

THE FINANCIAL SERVICES BILL
(No. XVI of 2007)

Explanatory Memorandum

The object of this Bill is to amend and consolidate the law regulating financial services, other than banking, and global business and to provide for related matters.

06 July 2007

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

THE FINANCIAL SERVICES BILL
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A Bill

To amend and consolidate the law regulating financial services, other than banking, and global business 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 Financial Services Act 2007.

2. Interpretation

In this Act –

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

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

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

"Board" means the Board referred to in section 4;

“Category 1 Global Business Licence” means a licence issued under section 72(6) and includes a licence issued to –

(a) an external insurer; and

(b) an insurance manager;

“Category 2 Global Business Licence” means a licence issued under section 72(6);

“Chairperson” means the Chairperson of the Board;

“Chief Executive” means the Chief Executive of the Commission appointed under section 9;

"Commission" means the Financial Services Commission established under section 3;

"confidential information" includes any document, books of account, balance sheet, profit and loss account or any matter which is to be treated as confidential under section 83;

“controller” in relation to a corporation, means a person –

(a) who is a member of the governing body of the corporation;

- (b) who has the power to appoint or remove a member of the governing body of the corporation;
- (c) whose consent is needed for the appointment of a person to be a member of the governing body of the corporation;
- (d) who, either by himself or through one or more other persons –
 - (i) is able to control, or exert significant influence over, the business or financial operations of the corporation whether directly or indirectly;
 - (ii) holds or controls not less than 20 percent of the shares of the corporation;
 - (iii) has the power to control not less than 20 percent of the voting power in the corporation;
 - (iv) holds rights in relation to the corporation that, if exercised, would result in paragraphs (ii) and (iii);
- (e) who is a parent undertaking of that corporation, or a controller of such parent undertaking;
- (f) who is a beneficial owner or ultimate beneficial owner of the persons specified in paragraphs (a) to (e) and who appears to the Commission to be a controller of that corporation;

“corporation” –

- (a) means a body corporate; and
- (b) includes, where specified in FSC Rules, any trust, *société* or partnership or any other body of persons;

“Council” means the Financial Services Consultative Council established under section 12;

“document” –

- (a) means a document in any form; and
- (b) includes –
 - (i) any writing on any material;
 - (ii) a book, graph or drawing;
 - (iii) information recorded or stored by any electronic or other technological means and capable with or without the aid of any equipment of being reproduced;

“employee” means an employee of the Commission appointed under section 80;

“Enforcement Committee” means the Enforcement Committee established under section 52;

“external insurer” has the same meaning as in the Insurance Act 2005;

“financial crime” means –

- (a) an offence that involves fraud or dishonesty under the relevant Acts or any other enactment; or
- (b) an offence under the Financial Intelligence and Anti-Money Laundering Act 2002 or under the Prevention of Terrorism Act 2002;

“financial services” –

- (a) means any financial services or financial business activities governed by the relevant Acts; and
- (b) includes the financial business activities specified in the Second Schedule;

“FSC Rules” means the Financial Services Commission Rules made by the Commission under section 93;

“Fund” means the Financial Services Fund established under section 68;

“Global Business” has the meaning assigned to it by section 71;

“Global Business Licence” means a licence issued under section 72(6);

“guidelines” includes codes, guidance notes, practice notes and such other similar instruments issued by the Commission;

“insurance manager” has the same meaning as in the Insurance Act 2005;

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

“licence” –

- (a) means any licence issued under any relevant Act; and

- (b) except where otherwise specified, includes –
- (i) a Category 1 Global Business Licence;
 - (ii) a Category 2 Global Business Licence; or
 - (iii) a management licence;

“licensee” –

- (a) means the holder of a licence; and
- (b) includes –
 - (i) any person authorised, registered or approved under the relevant Acts; and
 - (ii) any institution established to provide any service under the relevant Acts;

“management company” means a company holding a management licence;

“management licence” means a licence referred to in section 77;

“member” means a member of the Board and includes the Chairperson and the Vice-Chairperson;

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

“officer” means a member of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a company secretary, a partner, a trustee or a person holding any similar function with a licensee;

