking the object of which is to insure deposits or promote the development of a money or securities market in Mauritius;
  - (iii) subject to the approval of the central bank and to subsection (8), a shareholding in any undertaking the object of which is to promote the economic development of Mauritius; or
  - (iv) subject to the approval of the central bank, a shareholding in any other undertaking up to an amount which, in the aggregate, does not exceed 30 per cent of the financial institution's current capital base, the shareholding being valued at its fair market value or, where it is not practicable to determine the fair market value, at a valuation approved by the central bank.

(2) The central bank may prescribe the classes of investment permitted under subsection (1)(b)(iii) and the maximum investment that a financial institution may make in it, provided that such classes shall be so closely related to banking as to be reasonably incidental thereto.

(3) A bank engaging in factoring, financial leasing, mutual fund sales operations, or securities brokerage operations shall do so only through a subsidiary of the bank.

(4) A bank licensed under this Act shall not have a significant interest in another bank in Mauritius.

(5) A bank shall not purchase or acquire any immovable property or any right therein except as may be reasonably necessary for the purpose of conducting its operations, including provision for foreseeable expansion, or of housing or providing amenities for its staff.

(6) Where a financial institution, in the course of the satisfaction of debts due to it, acquires any interest in the capital of any undertaking or in any other property, movable or immovable, by the default of the debtor, it shall dispose of the interest without undue delay.

(7) Notwithstanding subsection (1), a bank may invest an amount not exceeding 10 per cent of its current capital base in shares of companies quoted on the Official List of the Stock Exchange established under the Stock Exchange Act, subject to any such investment -

- (a) not being made by the bank directly or indirectly in its own shares; and
- (b) not exceeding, in the aggregate, 5 per cent of the total shareholdings of any such company.

(8) A bank may for the purpose of participating in the equity capital of enterprises and subject to such investment not having the effect of impairing such capital adequacy requirements as may be imposed from time to time pursuant to section 20, set up or participate in an equity fund approved by the Financial Services Commission established under the Financial Services Development Act 2001.

(9) The central bank may exempt a bank, with respect to its banking business or investment banking business in currencies other than Mauritius currency, from compliance with subsections (1)(b) and (5) in so far as activities and operations referred to in those subsections are carried on outside Mauritius and do not involve the acquisition of any interest in movable or immovable property in Mauritius.

### **31. Acquisition of interest in a financial institution**

(1) No financial institution shall, except as may be approved by the central bank, cause or permit any person to pledge or sell any of his shares which may, directly or indirectly, cause any other person to acquire a significant interest in a bank.

(2) Any sale or pledge of shares in contravention of subsection (1) shall be invalid, null and void and cause the person to forfeit all rights pertaining to voting or payment of dividends.

(3) A person proposing to acquire significant interest under subsection (1) shall give 30 days prior notice to the central bank of the acquisition, and such notice shall contain -

- (a) the name, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made and shall be accompanied by a certificate of good conduct in respect of each person from a competent authority or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy, in respect of each of the persons;

- (b) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made together with a statement of income and cash flow statement;
  - (c) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;
  - (d) the identity, source and amount of the funds or other consideration used or to be used in making the acquisition;
  - (e) any plans or proposals which any acquiring party making the acquisition may have to liquidate the financial institution, to sell its assets or merge it with any company or to make any other major change in its business, corporate structure or management; and
  - (f) any additional relevant information that the central bank may require.
- (4) The central bank shall not approve any proposed acquisition where -
- (a) the proposed acquisition would give rise to undue influence or would result in a monopoly or substantially lessen competition;
  - (b) the financial condition of any acquiring person might jeopardise the financial stability of the financial institution or prejudice the interests of its depositors;
  - (c) the competence, experience or integrity of any acquiring person or of any of the proposed managers indicates that it would not be in the interest of the depositors of the financial institution or in the interest of the public to permit such person to acquire significant interest in the financial institution;
  - (d) the proposed acquisition will not be conducive to the convenience and needs of the community or market to be served; or
  - (e) any acquiring person fails to furnish the central bank all the information that it requires.
- (5) Any shares of a financial institution held by a person without approval of the central bank in subsection (1) shall be null and void and not entitled to any voting rights or payment of dividends.

### **32. Mergers**

- (1) No financial institution shall merge or consolidate with any other financial institution or acquire, either directly or indirectly, the assets of, or assume liability to pay any deposit made in, any other financial institution except with the prior approval of the central bank.

(2) Any financial institution which proposes any merger, consolidation, acquisition or assumption of liability, under subsection (1) shall give 30 days' prior notice to the central bank.

(3) On receipt of a notice under subsection (2), the central bank shall take into consideration the financial and managerial resources and future prospects of the existing and proposed financial institutions, and the convenience and needs of the public.

(4) The central bank shall not approve a proposed transaction referred to in subsection (2) where the proposed transaction would result in a monopoly or substantially lessen competition unless it finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the public.

## **PART V - FINANCIAL STATEMENTS, AUDIT AND SUPERVISION**

### **33. Records**

(1) Every financial institution shall, for the purposes of the banking laws, keep in relation to its activities, a full and true written record of every transaction it conducts.

(2) The records under subsection (1) shall include -

- (a) accounting records exhibiting clearly and correctly the state of its business affairs, explaining its transactions and financial position so as to enable the central bank to determine whether the financial institution has complied with all the provisions of the banking laws;
- (b) the financial statements;
- (c) records showing, for each customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer;
- (d) proper credit documentation; and
- (e) such other records as the central bank may determine.

(3) Every record under this section shall be kept -

- (a) in written form or kept on microfilm, magnetic tape, optical disk, or any other form of mechanical or electronic data storage and retrieval mechanism as the central bank may agree to;
- (b) for a period of at least 10 years after the completion of the transaction to which it relates;
- (c) at the principal office of the financial institution, or at such other place, in Mauritius, as may be approved by the central bank; and

- (d) for identification purposes, in chronological order or sequential order, as appropriate, in batches of convenient size.

### **34. Financial statements**

(1) Every financial institution shall, not later than 3 months after the end of its financial year, prepare, in accordance with the International Accounting Standards and such guidelines, not inconsistent with such Standards, as may be issued by the central bank, its audited financial statements for the financial year, in such form as may be approved by the central bank.

(2) The central bank may, having regard to the scope of the activities undertaken by a financial institution, require the financial institution to prepare in respect of its distinct types of business its financial statements on such distinct basis as may be determined by the central bank.

(3) The central bank may, by notice, require a financial institution to prepare, in addition to the financial statements under subsection (1), its financial statements for such shorter period as may be specified in the notice.

(4) The financial statements under subsections (1), (2) and (3) shall be audited in the manner specified in section 39.

(5) The financial statements under this section shall be jointly signed by -

- (a) in the case of a financial institution incorporated in Mauritius, its chief executive officer and 2 of its directors; or
- (b) in the case of a financial institution incorporated outside Mauritius and having a branch in Mauritius, its chief executive officer and the next most senior officer of the principal office of the financial institution in Mauritius.

(6) Every financial institution shall -

- (a) exhibit at all times, in a conspicuous place, at its principal place of business in Mauritius and at each of its offices and branches in Mauritius, an authenticated copy of its latest financial statements under this section duly audited; and
- (b) not later than such period as the central bank may direct but, in any case, not later than 3 months after the end of the financial year of the financial institution -
  - (i) forward to the central bank a duly certified copy of its latest financial statements under this section duly audited; and

- (ii) cause to be published in the *Gazette* and in at least 3 daily newspapers in wide circulation in Mauritius, its latest audited balance sheet, income statement, statement of changes in equity, cash flow statement and the auditor's report.

(7) Every financial institution incorporated outside Mauritius and having a branch in Mauritius shall furnish to the central bank, not later than one month after publication, a copy of its audited annual consolidated financial statements, together with notes thereon and copies of the reports of the auditor and the board of directors.

### **35. Monthly statements**

(1) Every financial institution shall, not later than the tenth working day of each month, forward to the central bank a statement, in such form and in such medium as may be approved by the central bank, showing the assets and liabilities of all its offices and branches in Mauritius together with an analysis of advances, bills discounted and any other credit as at the close of business on the last working day of the preceding month.

(2) Every financial institution shall furnish the central bank, within such period and in such manner as it may require, with such additional statements and information relating to the operations of the financial institution and those of its affiliates in Mauritius or its branches and affiliates outside Mauritius as the central bank may consider necessary or expedient to obtain for the purposes of the banking laws.

### **36. Credit assessments and asset appraisals**

(1) The central bank may, by notice to any bank, require such bank -

- (a) to undergo an independent assessment of credit worthiness or financial stability by a person or organisation nominated or approved by the central bank;
- (b) to undergo an independent appraisal to assess the value of its assets, in particular real estate and other related assets, by a person or organisation nominated or approved by the central bank; and
- (c) to transmit to the central bank the results of an assessment under paragraph (a) or appraisal under paragraph (b) in such manner as the central bank may direct.

(2) Where the value determined in subsection (1)(b) varies materially from the value in the books of accounts of the bank, the central bank may send to the bank, its auditors and the audit committee a notice of the appropriate value of the assets as determined by the independent appraisal, and require that such value be reflected in the books of accounts of the bank.

(3) Every person appointed pursuant to subsection (1) shall have a right of access at all times to the books, accounts, records and vouchers of the bank in relation to which the person has been appointed and those of its subsidiaries in Mauritius and of its branches and subsidiaries abroad, if any, and may require from the directors or senior officers, employees and agents of the bank or its subsidiaries in Mauritius or its branches and subsidiaries abroad, if any, such information and explanations as may appear to be necessary for the performance of the person's duties under this section.

(4) Every bank shall comply at its own expense with an assessment or appraisal under subsection (1).

### **37. Disclosure of information**

(1) The central bank may, by notice, require all financial institutions or all members of any class of financial institutions, to publish –

- (a) within the time specified in the notice, a disclosure statement; and
- (b) within 45 days after the end of each calendar quarter, a quarterly report,

duly signed by its directors.

(2) The substance of the disclosure statement or quarterly report under subsection (1) shall be specified by the central bank.

(3) A financial institution shall not be required to publish information relating to the individual affairs of any particular customer or client of the financial institution.

(4) Subject to any guidelines or instructions issued by the central bank, where a bank issues a credit or charge card to a person, it shall disclose to him -

- (a) his rights and obligations in respect of -
  - (i) the credit limit authorized under the card and the amount of indebtedness outstanding at any time;
  - (ii) the period of time for which each statement is issued;
  - (iii) any charges and interest costs for which the person becomes responsible for accepting and using the card;
  - (iv) the minimum amount in respect of the balance outstanding that must be paid at the end of each statement period; and
  - (v) the maximum amount of the cardholder's liability for unauthorized use of the card where it is lost or stolen;



- (b) the cost of borrowing in respect of any loan obtained through the use of the card, the exchange rate applied and the manner in which it is calculated, and in the event the required instalment is not paid on the due date, particulars of the charges and penalties to be paid by the cardholder; and
- (c) the amount of any charge or fee for which the cardholder is responsible for accepting or using the card and the manner in which the charge is calculated;

(5) Where a bank intends to change any of the matters referred to in subsection (4), the bank shall give the cardholder a written notice of the change at least 30 days prior to the effective date of the change.

- (6) Where a financial institution extends credit to a person, it shall disclose to him -
  - (a) the interest charged thereon and the manner in which it is to be calculated;
  - (b) any applicable fees or other charges and the manner in which they are to be calculated; and
  - (c) all terms and conditions applicable to the credit, clearly identifying the obligations of the borrower.

### **38. Correction of disclosure statement**

Where the central bank considers that a disclosure statement or quarterly report under section 37 published by a financial institution -

- (a) contains information that is incorrect, false or misleading; or
- (b) does not contain information which it is required to contain, whether or not the information contained in the disclosure statement is incorrect, false or misleading as a result of the omission,

the central bank may, without prejudice to any action it may take under the banking laws, by notice to the financial institution, require the financial institution to -

- (i) publish a disclosure statement that does not contain incorrect, false or misleading information;
- (ii) publish a disclosure statement that contains the information that was omitted; or
- (iii) take such other corrective action as the central bank may specify in the notice.