“public sector agency” includes any Ministry or Government Department, local authority or statutory body;

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

“registered agent” has the meaning assigned to it by section 76;

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

“relevant Acts” –

- (a) means this Act and the Acts specified in the First Schedule; and
- (b) includes any regulations and FSC Rules made under those Acts;

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

“SRO” means a self-regulatory organisation whose object is to regulate the operations of its members or of the users of its services, their standards of practice and business conduct in order to better protect investors and consumers of securities or related services and includes such other organisations as may be declared or recognised as such by the Commission;

"technical committee" means a technical committee set up under section 11;

“trust” has the same meaning as in the Trusts Act 2001;

“Vice-Chairperson” means the Vice-Chairperson of the Board.

PART II – THE FINANCIAL SERVICES COMMISSION

3. Establishment of Commission

(1) The Financial Services Commission established under the repealed Financial Services Development Act 2001 shall be deemed to have been established under this Act.

(2) The Commission shall be a body corporate.

(3) Subject to this Act, the Commission shall, in the pursuit of its objects, perform its functions independently.

4. The Board

(1) The Commission shall be administered and managed by a Board.

(2) The Board shall consist of –

(a) a Chairperson, suitably qualified and experienced in the field of business, finance or law, appointed by the Prime Minister on such terms and conditions as the Prime Minister may determine; and

(b) a Vice-Chairperson, and not more than 5 other members, suitably qualified and experienced in the field of business, finance or law, appointed by the Minister on such terms and conditions as the Minister may determine.

(3) Every member shall hold office for a period of 3 years and shall be eligible for re-appointment.

(4) Every member shall be paid by the Commission such fees as the Board may, with the approval of the Minister, determine.

5. Objects of Commission

- (1) The objects of the Commission shall be –
- (a) to ensure the orderly administration of the financial services and global business activities;
 - (b) to ensure the sound conduct of business in the financial services sector and in the global business sector;
 - (c) to elaborate policies which are directed to ensuring the fairness, efficiency and transparency of financial and capital markets in Mauritius;
 - (d) to study new avenues for development in the financial services sector, to respond to new challenges and to take full advantage of new opportunities for achieving economic sustainability and job creation;
 - (e) to ensure, in collaboration with the Bank of Mauritius, the soundness and stability of the financial system in Mauritius; and
 - (f) to work out objectives, policies and priorities for the development of the financial services sector and global business and to make recommendations to the Minister.

(2) Notwithstanding the Bank of Mauritius Act 2004, the Bank of Mauritius may make available to the Commission such infrastructure, know-how and other facilities of the Bank as the Commission may need to enable it to attain its objects under the Act.

6. Functions of Commission

The Commission shall have such functions as are necessary to further most effectively its objects, and in particular, shall -

- (a) be responsible for the administration of the relevant Acts;
- (b) license, regulate, monitor and supervise the conduct of business activities in the financial services sector and of global business;
- (c) set rules and guidance governing the conduct of business in the financial services sector and of global business;
- (d) identify and take measures to prevent and eliminate investment business abuse;
- (e) establish norms and standards in order to preserve and maintain the good repute of Mauritius in the financial services sector;

- (f) promote public understanding of the financial system including awareness of the benefits and risks associated with different kinds of investment;
- (g) carry out investigations and take measures to suppress illegal, dishonourable and improper practices, market abuse and financial fraud in relation to any activity in the financial services and global business sectors;
- (h) prepare, develop and implement a plan for the better integration of the financial services industry ;
- (i) carry out research, commission studies and disseminate information in the field of financial services;
- (j) collect, compile, publish and disseminate statistics in respect of the financial services sector;
- (k) establish and maintain such links and liaison with international agencies in the field of financial services and global business as may be necessary for the furtherance of its objects;
- (l) ensure co-ordination and co-operation between public sector agencies and private corporations engaged in the financial services sector;
- (m) take measures for the better protection of consumers of financial services;
- (n) advise the Minister generally on any matter relating to the financial services sector and to global business; and
- (o) do such acts or things as are incidental or conducive to the attainment of its objects.

7. Powers of Commission

(1) The Commission shall have such powers as are necessary to enable it to effectively discharge its functions and may, in particular -

- (a) make FSC Rules, set standards and provide guidelines;
- (b) give directions to ensure compliance with a relevant Act or guideline;
- (c) with respect to a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee –
 - (i) issue a private warning;
 - (ii) issue a public censure;

- (iii) disqualify a licensee from holding a licence or a licence of a specified kind for a specified period;
 - (iv) in the case of an officer of a licensee, disqualify the officer from a specified office or position in a licensee for a specified period;
 - (v) impose an administrative penalty;
 - (vi) revoke a licence;
- (d) in relation to any case or class of cases, for good cause, grant exemption or partial exemption from compliance with any FSC Rules and guidelines issued under a relevant Act subject to such conditions as it may impose;
- (e) set up such technical committees as it thinks fit to assist it in the discharge of its functions under the relevant Acts;
- (2) In the discharge of its functions under section 6(j), the Commission –
- (a) may require any licensee to furnish such statistical information relating to his business or to the business administered or managed by him for his clients at such intervals and within such time as may be required by the Commission;
 - (b) may, subject to paragraph (c), publish and disseminate any information obtained under paragraph (a) in any aggregate form and figures;
 - (c) shall not publish or disseminate information relating to the individual affairs of any particular client of the licensee.
- (3) (a) Any person to whom a direction has been given under subsection (1)(b) shall comply with the direction.
- (b) Any licensee who fails to comply with a requirement under subsection (2)(a) shall commit an offence.
- (4) The Commission may, for the purpose of section 6(k), enter into an agreement or arrangement for the exchange of information with a foreign supervisory institution having responsibility to supervise financial institutions and the conduct of financial markets and the provision of financial services, where the Commission is satisfied that the foreign supervisory institution has the capacity to protect the confidentiality of the information so imparted.
- (5) The Commission may publish a bulletin at such intervals as it thinks fit for the purpose of giving public notice of –
- (a) any decision or determination by the Commission or the Review Panel under any of the relevant Acts;

- (b) any statistical report or analysis; and
- (c) any other information the Commission deems relevant.

(6) The powers conferred upon the Commission under this Act shall be without prejudice and in addition to any other power conferred upon it by any relevant Act.

8. Meetings of Board

(1) The Board shall meet as often as is necessary but not less than once every month and at such time and place as the Chairperson thinks fit.

(2) In the absence of the Chairperson or the Vice-Chairperson at a meeting of the Board, the members present shall elect a member to act as Chairperson for that meeting.

(3) Everything authorised or required to be done by the Board shall be decided by a simple majority of the members present and voting.

(4) At any meeting of the Board, 4 members shall constitute a quorum.

(5) The Board may co-opt such other person as may be of assistance in relation to any matter before the Board.

(6) Any person co-opted under subsection (5) shall not have the right to vote on any matter before the Board.

(7) Subject to the other provisions of this section, the Board shall regulate its meetings and proceedings in such manner as it thinks fit.

9. The Chief Executive

(1) There shall be a chief executive officer of the Commission who shall –

- (a) be known as the Chief Executive; and
- (b) be appointed by the Board with the approval of the Minister, on such terms and conditions as it thinks fit.

(2) The Chief Executive shall be responsible for the execution of the policy of the Board and for the control and management of the day-to-day business of the Commission.

(3) In the exercise of his functions, the Chief Executive shall act in accordance with such directions as he may receive from the Board.

(4) The Chief Executive may, with the approval of the Board, delegate his functions or any power delegated to him under section 10 to an employee.

(5) The Chief Executive shall, unless otherwise directed by the Board, attend every meeting of the Board and may take part in its deliberations but shall not have the right to vote on any matter before the Board.

10. Delegation of powers

(1) Subject to subsection (2) and to such instructions and FSC Rules of a general nature as it may give or make, the Board may delegate to the Chairperson, the Vice-Chairperson, the Chief Executive or to a technical committee such of its powers and functions under the relevant Acts as may be necessary to assist it in the effective management of the Commission other than the power –

- (a) to borrow money;
- (b) to raise loans;
- (c) to enter into any transaction in respect of capital expenditure which exceeds one million rupees;
- (d) to make FSC Rules and issue guidelines under a relevant Act;
- (e) to grant exemption under section 7(1)(d) from compliance with any FSC Rules and guidelines.