### **39. Appointment, powers and duties of auditors**

(1) Subject to this section, a financial institution shall from time to time appoint, and at all times have, one or more firm of firms of auditors.

(2) Any firm of auditors appointed under subsection (1) shall be subject to the approval of the central bank.

(3) In addition to the requirements of the Companies Act 2001, the firm of auditors shall be independent, experienced in the audit of financial institutions and have the necessary resources to undertake audits of financial institutions on a consolidated basis as determined by the central bank.

(4) No partner in a firm of auditors appointed under subsection (1) shall be responsible for the audit of a financial institution for a continuous period of more than 5 years.

(5) Where a partner in a firm of auditors has been responsible for the audit of a financial institution for a continuous period of 5 years or less, that partner shall not be entrusted the responsibility for the audit of the same financial institution before a period of 5 years from the date of termination of his last audit assignment.

(6) The firm of auditors shall make a report -

- (a) in the case of a financial institution incorporated in Mauritius, to the shareholders of the financial institution, and the report shall be consolidated to include the affiliates and the overseas branches and affiliates of the financial institution, if any;
- (b) in the case of a financial institution incorporated outside Mauritius, to the head office of the financial institution.

(7) The auditor's report shall be made on the financial statements of the financial institution.

(8) The auditor shall, in the report, state whether -

- (a) the financial statements have been prepared in accordance with International Accounting Standards and any additional prudential requirements set out in guidelines issued by the central bank.
- (b) the financial statements are, in his opinion, complete, fair and properly drawn up;
- (c) the financial statements present a true and fair view of the affairs of the financial institution; and
- (d) the financial statements have been prepared on a basis consistent with that of the preceding year;

- (e) the explanations or information called for or given to him by the officers or agents of the financial institution, are satisfactory to him.

(9) The report shall -

- (a) in the case of a financial institution incorporated in Mauritius, be read together with the report of its board of directors at its annual meeting of shareholders;
- (b) in the case of a financial institution incorporated outside Mauritius, be transmitted to its head office; and
- (c) be transmitted to the Board through the Audit Committee established under section 40.

(10) A certified copy of the report together with the audited financial statements and notes thereon shall be sent to the central bank by the financial institution within such period as the central bank may specify and in any event not later than one month after it is made.

(11) An auditor may be appointed by the central bank in every case where a financial institution fails to appoint an auditor approved by the central bank.

(12) Every auditor appointed under subsection (1) or (11) shall have a right of access at all times to the books, accounts and records referred to in section 33(2) of the financial institution, whether kept electronically or otherwise, in relation to which he has been appointed and those of its affiliates in Mauritius and of its branches and affiliates outside Mauritius, if any, and may require from the directors, officers and agents of the financial institution or its affiliates in Mauritius or its branches and affiliates outside Mauritius, if any, such information and explanations as may appear to him to be necessary for the performance of his duties under this section.

(13) Every auditor appointed under subsection (1) or (11) shall be paid by the financial institution in respect of the appointment and where the appointment is made under subsection (11), the remuneration shall be determined by the central bank.

(14) The central bank may impose on an auditor, in addition to any duty specified in subsection (8), a duty to -

- (a) carry out any extended scope audit or other examination and make recommendations as necessary;
- (b) submit to the central bank such additional information in relation to the audit, extended scope audit or other examination as the central bank considers necessary;
- (c) submit to the central bank a report on any matter specified in paragraphs (a) and (b);

- (d) submit to the central bank a report on the financial and accounting systems and internal controls of the financial institution; and
- (e) submit to the central bank a report as to whether, in his opinion, the systems of credit provisioning and write-offs specified by the central bank are being complied with and whether or not measures to counter the possibility of money laundering or the funding of terrorist activities have been adopted by the financial institution and are being implemented in accordance with any enactment relating to anti-money laundering and prevention of terrorism and with guidelines or instructions issued by the central bank.

(15) A financial institution shall remunerate the auditor in respect of the discharge by him of any additional duties under subsection (14).

(16) Where in the course of the performance of his duties under the Act, an auditor comes across transactions or conditions in a financial institution affecting its well being and he has reason to believe that -

- (a) there has been a material adverse change in the risks inherent in the business of the financial institution with the potential to jeopardise its ability to continue as a going concern;
- (b) there has been or there is a breach of any of the provisions of the banking laws, or the Companies Act 2001 relating to the duties of auditors;
- (c) measures to counter the possibility of money laundering or the funding of terrorist activities in accordance with any enactment have not been or are not being properly implemented;
- (d) guidelines or instructions issued by the central bank have not been or are not being properly followed;
- (e) a criminal offence involving fraud or other dishonesty has been, is being or is likely to be committed;
- (f) losses have been incurred which reduce the amount paid as stated capital or assigned capital, as the case may be, of the financial institution by 50 per cent or more;
- (g) serious irregularities have occurred, including those that jeopardise the security of depositors and creditors; or
- (h) he is unable to confirm that the claims of depositors and creditors are still covered by the assets,

he shall immediately inform the central bank of the matter and, as soon as practicable, submit a report thereon to the central bank.

(17) Where, in the performance of his duties, the auditor finds any matter which in his opinion is of material importance to the well-being of the financial institution, he shall call a meeting of the Audit Committee for the purpose of considering the matter.

(18) The central bank shall at least once a year arrange meetings with every financial institution and its auditors to discuss matters relevant to the central bank's supervisory functions which have arisen in the supervisory process, including on-site inspections and off-site monitoring of the financial institution, relevant aspects of the financial institution's business, its accounting and control systems, and its monthly statements under section 35, disclosure statement and quarterly reports under section 37 and financial statements, and any matters arising out of the statutory audit.

(19) The central bank may, where it considers it desirable or necessary in the interests of depositors, arrange meetings with auditors of financial institutions.

(20) No civil, criminal or disciplinary proceeding shall lie against an auditor by reason of his communicating in good faith to the central bank, whether or not in response to a request made by it, any information or opinion which is relevant to the central bank's functions under this Act or any enactment, guidelines or instructions referred to in subsection (16), (b), (c) and (d).

#### **40. Audit committee**

(1) Every bank and non-bank deposit taking institution incorporated in Mauritius shall by resolution of its board of directors, establish an audit committee which shall, subject to subsection (2), consist of not less than 3 members who shall be independent directors.

(2) The central bank may, having regard to the scope of the activities undertaken by the bank, require that the audit committee be composed of such number of non-executive directors where the bank is a subsidiary or an associate of a foreign banking group of companies, as the central bank may direct.

- (3) The audit committee of a bank or the non-bank deposit taking institution shall -
- (a) review the audited financial statements of the bank or the non-bank deposit taking institution before they are approved by the directors;
  - (b) require management of the bank or the non-bank deposit taking institution to implement and maintain appropriate accounting, internal control and financial disclosure procedures and review, evaluate and approve such procedures;
  - (c) review such transactions as could adversely affect the sound financial condition of the bank or the non-bank deposit taking institution as the auditors or any officers of the bank may bring to the attention of the committee or as may otherwise come to its attention;

- (d) perform such additional duties as may be assigned to it by the board of directors; and
- (e) report to the directors on the conduct of its responsibilities, with particular reference to section 39.

(4) The internal auditor of the bank or the non-bank deposit taking institution shall attend meetings of the audit committee and the external auditor shall be available to the committee to attend its meetings.

(5) Every member of the audit committee shall keep confidential, and not disclose, any information obtained in the course of its functions to third parties, save as otherwise provided for under this Act.

(6) The central bank may require such other financial institution licensed under this Act to comply with the provisions of this section.

#### **41. Termination of services of auditor**

(1) Any financial institution which decides to terminate the services of an auditor appointed under section 39(1) or (11) before the expiration of his term of office shall -

- (a) by resolution passed at a meeting of its shareholders, or by resolution in lieu of meeting, in accordance with the Companies Act 2001, terminate the services of the auditor and at the same time appoint a new auditor; and
- (b) obtain prior approval of the central bank to terminate the services of the auditor stating the reasons therefor or to appoint a new auditor.

(2) Where the financial institution in Mauritius is a branch of a financial institution incorporated outside Mauritius, it shall present the approval of its head office to the central bank before terminating the services of an auditor or appointing a new auditor under subsection (1).

(3) Where an auditor appointed under section 39(1) or (11) intends -

- (a) not to seek reappointment; or
- (b) to resign before the expiration of his term of office,

he shall, within at least 30 days before the expiry of his term of office or his date of resignation, as applicable, give notice thereof to the central bank and the reasons for such action.

#### **42. Regular examinations**

The central bank shall conduct regular examinations of the operations and affairs of every financial institution at least once a year, including, where the central bank so specifies, of affiliates and overseas branches and affiliates of the financial institution, to be made by its officers or such other duly qualified person as it may appoint and such examinations may be of a scope as the central bank deems necessary to assess that the financial institution is duly observing the provisions of the banking laws, guidelines, and instructions issued by the central bank and is in a sound financial condition.

#### **43. Special examinations**

(1) Where, in relation to any financial institution, a special examination appears to be necessary or expedient in order to determine whether the financial institution is in a sound financial condition and whether the banking laws or any enactment relating to anti-money laundering or prevention of terrorism or guidelines and instructions issued by the central bank, as the case may be, are being complied with, the central bank may appoint one or more of its officers or such other duly qualified person to conduct a special examination in respect of the affairs of the financial institution and of its affiliates and overseas branches and affiliates, if any.

(2) Where the central bank has reason to believe that any person who, either as a principal or as an agent, carries on, advertises, announces himself or holds himself out in any way as carrying on, banking business, deposit taking business, business of foreign exchange dealer or money-changer or accepting deposits from the public, without a licence or written authorisation from the central bank, the central bank shall require the person to produce for examination the books, accounts, records and financial statements of that person and such other information and certified copies of all relevant documents as the central bank may deem necessary in order to ascertain whether the person is carrying on such business.

(3) Where the central bank appoints a duly qualified person to conduct a special examination in respect of the affairs of a financial institution and of its affiliates and overseas branches or affiliates, if any, the costs incurred in connection therewith may be recovered, in whole or in part, by the central bank by deduction from any balance of, or money owing to, the financial institution, as if it were a civil debt.

#### **44. Powers of examiners and special examiners**

(1) The central bank may authorise in writing any of its officers or any other person appointed by the central bank for that purpose to conduct, either jointly or separately, a regular examination under section 42 or a special examination under section 43, and any such officer or person shall have the power to –

- (a) examine all books, minutes, accounts, records, cash, securities, vouchers and any other document, , in the possession or custody of the financial institution or of its affiliates in Mauritius or its branches and affiliates outside Mauritius; and

- (b) require, within such time as may be specified, such information and copies of all relevant documents, that he may reasonably require concerning its business, or that of its affiliates in Mauritius, or that of its branches and affiliates outside Mauritius, if any, as appear necessary.

(2) Every person appointed by the central bank for the purposes of sections 42 and 43 shall comply with the provisions of confidentiality under the banking laws.

#### **45. Powers of central bank following examination**

(1) Where, in relation to any financial institution, the central bank is of the opinion that as a result of an examination made under section 42 or a special examination made under section 43 or other information at its disposal, that -

- (a) any director or senior officer or employee of the financial institution is not a fit and proper person;
- (b) the financial institution has, or any of its directors or senior officers or employees have, engaged in unsafe or unsound practices in conducting its business in a manner detrimental to the interests of its depositors, or the financial institution has, or has knowingly or negligently permitted any of its directors or senior officers or employees or agents to violate any provision of the banking laws or any enactment relating to anti-money laundering or prevention of terrorism and the regulations, guidelines, or instructions issued by the central bank to which the financial institution is subject, or the central bank has reasonable cause to believe that such actions or violations are about to occur;
- (c) the financial institution has insufficient assets to cover its liabilities;
- (d) the amount paid as stated capital or the assigned capital, as the case may be, of the financial institution is impaired; or
- (e) the financial institution is otherwise in an unsafe or unsound condition,

the central bank may -

- (i) impose or vary conditions attaching to the financial institution's licence in accordance with section 10 or 16, as the case may be, invoking in cases of urgency the procedure specified in section 17;
- (ii) require the financial institution forthwith to take such steps as may appear to the central bank to be necessary to remedy the situation; and
- (iii) appoint a person to advise the financial institution in the proper conduct of its business and fix the remuneration to be paid by the financial institution to the person so appointed.



(2) Where the central bank considers that an examination made under section 42 or a special examination made under section 43 or other information at its disposal shows that the financial institution concerned has or any of its directors or senior officers or employees or agents have engaged in unsafe or unsound practices in conducting the business of the financial institution in a manner detrimental to the interests of its depositors, or have knowingly or negligently permitted any of its directors or senior officers or, employees or agents to violate any provision of the banking laws or any enactment relating to anti-money laundering or prevention of terrorism and the regulations made, or guidelines, or instructions issued by the central bank to which the financial institution is subject, or the central bank has reasonable cause to believe that such actions or violations are about to occur, the central bank may -

- (a) issue a cease and desist order that requires the financial institution and its directors, senior officers, employees or shareholders holding a significant interest, as the case may be, to cease and desist from the actions and violations specified in the order and may require affirmative action to correct the conditions resulting from any such actions or violations;
- (b) issue an order to the financial institution to suspend from office any director or senior officer or employee who has engaged in, or is otherwise responsible for, such actions or violations.

(3) A suspension under subsection (2)(b) shall be for an initial period of 30 days and may be extended for similar periods or made permanent by decision of the central bank, following completion of a hearing under subsections (6) and (7).

(4) Any action proposed to be taken by the central bank, or already taken under this section, under this section shall be notified in writing to the financial institution and to the director or senior officer, employee and shareholder holding a significant interest, as the case may be.

(5) Any recipient of a notice under subsection (4) may, within 15 days of the date of the notice, make a request in writing to the central bank for a hearing.

(6) Where a request is made under subsection (5), the central bank shall give an opportunity for the recipient to be heard and present arguments within 14 days of the date of the request and during that period of 14 days, any action taken by the central bank under subsection (4) shall not be suspended but shall remain in effect.

(7) The decision of the central bank shall be rendered within 15 days of the completion of the date of the hearing under subsection (6).

**PART VI - RESPONSIBILITIES OF DIRECTORS AND OTHER OFFICERS OF  
FINANCIAL INSTITUTIONS**

**46. Fit and proper person**

(1) No person shall be appointed or reappointed as director of a financial institution unless the appointment or reappointment takes into account the guidelines issued by the central bank relating to fit and proper persons.

(2) No financial institution shall appoint or reappoint any person as senior officer in Mauritius unless -

- (a) prior notice to the central bank is given by the financial institution at least 20 days before the date of the proposed appointment or re-appointment;
- (b) the notice under paragraph (a) is accompanied by a certificate of good conduct acceptable to the central bank, or a certificate of morality dating back to not more than 3 months, or an affidavit duly sworn stating any convictions for crimes and any past or present involvement in a managerial function in a body corporate subject to insolvency proceedings or having declared personal bankruptcy duly executed by the person concerned; and
- (c) the central bank is satisfied that the person to be appointed or re-appointed is a fit and proper person.

(3) The central bank shall, for the purposes of determining whether the person is a fit and proper person, have regard to -

- (a) his probity, integrity, diligence, competence and business experience,
- (b) his previous conduct and activities in business; and
- (c) the person not having been subject to any conviction of an offence involving fraud or other dishonesty.

(4) The central bank shall communicate in writing to the financial institution its objection, if any, to the appointment or re-appointment of the person within 15 days of the date of receipt of the notification under subsection (2).

(5) Any person who attempts to assume any office specified in subsection (2) over the objection of the central bank under subsection (4) shall be subject to a suspension order by the central bank under section 45(2)(b).

(6) Where the central bank has reason to believe that any person is, by virtue of its shareholding in the financial institution or otherwise, in a position to influence any person specified in subsection (1) or (2), and is exercising its influence in a manner which is likely to be detrimental to the interests of depositors, the central bank may request that the shareholder holding a significant interest and the financial institution to remedy the situation.

(7) Where a shareholder holding a significant interest or a financial institution fails to give satisfaction to the central bank following a request made under subsection (6), the central bank may take action against him under section 45(2)(a).

#### **47. Disqualification**

(1) Without prejudice to the provisions of the Companies Act 2001, any person who is a director or senior officer or an employee concerned with the management of a financial institution, shall cease to hold office where he is -

- (a) declared bankrupt or makes a composition with his creditors; or
- (b) convicted of any offence involving fraud or dishonesty.

(2) No director or senior officer or employee of any financial institution shall be at the same time a director or senior officer or an employee of any other financial institution except with the approval of the central bank.

(3) No person who has been a director of, or directly or indirectly concerned in the management of, a financial institution which has been liquidated shall, without the approval of the central bank, act or continue to act as a director of, or be directly or indirectly concerned, in the management of a financial institution.

#### **48. Disclosure of interest**

(1) Any director or senior officer of a financial institution who is in any manner, whether directly or indirectly, interested in an advance, loan or credit from the financial institution shall –

- (a) disclose in writing the nature and extent of his interest to the board of directors of the financial institution; and
- (b) not take part in any deliberation or any decision-making process in relation thereto.

(2) Any disclosure of interest under subsection (1)(a) shall be made at the earliest opportunity or at or before a meeting of the board of directors convened to discuss the matter or before a decision is made thereon.

(3) The board shall cause the disclosure of interest under subsection (1)(a) to be circulated forthwith to all the directors individually.

(4) Where a director or senior officer of a financial institution who holds any office or acquires property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director as a consequence thereof or otherwise or senior officer of the financial institution, he shall disclose in writing, at a meeting of the board of directors of the financial institution, the fact, nature and extent of the conflict and where the board of directors determines that the director or senior officer is in a situation of conflict of interest, he shall abstain from taking part in any decision on or vote taken by the board of directors on the matter.

(5) The disclosure under subsection (4) shall be made at the first meeting of the board of directors held -

- (a) after the declarant becomes a director or senior officer of the financial institution; or
- (b) where he is already a director or senior officer of the financial institution after he commences to hold the office or comes into possession of the property, as the case may be; and
- (c) such disclosure shall be recorded in the minutes of the meeting.

(6) Every disclosure under subsection (1) or (4) shall be chronologically recorded by the financial institution in a separate register which, as and when required, shall be produced for examination by officers or other persons duly authorised by the central bank.

#### **49. Indemnity insurance**

The central bank may require any financial institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses.

### **PART VII - ELECTRONIC BANKING**

#### **50. Automated teller machines**

(1) Any bank may set up automated teller machines for the use by customers to make cash withdrawals or deposits.

(2) Where a bank sets up automated teller machines, it shall provide such security for their operation, and such systems for customer authentication, terminal receipts and periodic statements and for physical and logical protection against unauthorized access in any form, as the central bank considers adequate.

## **51. Computer access**

(1) Any bank may provide to its customers remote access to their accounts through computers using proprietary software or the Internet.

(2) Where a bank permits computer access to customers' accounts, it may permit customers, by computer access, to transfer funds between accounts, initiate payments, apply for credit or to use such other facilities as may be provided by the bank.

(3) Any bank that permits computer access to customers shall -

- (a) provide the customers with a privacy policy statement which shall include information to be accessed and retrieved and how the information shall be used by the customers; and
- (b) permit any customer to opt out of information sharing concerning him by banks with affiliates or with third parties.

(4) Where a bank provides computer access to its customers, it shall provide such security for their Internet or proprietary platforms, and such systems for customer authentication, appropriate documentation and for physical and logical protection against unauthorized external access in any form whether by individual penetration attempts, computer viruses, denial of service, and other forms of electronic access, as the central bank considers adequate.

## **52. Electronic Delivery Channel**

(1) Banks may provide services to customers through electronic delivery channels such as the Internet.

(2) Banks shall have such systems to identify, monitor, and control transactional risk from the bank's use of technology and shall provide such security for their Internet platforms, including such systems for customer authentication and for physical and logical protection against unauthorized external access by individual penetration attempts, computer viruses, denial of service, and other forms of electronic access, as the central bank considers adequate.

(3) Banks may provide operational functions themselves or contract with third-party service providers, provided that third-party service providers agree that their services to the bank will be subject to regulation and examination by the central bank to the same extent as if such services were being performed by the bank itself on its own premises.

(4) The operational functions under subsection (3) may include item processing, web-hosting, credit checking, credit and other payment card services, customer service, data processing, Internet service access, and processing loan operations.

(5) Banks may host web-pages of third parties or provide links to third-party websites to enable banks' customers to receive financial and non-financial products and services, provided that banks shall make clear to customers when they -

- (a) are establishing a transaction with the bank and when they are not; and
  - (b) are leaving the website of the bank.
- (6) Any bank which provides services under subsection (5) -
- (a) shall advise customers that they do not provide or guarantee the products or services available to customers through third-party websites; and
  - (b) may receive finder's fees for purchases by their customers of third-party products or services originated from banks' websites.

### **53. Clearing house and payments system**

Every bank shall comply with the instructions issued by the central bank for the smooth functioning of the clearing house and payments system including the Mauritius Automated Clearing and Settlement System (MACSS), set up by the central bank.

## **PART VIII - ADMINISTRATION OF FINANCIAL INSTITUTIONS**

### **54. Internal control systems**

Every bank shall maintain adequate internal control systems, commensurate with the nature and volume of its activities and various types of risks to which it is exposed, regarding –

- (i) operations and internal procedures;
- (ii) the organisation of accounting and information processing systems;
- (iii) risk and result measurement systems;
- (iv) documentation and information systems; and
- (v) cash flow transactions monitoring systems.

### **55. Identity of customers**

(1) Every financial institution shall only open accounts for deposits of money and securities, and rent out safe deposit boxes, where it is satisfied that it has established the true identity of the person in whose name the funds or securities are to be credited or deposited or the true identity of the lessee of the safe deposit box, as the case may be.

(2) Every financial institution shall require that each of its accounts be properly named, at all times, so that the true owner of the accounts can be identified by the public and no name shall be allowed that is likely to mislead the public.

**56. Validity of thumb print**

In all the transactions connected with the opening of deposit into or withdrawal from a savings account or a fixed deposit account, the thumb print of a depositor who is unable to sign shall, where it is affixed in the presence of, and certified by, 2 officers of the financial institution, have the same legal effect as if the depositor had signed his name.

**57. Bank's obligations towards customers**

(1) A drawee bank upon which cheques have been drawn by its customer shall send or make available to the customer a statement of account in written or electronic form, showing payment of the cheques for the account and shall either return or make available to the customer the cheques paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the cheques paid.

(2) The statement of account shall -

- (a) provide sufficient information where the cheque is described by transaction date, description or particulars and amount; and
- (b) specify the different charges in respect of the cheque book facilities provided by the bank to the customer.

(3) The frequency required for sending such statements of account shall be agreed with the central bank.

(4) Where the cheque -

- (a) is not returned to the customer, the bank retaining the cheque shall keep the cheque for a period of at least 10 years as from the date the cheque is drawn; and
- (b) after the period specified in paragraph (a), is kept by the bank in a legible copy by use of microfilm, magnetic tape, or such other form of mechanical or electronic data retrieval mechanism as the central bank may approve, the cheque may be destroyed by the bank;
- (c) is kept by the bank in the manner specified in paragraph (b), the legible copy shall be kept for a period of at least 20 years as from the date the legible copy is made; or
- (d) is not kept by the bank in the manner specified in paragraph (b), the cheque shall be kept, in addition to the period of 10 years referred to in paragraph (a), for a further period of 20 years.