(2) (a) Subject to paragraph (b), no document relating to any transaction referred to in subsection (1) shall be executed or signed by or on behalf of the Commission unless it is signed by the Chairperson and the Chief Executive, or, in the absence of the Chairperson, by the Vice-Chairperson or any other member appointed by the Board for that purpose.

(b) In the absence of the Chief Executive, his powers under paragraph (a) shall be exercised by such employee as may be appointed by the Board for that purpose.

11. Technical committees

(1) The Board may set up such technical committees as may be necessary to examine and report on any matter in relation to the administration of any relevant Act referred to them by the Board or the Chief Executive.

(2) Every technical committee shall consist of not less than 3 and not more than 7 members including a chairperson, who shall be appointed by the Board on such terms and conditions as the Board thinks fit.

(3) A technical committee may co-opt, with the approval of the Board, any person and may set up such sub-committees as it considers necessary.

(4) The Board may, at any time, terminate the appointment of any member of a technical committee for misconduct, default or breach of trust in the discharge of his duties as member or for any other good or sufficient cause.

(5) A technical committee shall –

- (a) meet as often as is necessary and at such time and place as the chairperson of the Committee thinks fit;
- (b) meet when required to do so by the Board; and
- (c) subject to the other provisions of this section, regulate its meetings and procedures as it thinks fit.

PART III – THE FINANCIAL SERVICES CONSULTATIVE COUNCIL

12. Establishment of Council

(1) There is established for the purposes of this Act a Financial Services Consultative Council, which shall not be a body corporate.

(2) The Council shall consist of –

- (a) the Minister who shall be the Chairperson;
- (b) the Financial Secretary, who shall be the Vice-Chairperson;
- (c) the Governor of the Bank of Mauritius;
- (d) the Chairperson of the Commission;
- (e) the Chief Executive; and
- (f) not more than 6 other members designated by the Minister from amongst persons of high calibre and of international repute in their relevant fields.

(3) The Council shall meet at such time and place as the Chairperson thinks fit.

(4) The Council shall regulate its own proceedings.

(5) The Council may co-opt any person and may set up such sub-committees as it considers necessary to attain its objects.

13. Objects of Council

The objects of the Council shall be to act as a think-tank and to serve as a platform for discussions of the latest concepts and international trends in the field of financial services and to formulate suggestions and ideas for the development of the financial services sector.

PART IV – REGULATION OF FINANCIAL SERVICES

14. Requirement to be licensed

(1) No person shall carry out , or hold himself out as carrying out , in Mauritius any financial services without a licence issued by the Commission.

(2) Any person who contravenes subsection (1) 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 8 years.

15. Application of Part IV

(1) Subject to subsection (3), where under any relevant Act, the conduct of an activity is subject to the requirement of a licence, the application for such licence shall be made in accordance with this Part.

(2) This Part shall apply, with necessary modifications and adaptations, to the licensing of an activity under any relevant Act.

(3) Except as otherwise expressly provided under this Act, this Part shall not apply to an application for -

- (a) a licence under the Insurance Act 2005;
- (b) a Global Business Licence.

(4) Except as otherwise expressly provided under this Act, this Part shall not apply to a corporation holding a Global Business Licence unless the corporation also holds a licence, authorisation, approval or registration for the conduct of a financial services activity under a relevant Act.

16. Application for a licence

(1) An application for a licence shall be made in such form and manner as may be specified in FSC Rules, and shall be accompanied by –

- (a) a business plan or feasibility study outlining the proposed business activity of the applicant;
- (b) particulars of promoters, beneficial owners, controllers and proposed directors in such form as may be specified in FSC Rules;
- (c) such fees, as may be specified in FSC Rules; and
- (d) such other information as may be specified in FSC Rules or otherwise required by the Commission to determine the application.