(5) Where a bank has paid a cheque, the customer drawing the cheque may request the bank to return him the cheque and the bank shall provide within a reasonable time either the cheque or, where the cheque has been destroyed or is not otherwise obtainable, a legible copy of the cheque at a charge that shall not exceed the maximum charge determined by the central bank.

(6) Where a customer's deposit or money lodged with a financial institution for any purpose, becomes less than the minimum balance requirement in force in a financial institution from time to time and it has been left untouched for a period of one year and the customer has not responded within 6 months to a letter from the financial institution informing him of any service fees or charges that may be applicable on the deposit or money for reason of it having fallen below the minimum balance, sent by registered post to the customer's last known address, the deposit or money, as the case may be, shall, without formality, be handed over forthwith by the financial institution to the customer concerned in person, failing which it shall be transferred to the central bank to be dealt with in the manner referred to in section 59.

(7) Every bank shall at all times display, in a conspicuous place in the public part of its principal place of business and in each branch or office of the bank, the rates of the fees or charges in respect of services provided by the bank.

(8) The rates of the fees or charges referred to in subsection (7) shall be posted on the website of the bank.

(9) For the purposes of this section, "cheque" includes any payment by means of credit card or any payment order or transaction whether made electronically or otherwise.

#### **58. Customer's duty to report unauthorised signature or alteration**

(1) Where a bank sends or makes available a statement of account or cheque pursuant to section 57, the customer shall exercise reasonable promptness in examining the statement or the cheque to determine whether any payment was not authorised because of an alteration of a cheque or because a purported signature by or on behalf of the customer was not authorised.

(2) Where, based on the statement or cheque provided, the customer ought to have reasonably discovered the unauthorised payment, the customer shall promptly notify the bank of the relevant facts.

(3) Where the bank proves that the customer failed, with respect to a cheque, to comply with the duties imposed on the customer by subsections (1) and (2), the customer shall be precluded from asserting against the bank -

- (a) the unauthorised signature or the alteration on the cheque, where the bank also proves that it suffered a loss by reason of the failure; and



- (b) the unauthorised signature or the alteration by the same wrongdoer on any other cheque paid in good faith by the bank where the payment was made before the bank received notice from the customer of the unauthorised signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the cheque or statement of account and notify the bank.

(4) Where subsection (3) applies and the customer proves that the bank failed to exercise ordinary care in paying the cheque and that the failure substantially contributed to loss, the loss shall be allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsections (1) and (2) and the failure of the bank to exercise ordinary care contributed to the loss.

(5) Where the customer proves that the bank did not pay the cheque in good faith, the preclusion under subsection (3) shall not apply.

(6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or cheques are made available to the customer, pursuant to section 57, discover and report any unauthorised signature on or any alteration on the cheque shall be precluded from asserting against the bank the unauthorised signature or alteration.

(7) Every bank shall notify its customers of their duties under subsections (1) and (2) and a notice to that effect shall be printed on the face of each bank statement of the customer.

(8) Notification under subsection (7) shall, in the case of existing customers be made within 60 days of the coming into force of this Act and in the case of new customers, at the time the account is opened.

## **59. Abandoned funds**

(1) Notwithstanding anything in any agreement between a bank and its customer and irrespective of the amount, where a customer's deposit, or money lodged with a bank for any purpose, has been left untouched and not reclaimed for 10 years or more and the customer has not responded within 6 months to a letter from the bank about the dormant deposit or money sent by registered post to the customer's last known address, the deposit or money, as the case may be, shall be deemed to have been abandoned and shall, without further formality, be transferred forthwith by the bank concerned to the central bank to be dealt with as decided by the central bank.

(2) The central bank shall maintain such records of any deposit or money abandoned as to enable the bank to refund to the owner or his heirs or assigns the deposit or money to which a rightful claim is established to the satisfaction of the central bank.

(3) No refund made under subsection (2) shall carry any interest.

**60. Evidence in relation to banker's books**

(1) Notwithstanding any other enactment, a copy of any entry in a banker's books shall be prima facie evidence of such entry and of the matters, transactions and accounts recorded where -

- (a) the book was, at the time the entry was made, one of the ordinary books of the bank;
- (b) the entry was made in the usual course of the business of the bank;
- (c) the book is in the custody of the bank; and
- (d) the copy of the entry is certified by a responsible person to have been compared with, and is a correct copy of, the original entry.

(2) No director or senior officer, employee or agent of a bank shall, in any proceedings to which the bank is not a party, be compelled to produce any banker's book, the contents of which can be proved under subsection (1) or to appear as a witness to prove the matters, transactions and accounts recorded except by order of a Judge in Chambers or any court and on good cause shown.

(3) A Judge in Chambers or any court may, on the application of any party to legal proceedings, order that such party be permitted to obtain copies of any entry in a banker's book where such entry is material to the proceedings.

(4) Any application made under subsection (3) shall be served on the bank in respect of whose banker's books the application is made.

(5) For the purposes of this section, "banker's books" includes ledgers, day books, cash books, account books, records, financial statements or other documents used in the ordinary course of business of a bank, whether all these are in written form or are kept on microfilm, magnetic tape, or any other form of mechanical or electronic data retrieval mechanism.

**61. Control of advertisement**

(1) No advertisement respecting deposits shall be made on behalf of a financial institution unless a copy of such advertisement has been submitted to the central bank not less than 7 days before the intended date of publication or other dissemination.

(2) For the purpose of this section, an advertisement means any material, written, published, broadcast or otherwise, containing an invitation to make a deposit or obtain other financial services or information such as might lead directly or indirectly to the making of a deposit.

(3) Where in the opinion of the central bank an advertisement is misleading, the central bank may direct the financial institution or other person responsible for the dissemination of such advertisement to withdraw or modify it as directed by the central bank, and the person to whom the direction is given shall comply with it.

## **62. Hours of business**

Subject to the other provisions of this Part, the central bank shall fix –

- (a) the hours during which the financial institution shall remain open for the transactions of business with the public;
- (b) the hours during which banks shall give facilities to their customers to effect electronic transactions on their accounts for same day value; and
- (c) the hours during which the central bank shall give facilities to banks for the purposes of clearing and settlement of payments under the Mauritius Automated Clearing and Settlement System (MACSS) set up by the central bank.

## **63. Bank holidays**

(1) The central bank may, with the approval of the Minister, declare by public notice, any day to be a bank holiday.

(2) Except with the approval of the central bank, no bank shall transact business with the public on any bank holiday or public holiday.

(3) Any obligation which is required to be fulfilled at a bank and which falls due on any bank holiday or public holiday shall be deemed to fall due on the following working day.

## **64. Confidentiality**

(1) Subject to the other provisions of this Act, every person having access to the books, accounts, records, financial statements or other documents, whether electronically or otherwise, of a financial institution shall -

- (a) in the case of a director or senior officer, take an oath of confidentiality in the form set out in the First Schedule; or
- (b) in any other case, make a declaration of confidentiality before the chief executive officer or deputy chief executive officer of the financial institution in the form set out in the Second Schedule,

before he begins to perform any duties under the banking laws.

(2) Except for the purpose of the performance of his duties or the exercise of his functions under the banking laws or as directed in writing by the central bank, no person referred to in subsection (1) shall, during or after his relationship with the financial institution, disclose directly or indirectly to any person any information relating to the affairs of any of its customers including any deposits, borrowings or transactions or other personal, financial or business affairs, without the prior written consent of the customer or his personal representative.

- (3) The duty of confidentiality imposed under this section shall not apply where -
- (a) a customer who had been issued a credit card or charge card by a financial institution, has his card suspended or cancelled by the financial institution by reason of his default in payment, and the financial institution discloses information relating to the customer's name and identity, the amount of his indebtedness and the date of suspension or cancellation of his credit card or charge card to other financial institutions issuing credit cards or charge cards in Mauritius;
  - (b) the customer is declared bankrupt in Mauritius or, in a case of a company, is being wound up;
  - (c) the customer has passed away, testate or intestate, and the information is required by his appointed personal representative or his testamentary executor solely in connection with the succession estate;
  - (d) civil proceedings arise involving the financial institution and the customer or his account;
  - (e) the information is required by a colleague in the employment of the same financial institution in Mauritius or an auditor or legal representative of the financial institution who requires and is entitled to know the information in the course of his professional duties;
  - (f) the information is required by another financial institution for the purpose of assessing the credit-worthiness of a customer, provided that the information is being sought for commercial reasons and is of a general nature;
  - (g) the financial institution has been served with a garnishee order attaching monies in the account of the customer;
  - (h) any person referred to in subsection (1) is summoned to appear before a court or a Judge in Mauritius and the court or the Judge orders the disclosure of the information;
  - (i) the information is required for transmission to the Credit Information Bureau established under the Bank of Mauritius Act 2004; or

(j) the bank is required to make a report or provides additional information on a suspicious transaction to the Financial Intelligence Unit under the Financial Intelligence and Anti-Money Laundering Act 2002.

(4) Subject to subsections (6) and (7), where the head office of a financial institution -

(a) incorporated outside Mauritius requires information from its branch in Mauritius about any transaction of that branch; or

(b) incorporated in Mauritius requires information from its branch outside Mauritius about any transaction of that branch,

the information shall be disclosed.

(5) Subject to subsections (6) and (7), where the parent financial institution of a subsidiary operating in Mauritius and subject to consolidated supervision requires information from the subsidiary about any transaction of the subsidiary, the information shall be disclosed.

(6) Where the information which is required under subsection (4) or (5) relates to a transaction with a customer other than a financial institution, no information other than credit facilities granted to or foreign exchange transactions with the customer shall be disclosed.

(7) No information relating to deposits taken from or foreign exchange transactions with a central bank or any other entity or agency, by whatever name called, which performs the functions of a central bank, shall be disclosed.

(8) Where an officer of a foreign financial institution or an officer of a central bank or banking regulator in a foreign country or any other entity or agency, by whatever named called, having the responsibility to supervise financial institutions or performing the functions of a central bank, proposes to conduct an inquiry, audit or inspection of a branch or a subsidiary of such financial institution in Mauritius or to conduct such other action that would involve the duty of confidentiality imposed under this section, he shall obtain the prior written authorisation of the central bank and be subject to the duty of confidentiality imposed under this section and any conditions that the central bank may impose before information of a confidential nature be made available to him.

(9) The Commissioner under the Prevention of Corruption Act 2002, the Chief Executive of the Financial Services Commission established under the Financial Services Development Act 2001, the Commissioner of Police, the Director-General of the Revenue Authority, the revenue Commissioner under the Unified Revenue Act, or any other competent authority in Mauritius or outside Mauritius who requires any information from a financial institution relating to the transactions and accounts of any person, may apply to a Judge in Chambers for an order of disclosure of such transactions and accounts or such part thereof as may be necessary.

(10) The Judge in Chambers shall not make an order of disclosure unless he is satisfied that -

- (a) the applicant is acting in the discharge of his or its duties;
- (b) the information is material to any civil or criminal proceedings, whether pending or contemplated or is required for the purpose of any enquiry into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking, offences related to terrorism under the Prevention of Terrorism Act 2002 or money laundering under the Financial Intelligence and Anti-Money Laundering Act 2002; or
- (c) the disclosure is otherwise necessary, in all the circumstances.

(11) Subject to the other provisions of this Act, the central bank or any person making an inspection or conducting an examination for it under Part V shall not reveal, unless required by a court so to do, to any person any information in relation to the affairs of a customer obtained in the course of an inspection made or of an examination conducted under Part V.

(12) Notwithstanding subsection (11), the central bank may disclose to the auditor of a financial institution any information received under or for the purposes of this Act where it considers that disclosing the information would enable or assist it in the discharge of its supervisory responsibilities.