(2) An applicant shall notify the Commission of any material change which may have occurred, whether before or after the issue of a licence, in the information provided in the application.

(3) An application for a licence shall include an authority for any regulatory body, law enforcement body or financial institution, in Mauritius or in a foreign country, to release to the Commission, for use in relation to the application and the enforcement of this Act, any

information about the applicant, and any of its promoters, officers or controllers, as may be applicable.

(4) Where the applicant is not an individual, such an authority shall be given by each of the directors of the applicant or by 2 directors duly authorised by a resolution of the board of directors.

17. Further information and verification

(1) The Commission may require an applicant including an applicant for a Global Business Licence –

- (a) to give it further information in connection with an application in such form and manner as it may specify;
- (b) to have any information submitted in support of an application verified at the cost of the applicant in such manner and by such persons as it may specify.

(2) The Commission shall not be bound to deal further with the application until the requirement under subsection (1) is satisfied.

18. Granting of applications

(1) Subject to this Part and to any applicable relevant Act, the Commission may issue a licence authorising the applicant to carry out the business activity specified in the licence on such terms and conditions as may be specified in FSC Rules or as it deems appropriate in the circumstances.

(2) The Commission shall not grant an application unless it is shown to its satisfaction that –

- (a) the application complies with the provisions of the law;
- (b) the criteria set out under the applicable relevant Act for the grant of the licence are met;
- (c) the applicant has adequate resources, infrastructure, staff with the appropriate competence, experience and proficiency to carry out the activity for which the licence is sought;
- (d) the applicant has adequate arrangements for proper supervision of everything done under the licence so as to ensure compliance with the law and the conditions of its licence;
- (e) the applicant and each of its controllers and beneficial owners are fit and proper persons to carry out the business for which a licence is sought;

- (f) the applicant, once licensed, will be able to satisfy criteria or standards, including prudential standards, applicable to its business activity; and
- (g) no prejudice would be caused or would ensue to the financial services industry or any part thereof, if the licence is granted.

19. False and misleading statements to the Commission

(1) No person shall, in connection with an application submitted to the Commission for a licence including a Global Business Licence –

- (a) make or procure the making of a statement to the Commission which he knows or ought reasonably to know is false or misleading;
- (b) omit to state any matter to the Commission where he knows or ought reasonably to know that, because of the omission, the application is misleading in a material respect.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

20. Matters related to fit and proper person requirements

(1) In considering whether a person is a fit and proper person the Commission may have regard to –

- (a) in relation to the person and, where the person is a corporation, the officers and beneficial owners of the corporation –
 - (i) financial standing;
 - (ii) relevant education, qualifications and experience;
 - (iii) ability to perform the relevant functions properly, efficiently, honestly and fairly; and
 - (iv) reputation, character, financial integrity and reliability;
- (b) any matter relating to –
 - (i) any person who is or is to be employed by, or associated with, the person;
 - (ii) any agent or representative of the person;
 - (iii) where the person is a corporation, the officers and any shareholder of the corporation, the related corporations of the corporation and the officers of those related corporations; and

- (c) any matter specified in a relevant Act as relating to the fit and proper person requirement.

(2) For the purposes of this section, the Commission may have regard to any other information in its possession.

21. Display of licence

(1) A licensee shall, at all times, conspicuously display –

- (a) the licence in a public part of its principal place of business or its head office; and
- (b) a copy of the licence in a public part of each of its branches or offices.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

22. Licence fees

(1) A licensee shall pay to the Commission such annual fees as may be specified in FSC Rules.

(2) FSC Rules may specify additional charges for late payment of annual fees.

(3) The Commission shall not be bound to accept late payment of annual fees where the payment is effected after such time as may be specified in FSC Rules.

(4) Where a licensee fails to pay its annual fees within such time as is specified in FSC Rules, the Chief Executive may, after giving notice of not less than 15 days to the licensee, terminate the licence subject to such terms and conditions as he deems appropriate in the circumstances.

23. Approval of controllers and beneficial owners

(1) No shares, or any legal or beneficial interest in a licensee shall be issued or transferred except with the approval of the Commission.