(13) The central bank may publish at such times as it may determine, information or data furnished under this Act provided that the information or data do not disclose the particular financial situation of any financial institution or customer, unless the consent of the financial institution or the customer, as the case may be, has been specifically obtained.

(14) Nothing in this section shall preclude the disclosure of information by the central bank, under conditions of confidentiality, to a central bank or any other entity or agency, by whatever name called, which performs the functions of a central bank in a foreign country for the purpose of assisting it in exercising functions corresponding to those of the central bank under this Act.

(15) This section shall be without prejudice to the obligations of Mauritius under any international treaty, convention or agreement and to the obligations of the central bank under any concordat or arrangement or under any existing or future memorandum of understanding for cooperation and exchange of information between the central bank and the Financial Services Commission established under the Financial Services Development Act 2001, or between the central bank and any other foreign regulatory agency performing functions similar to those of the central bank.

(16) In the event of any conflict or inconsistency between any provision of this section and the provisions of any other enactment, other than the Bank of Mauritius Act 2004, the Mutual Assistance in Criminal and Related Matters Act 2003, the Financial Intelligence and Anti-money Laundering Act 2002 and section 123 of the Income Tax Act, the provisions of this section shall prevail.

## PART IX - CONSERVATORSHIP

### 65. Appointment of conservator

Where the central bank deems it necessary in order to protect the assets of a financial institution for the benefit of its depositors and other creditors, it may appoint a conservator, which may be the central bank or any other person directed by the central bank to be conservator, if the central bank has reasonable cause to believe that -

- (a) the capital of the financial institution is impaired or there is a threat of such impairment; or
- (b) the financial institution has, or its directors have -
  - (i) engaged in practices detrimental to the interests of its depositors;
  - (ii) knowingly or negligently permitted its chief executive officer, any of its other managers, officers or employees or agents to violate any provision of the banking laws, any enactment relating to anti-money laundering or prevention of terrorism or guidelines and instructions issued by the central bank; or
- (c) actions or violations referred to in paragraph (b)(ii) are about to occur, or the assets of the financial institution are not sufficient to give adequate protection to the bank's depositors or creditors.

### 66. Powers and duties of conservator

(1) The conservator shall take charge of the financial institution and all of its property, books, records and effects and shall exercise all powers necessary to preserve, protect and recover any of the assets of the financial institution, collect all monies and debts due to it, assert causes of action belonging to the financial institution and file, prosecute and defend suits on its behalf.

- (2) The conservator may -
  - (a) overrule or revoke actions of the board of directors and management of the financial institution; or
  - (b) suspend the powers of the board of directors of the financial institution during the period of the conservatorship.

- (3) The conservator may -
- (a) subject to subsection (4), suspend, in whole or in part, the repayment or withdrawal of deposits and other liabilities of the financial institution;
  - (b) subject to subsection (5), disaffirm or repudiate any contract or lease to which the financial institution is a party other than a financial contract such as a securities contract, forward contract, repurchase agreement, swap agreement or other similar agreement that the Board determines to be a financial contract for the purposes of this provision; or
  - (c) enforce any contract, other than a financial contract, entered into by the financial institution, notwithstanding any provision of the contract providing for termination, default or acceleration by reason of insolvency or the appointment of a conservator.

(4) Any deposit and other credits received while the financial institution is under conservatorship shall not be subject to any limitation as to repayment or withdrawal but shall be segregated and not used to liquidate any indebtedness of the financial institution existing at the time the conservator was appointed or subsequent indebtedness incurred in order to discharge such indebtedness.

(5) The conservator may disaffirm or repudiate a financial contract that, in his opinion, is fraudulent.

(6) The conservator, where it is not the central bank itself, shall report to and be responsible to the Board.

## **67. Term of office and remuneration of conservator**

(1) The term of office of the conservator shall continue, unless replaced by a successor, until such time as the Board finds that -

- (a) the financial institution is rehabilitated or reorganised, so that it may be returned to management or a new management under such conditions as are necessary to prevent recurrence of the conditions that gave rise to the conservatorship; or
- (b) the financial institution is in such condition that its continuance in business would involve probable loss to its depositors and other creditors, in which case Part XI shall apply.

(2) The remuneration of the conservator and the indemnification of the conservator from liability to third persons on account of all actions taken in good faith shall be borne by the financial institution.



**68. Resumption of office by directors upon conclusion of conservatorship**

(1) Subject to subsection (2), every director of the financial institution shall return to his office following the conclusion of the conservatorship.

(2) Subsection (1) does not apply to a director who has, after conclusion of the conservatorship, been found by the central bank to cease to be a fit and proper person for a directorship.

**69. Rehabilitation or reorganisation of financial institution**

(1) The conservator shall seek authority from the Board to -

- (a) rehabilitate the financial institution and return it to management; or
- (b) reorganise the financial institution in accordance with this Part.

(2) Where the Board authorises the conservator to proceed to reorganise the financial institution, the conservator shall, after granting a hearing to all interested parties, propose a reorganisation plan and send a copy of it to all depositors and other creditors who shall not receive full payment under the plan.

(3) The copy of the reorganisation plan shall be accompanied by a notice stating that where the reorganisation plan is not refused in writing within a period of 30 days by persons holding not less than one-third of the aggregate amount of deposits and creditors comprising not less than one-third in value of the aggregate of the claims of creditors other than subordinated creditors, the conservator shall, with the approval of the Board, proceed to carry out the reorganisation plan.

(4) The approval of a reorganisation plan by the Board shall be subject to its finding that the reorganisation plan shall -

- (a) be equitable under the circumstances, to depositors, other creditors and shareholders;
- (b) provide for bringing in new funds so as to establish adequate ratios between -
  - (i) capital and deposits;
  - (ii) capital and risk assets;
  - (iii) liquid assets and deposits; and
- (c) provide for the removal of any director, chief executive officer, manager, officer or employee responsible for the circumstances which necessitated the appointment of the conservator.

(5) Where in the course of reorganisation it appears that circumstances render the plan inequitable or its execution undesirable, the conservator may recommend to the Board to order the compulsory liquidation of the financial institution in accordance with Part XI.

## **PART X - VOLUNTARY LIQUIDATION**

### **70. Procedures to go into voluntary liquidation**

(1) Notwithstanding any other enactment, any financial institution which proposes to go into voluntary liquidation shall obtain the authorisation of the Board.

(2) The Board may, where -

- (a) the financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and
- (b) the proposed liquidation has been approved by shareholders representing three-quarters of the voting rights at a meeting called expressly for this purpose,

authorise the financial institution to go into liquidation.

(3) Where the financial institution has received the authorisation of the Board under subsection (2), it shall -

- (a) immediately cease to do business, retaining only the powers to do the necessary business for the purpose of effecting an orderly liquidation;
- (b) repay its depositors and other creditors;
- (c) wind up all operations undertaken prior to the receipt of the authorisation.

### **71. Notice and publication of voluntary liquidation**

The financial institution shall -

- (a) not later than 30 days from the receipt of an authorisation under section 70, send by mail a notice of voluntary liquidation, specifying such information as the central bank may prescribe, to all depositors, other creditors, and persons otherwise entitled to the funds or property held by the financial institution as a fiduciary, lessor of a safe deposit box, or bailee;
- (b) post a notice of voluntary liquidation conspicuously on the premises of each office and branch of the financial institution; and
- (c) give publication of the voluntary liquidation in such manner as the central bank may direct.

**72. Rights of depositors and creditors**

(1) The authorisation to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the financial institution to the return thereof.

(2) All lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned to their rightful owners within such maximum period as the central bank may prescribe.

**73. Distribution of assets**

(1) Where, in the opinion of the central bank, the financial institution has discharged all of its obligations, its licence shall be revoked and the remainder of its assets shall be distributed among its shareholders in proportion to their respective rights.

(2) No distribution shall be made before -

- (a) all claims of depositors and other creditors have been paid or, in the case of a disputed claim, before a financial institution has turned over to the central bank, or to any other person proposed by the liquidating financial institution and approved by the central bank, sufficient funds to meet any liability that may be judicially determined;
- (b) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the central bank or to any other person proposed by the liquidating financial institution and approved by the central bank;
- (c) any other funds and property held by the financial institution that could not be returned to the rightful owners in accordance with section 72 have been transferred to the central bank, or to any other person proposed by the liquidating financial institution and approved by the central bank, together with the relevant inventories.

(3) Any funds or property not claimed within a period of 10 years following their transfer shall be presumed to be abandoned funds or property and shall be dealt with as determined by the Board.

**74. Insufficient assets**

Where the central bank finds that the assets of a financial institution whose voluntary liquidation has been authorised shall not be sufficient for the full discharge of all of its obligations or that completion of the voluntary liquidation is unduly delayed, it shall appoint any person as receiver, to take possession of the financial institution and commence proceedings leading to its compulsory liquidation in conformity with the procedures specified in Part XI.

## PART XI - COMPULSORY LIQUIDATION

### 75. Board to appoint a receiver

The Board shall, notwithstanding any other enactment, appoint any person as receiver to take possession of a financial institution where -

- (a) the capital of the financial institution is impaired or its condition is otherwise unsound;
- (b) the ratio of its capital to total assets is less than 2 per cent;
- (c) the business of the financial institution is being conducted in an unlawful, unsafe or unsound manner;
- (d) the continuation of the activities of the financial institution is detrimental to the interests of its depositors;
- (e) the licence of the financial institution has been revoked.

### 76. Notice of appointment of receiver

(1) Where the receiver takes possession of a financial institution, he shall post on the premises of the financial institution a notice announcing its action under this Part and the time when such possession shall be deemed to take effect which shall not be earlier than the posting of the notice.

- (2) A copy of the notice shall be transmitted to the Bankruptcy Court.

### 77. Duties of receiver

The receiver shall -

- (a) commence proceedings leading to compulsory liquidation of the assets of the financial institution;
- (b) take such other measures as it thinks fit in accordance with section 78 in respect of a financial institution of which it has taken possession within a period of not more than 30 days from the date of the taking of possession; or
- (c) terminate the taking of possession.

**78. Powers of receiver**

- (1) After entering into possession of a financial institution, the receiver may -
  - (a) manage and control the financial institution;
  - (b) continue or discontinue its operations;
  - (c) stop or limit the payment of its obligations;
  - (d) employ any necessary staff;
  - (e) execute any instrument in the name of the financial institution;
  - (f) initiate, defend and conduct in its name any action or proceedings to which the financial institution may be a party;
  - (g) terminate possession by restoring the financial institution to its board of directors; and
  - (h) liquidate or take such other measures as it thinks fit under this section.
- (2) The receiver shall succeed to all rights, titles, powers and privileges of the financial institution, of any shareholder, account holder, depositor, officer, or director of the financial institution with respect to it and its assets.
- (3) The receiver may, with the approval of the Board under section 79 -
  - (a) merge or consolidate a financial institution with any other financial institution;
  - (b) transfer any asset or liability of the financial institution; or
  - (c) without the approval or consent of the financial institution, offer the assets or shares of a financial institution for sale to the central bank or as security for loans from the central bank.

**79. Powers of central bank under this Part**

- (1) The central bank may, at the direction of its Board -
  - (a) confirm and facilitate the actions of the receiver under section 78;
  - (b) purchase any assets of the financial institution or assume any of its liabilities; and
  - (c) make loans to any other financial institution merging or consolidating with or assuming the liabilities and purchasing the assets of the financial institution.

(2) The central bank may provide any investor acquiring control of, merging with, consolidating with or acquiring the assets of a financial institution with the financial assistance that it is authorised to provide under this section.

(3) The central bank may, pending such further action as is contemplated under subsection (1) or (2), grant a licence for the operation of a temporary financial institution for not more than 2 years.

(4) The temporary financial institution may -

- (a) assume such deposits and other liabilities; and
- (b) purchase such assets of a financial institution that becomes subject to this Part,

as the central bank thinks fit.

(5) The board of directors of the temporary financial institution shall be appointed by and be responsible to the central bank.

(6) In determining the course of action to be taken in any given case, the Board shall have regard to -

- (a) the financial implications thereof, and any funds that it may administer in order to protect depositors, taking into consideration the ultimate viability of the temporary financial institution;
- (b) the convenience to the community in maintaining banking facilities; and
- (c) the tendency to create a monopoly or to restrict competition in the area served.

## **80. Receiver taking possession of financial institution**

(1) Where the receiver has taken possession of a financial institution -

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the financial institution would expire or be extinguished shall be extended by 6 months from the date of the taking of possession;
- (b) any attachment or lien, other than a lien existing 6 months prior to the taking of possession of the financial institution, shall be vacated and no attachment or lien, other than a lien created by the receiver in the application of these provisions, shall attach to any of the property or assets of the financial institution so long as such possession continues; and

- (c) subject to subsection (2), any transfer of an asset of the financial institution made after or in contemplation of its insolvency or the seizure of the assets with intent to effect a preference within 5 years thereof shall be void.

(2) The receiver may recover the asset transferred or its value from the initial transferee or any subsequent transferee other than a transferee who has acquired the asset for value in good faith.

### **81. Execution against assets of a financial institution**

No execution shall be returned against the seized assets of a financial institution except, in the discretion of the Bankruptcy Court, an execution effected pursuant to a judgment delivered prior to the date of the seizure for an amount not exceeding 100,000 rupees.

### **82. Further powers of receiver**

- (1) The receiver may -
  - (a) suspend, in whole or in part, the repayment or withdrawal of deposits and other liabilities of the financial institution;
  - (b) disaffirm or repudiate any contract or lease to which the financial institution is a party other than a financial contract, such as securities contract, forward contract, repurchase agreement, swap agreement or other similar agreement that the Board determines to be a financial contract for the purposes of this section;
  - (c) disaffirm or repudiate a financial contract that in his opinion is fraudulent; or
  - (d) enforce any contract, other than a financial contract entered into by the financial institution, notwithstanding any provision of the contract providing for termination, default or acceleration by reason of insolvency or the appointment of a receiver.

(2) The receiver shall, as soon as possible, take the necessary steps to terminate all fiduciary functions performed by the financial institution, return all assets and property held by the financial institution as a fiduciary to the owner thereof, and settle its fiduciary accounts.

### **83. Inventory of assets**

(1) The receiver shall as soon as possible after taking possession, make an inventory of the assets of the financial institution and transmit a copy thereof to the Bankruptcy Court.

(2) A copy of the inventory shall be available for examination by interested parties at the Bankruptcy Court.

(3) The receiver shall not later than 120 days after his appointment, send by mail, at the address shown on the financial institution's books, to all depositors, other creditors, safe deposit box lessees, and the bailors of property held by the financial institution, a statement of the nature and amount for which their claim is shown on the financial institution's books.

(4) The statement shall note that any objection shall be filed with the receiver before a specified date not later than 60 days thereafter and shall invite safe deposit box lessees and bailors to withdraw their property in person.

#### **84. Safe deposit box**

(1) Any safe deposit box the contents of which have not been withdrawn before the date specified shall be opened in the manner specified by the receiver.

(2) The contents specified in subsection (1) and any unclaimed property held by the financial institution as bailee, together with inventories pertaining thereto, shall be deposited in the central bank or in such depository as the central bank may direct and shall be kept for 10 years, unless claimed by the owner before the expiration of that period.

(3) On the expiration of the time specified in subsection (2), any funds or property not claimed shall be presumed to be abandoned funds or property and shall be dealt with as determined by the Board.

#### **85. Receiver dealing with claims**

(1) Within 60 days after the last day specified in the notice for the filing of claims, the receiver shall -

- (a) reject any claim where it doubts the validity thereof;
- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim under this Part;
- (c) prepare for filing with the Bankruptcy Court a schedule of the steps proposed to be taken; and
- (d) notify each person whose claim has not been allowed in full and publish once a week for 3 consecutive weeks, in a newspaper of general circulation approved by the Bankruptcy Court, a notice of the date and place where the schedule of the steps it proposes to take will be available for inspection, and the date, which shall be not less than 30 days from the date of the third publication in the newspaper, on which the receiver shall file the schedule with the Bankruptcy Court.

(2) Within 20 days after the filing of the schedule specified in subsection (1)(c), any depositor, other creditor or shareholder, and any other interested party may file with the receiver an objection to any step proposed.



(3) Any objection filed under subsection (2) shall be considered by the Bankruptcy Court upon such notice to the receiver, and any interested parties as the court may designate.

(4) Where an objection is sustained, the Bankruptcy Court shall direct that an appropriate modification of the schedule be made.

(5) After filing the schedule, the receiver may make partial distribution to the holders of claims which are undisputed or which have been allowed by the Bankruptcy Court, on condition that a proper reserve is established for the payment of disputed claims.

(6) After all objections have been decided upon, the receiver shall make final distribution.

## **86. Priority of claims**

(1) Notwithstanding any other enactment, including the Code Civil Mauricien, claims as set out hereunder against the general assets of a financial institution, shall be settled in the following order of priority -

- (a) necessary and reasonable costs, charges and expenses incurred by the receiver, including his remuneration, in application of this Part;
- (b) wages and salaries of officers and employees of the financial institution in liquidation for the 3-month period preceding the taking possession of the financial institution;
- (c) taxes, rates and deposits owed to the Government of Mauritius;
- (d) savings and time deposits not exceeding in amount 100,000 rupees per account;
- (e) other deposits;
- (f) other liabilities.

(2) In the event of the winding up of a financial institution holding a banking licence, section 91 shall apply.

(3) After payment of all other claims filed, with interest thereon at a rate to be fixed by the receiver with the approval of the Bankruptcy Court, any remaining claims which were not filed within the prescribed time shall be paid.

(4) Where the amount available for any class is insufficient to provide payment in full, the amount shall be distributed pro rata among the members of that class.

(5) Any assets remaining after all claims have been paid shall be distributed among all the shareholders in proportion to their participation.

(6) Unclaimed funds remaining after the final distribution shall be deposited by the receiver in the central bank or in such depository as the central bank may direct and shall be kept for 10 years, unless claimed by the owner before the expiration of that period.

(7) On the expiration of the period specified in subsection (6), any funds or property remaining unclaimed shall be presumed to be abandoned funds or property and shall be dealt with as determined by the Board.

#### **87. Submission of audited accounts to Bankruptcy Court**

(1) Where all assets have been distributed in accordance with this Part, the receiver shall submit audited accounts to the Bankruptcy Court.

(2) On approval of the accounts by the Bankruptcy Court -

- (a) the licence of the financial institution shall be revoked;
- (b) the Registrar of Companies shall be notified; and
- (c) the receiver shall be relieved of any liability in connection with the liquidation.

#### **88. Liquidation of a financial institution**

On completion of the procedures provided under section 87, the Bankruptcy Court shall declare the liquidation of the financial institution and shall terminate its juridical existence in Mauritius.

#### **89. Civil and criminal actions**

The conservator or receiver or the central bank may bring a civil action against any director, chief executive officer, manager, officer, employee, agent or independent contractor of a financial institution for gross negligence or intentional wrong for damages caused to that financial institution and may recommend to the Director of Public Prosecutions the criminal prosecution of any such person.

### **PART XII - WINDING UP OF FINANCIAL INSTITUTIONS GENERALLY**

#### **90. Winding up of financial institutions**

(1) The provisions of sections 215 to 295 of the Companies Act 1984 and such regulations as may be prescribed shall apply in relation to the winding up of a financial institution, where the provisions of Parts X and XI are not resorted to, or any of the provisions of those Parts are not otherwise applicable.

(2) The amounts shown in the books of a financial institution as standing to the credit of depositors shall, unless the liquidator shows that there is reason to doubt the entry, be presumed to be proof of those amounts without further proof from the depositors.

## **91. Priority of deposit liabilities**

Subject to section 92, where a financial institution becomes unable to meet its obligations or becomes insolvent or suspends payment, the assets of the financial institution in Mauritius shall be available to meet all deposit liabilities of the financial institution in Mauritius, and those deposit liabilities shall have priority over all unsecured liabilities of the financial institution other than those expenses and debts specified in the Companies Act 1984 to have priority of claim over all other liabilities of the company in the event of a winding up.

## **92. Priority of deposit and other liabilities in case of winding up of a bank**

(1) Notwithstanding any other enactment, in the event of a winding up of a bank, the deposit liabilities of the bank shall be settled in the manner specified in subsection (2).

(2) All assets of the bank shall be available to meet all deposit liabilities of the bank in the following order of priority -

- (a) deposit liabilities incurred by the bank with non-bank customers;
- (b) deposit liabilities incurred by the bank with other banks;
- (c) other liabilities of the bank.

(3) The deposit or other liabilities in each class specified in subsection (2) shall rank in the order specified in that subsection but as between deposit or other liabilities of the same class shall rank equally between themselves and shall be paid in full unless the assets of the financial institution are insufficient to meet them in which case they shall be settled in equal proportions between themselves.

(4) For the purposes of section 91 and this section, "deposit liabilities" means sums of money paid on terms -

- (a) under which they shall be repaid, with or without interest or at a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the persons making the payments and the bank receiving them;
- (b) which are not referable to the provisions of property or services or to the giving of security;

(5) For the purposes of subsection (4), money shall be paid on terms which are referable to the provisions of property or services or to the giving of security only where -

- (a) it is paid by way of advance or part-payment for the sale, hire or other provision of property or services of any kind and shall be repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

- (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the bank by whom or on whose behalf the money is accepted; or
- (c) it is paid by way of security for the delivery or return of any property, whether in a particular state of repair or otherwise.

### **PART XIII - MISCELLANEOUS**

#### **93. Deposit insurance scheme**

(1) There shall be established and maintained, in such manner as may be prescribed, a deposit insurance scheme to provide insurance against the loss of part or all of deposits in a bank in a manner that will contribute to the stability of the financial system in Mauritius and minimize the exposure to loss.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) shall set out the terms and conditions of the scheme which shall include -

- (a) financing of the deposit insurance scheme through a deposit insurance fund to which shall be credited premiums levied on banks and shall be charged all costs associated with the payment of deposits, any restructuring of banks to reduce or avert a threatened loss to the scheme, or to pay cost of their liquidation;
- (b) types of deposits covered and the ceiling of coverage;
- (c) powers of the body administering the scheme; and
- (d) administration of the scheme.

(3) The central bank may advance funds to the deposit insurance fund on such repayment terms and conditions as it deems fit for the administration of the deposit insurance scheme.

#### **94. Derogations from articles 1659, 1660, 1661, 1673, 2087 and 2088 of the Code Civil Mauricien for the purposes of repurchase transactions**

(1) Pursuant to the second alinea of article 2094 of the Code Civil Mauricien and notwithstanding any other enactment -

- (a) articles 1659, 1660, 1661 and 1673 of the Code Civil Mauricien shall not apply to commercial contracts involving purchases made with a provision for repurchase of -

- (i) Treasury Bills;
- (ii) Bank of Mauritius Bills; or
- (iii) such other instruments as the central bank may specify,

among banks and such other financial institutions as the central bank may specify; and

- (b) articles 2087 and 2088 of the Code Civil Mauricien shall not apply to securities given for the repurchase of instruments referred to in paragraph (a).

(2) The central bank shall, by direction, specify the terms and conditions under which repurchase transactions may be entered into.

#### **95. Immunity**

No action shall lie against the Government, the central bank, any officer or employee of the central bank or any person acting under the direction of the central bank for anything done or omitted to be done in good faith in the administration of this Act, or in the execution of any powers or duties authorised or required under any other enactment that are relevant to this Act.

#### **96. Ombudsperson for banks**

(1) The Board shall, with the concurrence of the Minister, designate an officer of the central bank to be the Ombudsperson for Banks.