(2) The licensee shall provide such particulars of any person under subsection (1) as may be required by the Commission.

(3) Where, at any time, the Commission is not satisfied that a controller or beneficial owner of a licensee is a fit and proper person, it may, after giving the person and the licensee an opportunity to make representations about the matter, direct -

- (a) such person to dispose of his shareholding in the licensee;
- (b) such person not to exercise any voting rights with respect to his shareholding in the licensee; or

- (c) the licensee to take such remedial measures as may be necessary in the circumstances.

(4) The requirement under subsection (1) shall not apply to such classes of licensees as may be specified in FSC Rules.

24. Approval of officers

(1) Without prejudice to any other enactment or to anything stated as a condition attached to a licence, no person shall be appointed as an officer of a licensee without the prior approval of the Commission.

(2) Any appointment in contravention of subsection (1) shall be of no effect.

(3) An application for the Commission's approval in terms of subsection (1) shall –

- (a) be accompanied by full particulars of the person to be appointed and such other information as may be required by the Commission;
- (b) not be proceeded with by the Commission unless all information under paragraph (a) have been submitted;
- (c) be deemed to be approved where the Commission has not objected to the proposal within 15 days of having received the application, or any information required under paragraph (a), whichever is later.

(4) Where the Commission objects to a proposed appointment, it shall give the officer and the licensee an opportunity to make representations within such reasonable time as the Commission may specify.

(5) The Commission may, after having considered the representations submitted pursuant to subsection (4), withdraw its objection to the proposed appointment.

(6) A licensee shall forthwith notify the Commission of any removal or resignation of any officer and shall provide particulars of such removal or resignation as may be required by the Commission.

(7) Notwithstanding any other enactment, where, at any time, the Commission is not satisfied that an officer of a licensee is a fit and proper person, it may, after giving such officer and the licensee an opportunity to make representations thereon, direct the licensee to remove such officer.

25. Variation of licence

(1) The Commission may, by written notice to a licensee, vary the licence.

(2) The Commission shall not vary a licence by –

- (a) restricting the activity authorised by the licence; or

- (b) including further conditions on the licence,

unless the Commission has notified the licensee of the proposed variation, and the reasons for the proposed variation, and has given the licensee a reasonable opportunity to make representations to the Commission thereon.

- (3) This section shall apply to a holder of a Global Business Licence.

26. Register of licensees

(1) The Chief Executive shall keep in such form and manner as he may determine, a register of licensees which shall be made available for public inspection in such manner as he may determine.

- (2) The register shall contain –

- (a) the name of the licensee;
- (b) the business address of the licensee;
- (c) the type and category of licence held by the licensee and the business activity or services authorised;
- (d) the date the licence was granted;
- (e) the names and business address of any agent or representative of the licensee, if any;
- (f) any other matter that the Commission considers appropriate.

(3) The Chief Executive may make appropriate annotations in the register with respect to a licensee where the licence is suspended or terminated.

27. Suspension of licence

(1) Where the Chief Executive is satisfied on reasonable grounds that it is urgent and necessary to do so –

- (a) for the prevention or mitigation of damage to the integrity of the financial services industry or to any part thereof;
- (b) for the protection of the interest of clients of a licensee or of the interest of the public in general; or
- (c) for the protection of the good repute of Mauritius as a centre for financial services,

he may, by notice, suspend the licence of a licensee.

(2) The Chief Executive shall, subject to subsection (3), not suspend a licence under subsection (1) unless he gives the licensee –

- (a) prior notice of his intention and the reasons for doing so; and
- (b) an opportunity to make representations on the matter.

(3) Where the Chief Executive considers that any delay in suspending a licence may cause prejudice to the clients of the licensee, the public or any part of the financial services industry, he may suspend the licence with immediate effect and shall give the licensee the opportunity to make representations as soon as practicable, but not later than 7 days from the date the licence is suspended.

(4) The suspension of a licence shall operate as the suspension of the licence or similar permission granted to any agent or representative of the licensee as may be applicable.

(5) Where a licence is suspended, the licensee shall cease to carry out the activity authorised by the licence, but he shall remain subject to the obligations of a licensee and to the directions of the Commission until the suspension of the licence is cancelled.