(2) The Minister shall, after consultation with the central bank, make such regulations as may be necessary –

- (a) concerning the functions, duties and powers of the Ombudsperson;
- (b) for dealing with complaints against financial institutions by their customers.

#### **97. Offences and penalties**

(1) Any person who transacts banking business, deposit taking business, business of cash dealer, without a licence, or, if applicable, the written authorisation from the central bank, 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.

(2) Any person who fails to comply with the requirements of the central bank under section 43(2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) Any person who, without any valid reason, hinders or obstructs the central bank in the exercise of its powers of special examination under section 43 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees for each day on which the offence occurs or continues and to imprisonment for a term not exceeding 2 years.

(4) Any person who knowingly furnishes any document or information which is false or misleading in a material way or particular in relation to an application for a banking licence under section 5 or to an application for a licence under section 14 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.

(5) Any financial institution which -

- (a) fails to display its licence in accordance with section 9 or 15; or
- (b) fails to comply with section 57(7) or (8),

shall commit an offence, and shall, on conviction, be liable to a fine which shall not be less than 10,000 rupees and not more than 50,000 rupees for each day on which the offence occurs or continues.

(6) Any financial institution which opens or keeps open a new place of business, closes or keeps closed an existing place of business or changes its location without the approval of the central bank shall commit an offence.

(7) Any person who, without being licensed, or without written authorisation by the central bank, under this Act -

- (a) uses the word “bank”, “foreign exchange dealer”, “money-changer” “deposit taking” or any of their derivatives in any language in the description or title under which that person is carrying on his activities in Mauritius;
- (b) uses, as part of the name, description or title under which he carries on his activities, any word or term likely to indicate the nature of his activities to be those of a bank or any other financial institution;
- (c) makes any representation or uses any word or term in any billhead, letter, notice, advertisement or in any manner whatsoever indicating that he is carrying on the activities of a bank or any other financial institution,

shall commit an offence.

(8) Any director or senior officer who commits an offence under subsection (5), (6) or (7) shall, on conviction, be liable to a fine which shall be not less than 25,000 rupees for each day on which the offence occurs or continues.

(9) (a) Any bank which contravenes section 23(2) shall commit an offence and shall, on conviction, be liable to a fine not less than 10,000 rupees and not more than 50,000 rupees for each day on which the offence occurs or continues.

(b) Upon a conviction pursuant to paragraph (a), the Court shall, in addition to the fine, order the bank to pay to the central bank a charge at a rate of interest which shall not be more than 3 times the legal rate of interest, calculated on -

(i) the amount by which the minimum holding of liquid assets have been proved in Court to be deficient; and

(ii) the period over which the minimum holding of liquid assets has been proved in Court to be deficient.

(c) The charge ordered to be paid under paragraph (b) may be recovered by the central bank by deduction of any balance of, or money owing to, the bank concerned, or as if it were a civil debt

(d) Paragraphs (b) and (c) shall apply notwithstanding anything to the contrary in any other enactment

(10) Any person who fails to comply with section 31 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.

(11) Any financial institution which fails to comply with section 34(5) or 35 shall commit an offence and shall, on conviction, be liable to a fine which shall be not less than 10,000 rupees and not more than 50,000 rupees for each day on which the offence occurs or continues.

(12) Any person who does not take the necessary corrective action mandated under section 38 shall commit an offence and shall, on conviction, be liable to a fine which shall not be less than 10,000 rupees and not more than 50,000 rupees for each day the offence occurs or continues.

(13) Any financial institution or its affiliate which fails to produce any book or other document or information required under section 44, shall commit an offence and shall, on conviction, be liable to a fine which shall be not less than 10,000 rupees and not more than 50,000 rupees for each day on which the offence occurs or continues.

(14) Any financial institution or its affiliate which gives information or produces any book or other document required under section 44, which is false in any material particular shall commit an offence and shall, on conviction, be liable to a fine which shall be not less than one million rupees and not more than 5 million rupees.

(15) (a) Where any financial institution has not taken the measures specified by the central bank pursuant to section 45(1)(ii), it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees in respect of each day on which the offence occurs or continues and the director, chief executive officer, manager, officer, employee or shareholder holding a significant interest responsible 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.

(b) Where a financial institution or any of its directors, senior officers, employees or shareholders holding a significant interest, fails to -

- (i) cease or desist from actions and violations specified in a cease and desist order issued by the central bank under paragraph (a) of section 45(2);
- (ii) take such affirmative action, as is specified in the order, to correct the conditions resulting from any such actions or violations,

the financial institution or any of its directors, senior officers, employees or shareholders, as the case may be, should commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million rupees.

(c) Where a financial institution fails to comply with an order issued under paragraph (b) of section 45(2), it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million rupees.

(16) Any person who contravenes section 47 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.

(17) Any director or senior officer who fails to comply with section 48, 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.

(18) Any bank which fails to comply with the requirements of sections 50(2), 51(3), 51(4), 52(2), 52(6)(a) and 53 shall commit an offence and shall, on conviction, be liable to a fine not less than 10,000 rupees and not more than 50,000 rupees for each day on which the offence occurs or continues.

(19) Any financial institution which contravenes section 55 shall commit an offence and shall, on conviction, be liable to a fine which shall be not less than one million rupees and not more than 5 million rupees.

(20) Any person who contravenes section 64 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.

(21) Any person who, being a director, chief executive officer, manager, officer, employee or agent of a financial institution -

- (a) makes, with intent to deceive, any false or misleading statement or entry or omits any statement or entry in any book, account, report or statement of the financial institution;



- (b) obstructs an inspection or examination, by an officer of the central bank or such other duly qualified person as it may authorise, of the affairs of the financial institution or the proper performance by an auditor of his duties under this Act;
- (c) fails to take all reasonable steps to ensure compliance by the financial institution with this Act; or
- (d) is privy to any offence committed under this subsection and fails to report it to a senior officer or, in the case of a director, to the Board of the central bank,

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.

(22) Any person who contravenes any provisions of this Act shall commit an offence and shall -

- (a) in the case of the offences referred to in the preceding subsections, be liable, on conviction, to the penalties specified in those subsections;
- (b) in any other case, be liable, on conviction, to a fine not exceeding 500,000 rupees and to a term of imprisonment not exceeding 2 years.

#### **98. Prosecution for offence**

No prosecution for an offence under this Act or any regulations made thereunder shall be instituted except by or with the consent of the Director of Public Prosecutions.

#### **99. Compounding of offences**

(1) The central bank may, with the concurrence of the Director of Public Prosecutions, compound any offence committed by a person under this Act which is prescribed as a compoundable offence, where the person agrees in writing to pay such amount not exceeding the maximum penalty specified for the offence, acceptable to the central bank.

(2) Every agreement to compound shall be final and conclusive and on payment of the agreed amount, no further proceedings in regard to the offence shall be taken against the person who agreed to the compounding.

#### **100. Guidelines or instructions**

(1) The central bank may make such guidelines or instructions as it thinks fit for the purposes of this Act.

(2) Any guidelines or instructions made under subsection (1) shall apply to all financial institutions or to one or more categories of financial institutions and shall take effect on the date of their issue to the financial institutions or on such later date as may be specified in the guidelines.

(3) Any person to whom guidelines or instructions are issued shall comply with those guidelines and instructions.

(4) Any person who fails to comply with the guidelines or instructions made under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

### **101. Regulations**

(1) The Minister may -

- (a) make such regulations as he thinks fit for the purposes of this Act;
- (b) by regulations, prescribe the offences which shall be compoundable offences for the purposes of section 99;
- (c) by regulations, amend the Schedules.

(2) Any regulations made under this section may -

- (a) provide for the payment of fees and the levying of charges; and
- (b) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 3 years.

### **102. Transitional provisions**

Where, on the commencement of this Act -

- (a) a bank has a capital of less than 200 million rupees as required under section 20(1), it shall raise its capital to not less than 150 million rupees as from 1 July 2005, and to not less than 200 million rupees as from 1 July 2006, after deduction of the accumulated losses of the bank;
- (b) a person holds a significant interest in a financial institution, the financial institution shall apply to the central bank within a period of 3 months from the commencement of this Act for approval under section 19(b)(i) and where such application is not approved by the central bank, the central bank may order the financial institution to take such measures as may be necessary for the person to comply with section 19(b)(i) within such time as the central bank may determine.

**103. Consequential amendments**

- (1) The Bills of Exchange Act is amended –
- (a) in section 13 –
- (i) by numbering the existing provisions as subsection (1);
- (ii) by adding after the new subsection (1), the following new subsection -
- (2) Where the last day for the time of payment as specified in the bill is a non-business day, the bill shall, for the purposes of subsection (1), be payable on the next business day.
- (b) by inserting immediately after section 44, the following new section -

**44A Presentment of cheque for payment by electronic means**

(1) A banker may present a cheque for payment to the banker on whom it is drawn by notifying him of its essential features by electronic means or by any other means as may be specified by the Bank of Mauritius instead of by presenting the cheque itself.

(2) Where a cheque is presented for payment under this section, presentment need not be made at the proper place or within a reasonable hour on the business day.

(3) Where before the close of business on the next business day following presentment of a cheque under this section, the banker on whom the cheque is drawn requests the banker by whom the cheque was presented to present the cheque itself –

- (a) the presentment under this section shall be disregarded, and
- (b) this section shall not apply in relation to the subsequent presentment of the cheque.

(4) A request under subsection (3) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

(5) Where presentment of a cheque is made under this section, the banker who presented the cheque and the banker on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.

(6) Where a notice of dishonour is given by electronic means the sender is deemed to have given the notice of dishonour unless the person due to receive it establishes that such notice was not received by him.

(7) For the purposes of this section, the essential features of a cheque include –

- (a) the serial number of the cheque;
- (b) the code which identifies the banker on whom the cheque is drawn;
- (c) the account number of the drawer of the cheque;
- (d) the amount of the cheque as entered by the drawer of the cheque;
- (e) the signature of the drawer and endorser, and
- (f) any such particulars as may be given in the form of letters or figures or any other code which as between bankers represent those particulars.

(c) by inserting immediately after section 79, the following new section –

**79A. Non-transferable cheques**

Where a cheque is crossed and bears across its face the words “account payee” or “a/c payee”, either with or without the word “only”, the cheque shall not be transferable, but shall only be valid as between the parties thereto.

(2) The Code Civil Mauricien is amended -

- (a) in article 2150-1 -
  - (i) by deleting the words “d’un prêt ou d’une avance” and replacing them by the words “d’un prêt, d’une avance ou autre facilité bancaire”; and
  - (ii) by deleting the words “de l’emprunteur” and replacing them by the words “du client a qui ce prêt, cette avance ou autre facilité bancaire a été consenti”;
- (b) in article 2150-2, by deleting the words “d’un prêt ou d’une avance” and replacing them by the words “d’un prêt, d’une avance ou autre facilité bancaire”;

- (c) in articles 2150-3, 2150-4 and 2150-5, by deleting the word “l’emprunteur” and replacing it by the word “le client”;
  - (d) in article 2150-6, by deleting the words “ le prêt ou l’avance” and replacing them by the words “le prêt, l’avance ou autre facilité bancaire”;
  - (e) in article 2202-3, by inserting immediately after the words “ou d’un paiement”, the words “ou toute autre obligation”.
- (3) The Financial Services Development Act 2001 is amended -
- (a) in section 2-
    - (i) in the definition of “bank” , by deleting the words “Banking Act 1988” and replacing them by the words “Banking Act 2004”;
    - (ii) by inserting in its appropriate alphabetical order, the following definition -
 

“Bank of Mauritius” means the Bank of Mauritius established under the Bank of Mauritius Act 2004;
  - (b) in section 21(2) -
    - (i) by deleting paragraphs (a) and (b) and replacing them by the following paragraph (a), the existing paragraphs (c) and (d) being relettered (b) and (c) respectively -
      - (a) open and maintain with a bank an account in Mauritius currency for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;
  - (c) in section 42 -
    - (i) by deleting subsection (3) and replacing it by the following subsection -
 

(3) A holder of a banking licence under the Banking Act 2004 shall be exempt from payment of any duty, levy, charge, fee or tax imposed by the enactments specified in Part I of the Fourth Schedule in respect of its banking transactions with a non-citizen who is a non-resident.
    - (ii) in subsection (4), by deleting the words “the Fourth Schedule” and replacing them by the words “Part II of the Fourth Schedule”;

- (d) by deleting the Fourth Schedule and replacing it by the following Schedule -

**FOURTH SCHEDULE**

*(section 42)*

**Enactments**

**Part I**

Land (Duties and Taxes) Act

Registration Duty Act

Stamp Duty Act

Transcription and Mortgage Act

**Part II**

Land (Duties and Taxes) Act

Local Government Act

Registration Duty Act

Stamp Duty Act

Transcription and Mortgage Act

- (4) The Income Tax Act is amended -
- (a) in section 6, by repealing subsection (4) and replacing it by the following subsection -
- (4) Notwithstanding the other provisions of this section, the net income of -
- (a) a corporation holding a Category 1 Global Business Licence under the Financial Services Development Act 2001; or

- (b) a bank holding a banking licence under the Banking Act 2004 in respect of its banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001,

shall be converted into Mauritius currency at the exchange rate in force at the date on which the return of income is submitted to the Commissioner.

- (b) in section 123(4), by deleting the words “sections 39 and 51(2) of the Banking Act” and replacing them by the words “section 64 of the Banking Act 2004”;

- (c) in section 161A, in subsection (1) -

- (i) in paragraph (a), by deleting the words “Commissioner and to the Commission” and replacing them by the words “Commissioner, and to the Commission or the Bank of Mauritius, as the case may be”;

- (ii) in paragraph (b), by deleting the words “other than a trust under the Offshore Trusts Act 1992”;

- (iii) in paragraph (g), by deleting the definition of “qualified corporation” and replacing it by the following definition -

“qualified corporation” means -

- (a) a corporation holding a Category 1 Global Business Licence under the Financial Services Development Act 2001; or

- (b) a bank holding a banking licence under the Banking Act 2004 in so far as its banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001 are concerned,

and having been in operation before 1 July 1998.

- (iv) in paragraph (h), by deleting the words “other than a trust under the Offshore Trusts Act 1992” wherever they appear;

- (d) in the First Schedule, in Part IV, in item 16 -
  - (i) in paragraph (a), by deleting the words “ (a)”;
  - (ii) by deleting paragraph (b);
- (e) in the Second Schedule -
  - (i) in Part II, in item 14, by deleting paragraph (iv) and replacing it by the following paragraph -
    - (iv) holding a banking licence under the Banking Act 2004 and who is employed by that company to carry out banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001; or
  - (ii) in Part III -
    - (A) in item 3 -
      - (I) in paragraph (c), by deleting the words “domestic bank” and replacing them by the words “bank holding a banking licence under the Banking Act 2004”;
      - (II) by deleting paragraph (d) and replacing it by the following paragraph -
        - (d) a deposit made and maintained for a continuous period of not less than 3 years by an individual in a bank holding a banking licence, or in a non-bank financial institution authorised to carry on deposit-taking business in Mauritius, under the Banking Act 2004;
    - (B) in item 5, by deleting the words “a bank under the Banking Act in so far as it relates to its business covered by a Category 2 Banking Licence” and replacing them by the words “a bank holding a banking licence under the Banking Act 2004 in so far as the interest is paid out of gross income derived from its banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001”;



- (C) in item 6, by deleting the words “a bank holding a Category 2 Banking Licence under the Banking Act 1988” and replacing them by the words “a bank holding a banking licence under the Banking Act 2004 in so far as the royalty is paid out of gross income derived from its banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001”.
- (5) The Income Tax (Foreign Tax Credit) Regulations 1996 are amended -
- (a) in regulation 2 –
    - (i) by deleting the definition of “foreign source income” and replacing it by the following definition -

“foreign source income” means income which is not derived from Mauritius and includes –

      - (a) in the case of a corporation holding a Category 1 Global Business Licence under the Financial Services Development Act 2001, income derived from -
        - (i) a qualified corporation; or
        - (ii) a company holding a Category 2 Global Business Licence under the Financial Services Development Act 2001,

none of which derives income directly or indirectly from Mauritius; and
      - (b) in the case of bank holding a banking licence under the Banking Act 2004, income derived from its banking transactions with –
        - (i) non-residents; or
        - (ii) corporations holding a Global Business Licence under the Financial Services Development Act 2001;

- (ii) in the definition of “qualified corporation”, by deleting the words “a bank holding a Class B Banking Licence under the Banking Act 1988” and replacing them by the words “a bank holding a banking licence under the Banking Act 2004 in so far as its banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001 are concerned”;
  - (b) in regulation 6, in paragraph 2((b), by adding immediately after the word “taxpayer”, the words “, other than a bank holding a banking licence under the Banking Act 2004 in so far as a deduction from its gross income from banking transactions with non-residents and corporations holding a Global Business Licence under the Financial Services Development Act 2001 is concerned,”;
  - (c) in regulation 8, in paragraph (3), by adding immediately after the words “foreign tax charged” the words “on its foreign source income”.
- (6) The Mutual Assistance in Criminal and Related Matters Act 2003 is amended in section 6(9) by deleting the words “sections 39 and 39A of the Banking Act” and replacing them by “section 64 of the Banking Act 2004”.
- (7) The Non-Citizens (Property Restriction) Act is amended -
- (a) in section 2 -
    - (i) in the definition of “business certificate”, by deleting the words “or a Category 2 Banking Licence under the Banking Act” and replacing them by the words “or a banking licence under the Banking Act 2004, in so far as it relates to its banking transactions with non-residents and corporations holding a Category 1 Global Business Licence or a Category 2 Global Business Licence”;
    - (ii) in the definition of “qualified corporation”, by the deleting the words “or a bank holding a Category 2 Banking Licence under the Banking Act” and replacing them by the words “or a bank holding a banking licence under the Banking Act 2004, in so far as it relates to its banking transactions with non-residents and corporations holding a Category 1 Global Business Licence or a Category 2 Global Business Licence”;
  - (d) in section 6(1), by deleting the words “Category 2 Banking Licence” and replacing them by the words “banking licence under the Banking Act 2004 in so far as it relates to its banking transactions with non-residents and corporations holding a Category 1 Global Business Licence or a Category 2 Global Business Licence”.

- (8) The Registration Duty Act is amended -
- (a) in section 2, by inserting in their appropriate alphabetical order the following definitions -
- “non-citizen” has the same meaning as in the Non-Citizens (Property Restriction) Act;
- “resident in Mauritius” has the same meaning as in the Non-Citizens (Property Restriction) Act;
- (b) in section 3 –
- (i) by deleting subsection (4) and replacing it by the following subsection -
- (4) Notwithstanding subsections (1) and (2), no registration duty shall be leviable on any deed witnessing a transaction carried out within Mauritius -
- (a) between a company holding a Category 1 Global Business Licence under the Financial Services Development Act 2001 and a non-citizen; or
- (b) between a bank holding a banking licence under the Banking Act 2004 and a non-citizen who is not resident in Mauritius in so far as the deed relates to banking transactions with that non-citizen.
- (ii) by deleting subsection (6);

- (c) in the First Schedule, by deleting Part IV and replacing it by the following Part -

**PART IV – Special Duty**

- |    |   |  |
|----|---|--|
| 1. | Registration of a notice under article 2202 - 44 of the Code Napoleon.  | 300 rupees   |
| 2. | Recording of Memorandum of inventory under article 2202 - 49 of the Code Napoleon.  | 50 rupees  |
| 3. | Recording of the renewal of a "surete fixe ou flottante" under articles 2202 - 10 and 2203 - 6 of the Code Napoléon.  | 300 rupees   |
| 4. | (a) Registration of a deed witnessing the purchase of an immovable property under the Integrated Resort Scheme prescribed under the Investment Promotion Act.   | 70,000 US Dollars or the equivalent in Mauritius currency in the case of a citizen of Mauritius, or a company incorporated under the Companies Act 2001, |
|    | (b) Where the deed referred to in paragraph (a) is made under condition precedent ( <i>clause suspensive</i> ), the provisions of items 10, 12, 13 and 14 of paragraph J of Part I of the First Schedule shall not apply. | -  |
| 5. | Registration of a document witnessing the creation of fixed and floating charges by a company specified in the Eighth Schedule or a company registered with the Small and Medium Industries Development Organisation.     | 300 rupees   |
| 6. | Registration of a document witnessing the creation of a “ <i>gage sans déplacement</i> ” in accordance with Article 2112 of the Code Civil Mauricien by a company specified in the Eighth Schedule.                       | 300 rupees   |

7. Registration of a document witnessing the creation of fixed and floating charges by a non-citizen on his assets, property and accounts sited in Mauritius in favour of – 1000 rupees
- (a) another non-citizen;
  - (b) a company holding a Category 1 Global Business Licence, or a Category 2 Global Business Licence, under the Financial Services Development Act 2001; or
  - (c) a bank holding a banking licence under the Banking Act 2004 provided that the non-citizen is not resident in Mauritius.

#### **104. Repeal and savings**

- (1) The following enactments are repealed -
  - (a) The Banking Act; and
  - (b) The Foreign Exchange Dealers Act.
- (2) Notwithstanding the repeal of the enactments specified in subsection (1) -
  - (a) any licence or certificate issued, any approval given or authorisation granted under the repealed enactments and in force on the date immediately before the coming into operation of this Act shall be deemed to have been issued, given or granted under this Act and any such licence, certificate, approval or authorisation shall remain valid for the period specified therein;
  - (b) any Category 1 Banking Licence or Category 2 Banking Licence issued under the repealed enactment referred to in subsection (1)(a) shall, on the commencement of this Act, be deemed to be a banking licence issued under this Act;
  - (c) any licence fee paid under the repealed enactments referred to in subsection (1) shall, on the commencement of this Act, be deemed to have been paid under this Act for the remaining period to which it applies;

- (d) any guidelines or instructions issued by the central bank under the repealed enactments and in force on the date immediately before the coming into operation of this Act shall be deemed to have been issued under this Act;
- (e) all proceedings, judicial or otherwise under the repealed enactments commenced before and pending on the date immediately before the coming into operation of this Act shall be deemed to have been commenced and may be continued under this Act;
- (f) any act or thing done under the repealed enactments shall be deemed to have been done under this Act.

### **105. Commencement**

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

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

**FIRST SCHEDULE***(section 64(1)(a))***Oath of confidentiality****IN THE SUPREME COURT OF MAURITIUS**

I ..... being appointed  
 ..... do hereby swear/solemnly affirm that I shall maintain during  
 or after my relationship with ..... the confidentiality of any  
 matter relating to the banking laws which comes to my knowledge and shall not, on any account  
 and at any time, disclose directly or indirectly to any person, any matter or information relating  
 to the affairs of ..... otherwise than for the purposes of the  
 performance of my duties or the exercise of my functions under the banking laws or when  
 lawfully required to do so by a Judge in Chambers or any court of law or under any enactment.

Taken before me, .....

The Master and Registrar of the Supreme Court on .....(date)

**SECOND SCHEDULE***(section 64(1)(b))***Declaration of confidentiality**

I ..... being appointed  
 ..... do hereby declare that I shall maintain during or after my  
 relationship with ..... the confidentiality of  
 any matter relating to the banking laws which comes to my knowledge and shall not, on any  
 account and at any time, disclose directly or indirectly to any person, any matter or information  
 relating to the affairs of ..... otherwise than for the purposes  
 of the performance of my duties or the exercise of my functions under the banking laws or when  
 lawfully required to do so by a Judge in Chambers or any court of law or under any enactment.

Signature of declarant ..... Made before me this .....

Signature .....

Name .....

*Chief Executive Officer/Deputy Chief Executive Officer*