(6) A person whose licence is suspended may, notwithstanding subsection (5), continue to carry out such activities as the Chief Executive may authorise and on such conditions as the Chief Executive may impose.

(7) The Chief Executive shall give public notice of the suspension of a licence.

28. Termination of licence

(1) Subject to any other enactment, a licence shall terminate on the date –

- (a) specified in the notice served in accordance with subsection (6), where a licensee surrenders its licence;
- (b) specified in the notice to the licensee, where the licence is terminated under section 22(4);
- (c) on which the winding up order is made, or a provisional liquidator is appointed, whichever is earlier, where a licensee goes into compulsory liquidation;
- (d) on which the receiver is appointed, where a licensee goes into receivership;
- (e) on which the receiving order is made, or an interim receiving order is made or a special manager is appointed, whichever is earlier, where a licensee is adjudged bankrupt;
- (f) specified in the final decision notice issued by the Enforcement Committee, where a licence is revoked.

(2) Subsection (1)(f) shall be subject to section 53(7).

(3) A licensee shall forthwith inform the Commission of any winding-up petition or bankruptcy petition served upon it, and of any scheme of arrangement of its affairs or composition in satisfaction of debts proposed to be entered into by the licensee.

(4) No licensee shall adopt a resolution for voluntary winding-up or take any step towards the dissolution of its business or transfer of its business undertaking without surrendering its licence to the Commission.

(5) A licensee may, at any time, surrender its licence by giving prior notice in writing to the Commission.

(6) A notice under subsection (5) shall specify –

- (a) the date on which the termination is to be effective;
- (b) the measures taken by the licensee for the discharge of its liabilities and transfer of the business of the clients;
- (c) such other matters as may be required by the Commission.

(7) Where a licence terminates, it shall no longer authorise the holder thereof to carry out the activity for which the licence was issued, but the holder of the licence shall remain subject to the obligations of a licensee and to the directions of the Commission for the orderly dissolution of its business and the discharge of its liabilities.

(8) The termination of a licence shall operate as the termination of the licence or similar permission granted to any agent or representative of the licensee as may be applicable.

(9) The Chief Executive shall give public notice of the termination of a licence in such manner as he deems fit in the circumstances.

PART V – ONGOING OBLIGATIONS OF LICENSEES

29. Record keeping

(1) Subject to subsection (3), every licensee shall –

- (a) keep and maintain internal records of the identity of each of his customers; and
- (b) keep in relation to his business activities, a full and true written record, whether electronic or otherwise, in the English or French language of every transaction he makes.

(2) (a) For the purposes of subsection (1)(a), guidelines issued by the Commission under any relevant Act or under section 18(1) of the Financial Intelligence and

Anti-Money Laundering Act 2002 may specify the nature of customer identification documentation to be kept and maintained.

(b) Records under subsection (1)(b) shall include account files and business correspondence.

(c) Notwithstanding any other enactment, every record required to be kept under subsection (1) shall be kept for a period of at least 7 years after the completion of the transaction to which it relates.

(3) Except where otherwise required by the Commission or under any relevant Act or other enactment, the requirement under subsection (1) shall not apply to a Global Business Licence unless, the holder of the Global Business Licence also holds a licence, authorisation, approval or registration, for the conduct of financial services activity, under any relevant Act.

30. Audited financial statements

(1) Subject to the other provisions of this section, a corporation licensed under this Act shall file with the Commission every year an audited financial statements prepared in accordance with International Financial Reporting Standards.

(2) Except where otherwise required by the Commission, a corporation holding a Category 2 Global Business Licence shall not be subject to the requirement under subsection (1).

(3) (a) Except where otherwise required by the Commission or under any relevant Act, a corporation specified in subsection (1) shall file with the Commission audited financial statements within 6 months after the close of its financial year.

(b) For the purposes of paragraph (a), “financial year” means –

(i) in respect of its first financial year, for any period not exceeding 18 months from the date of its incorporation and in respect of every subsequent financial year, for a period not exceeding 12 months; or

(ii) where there is a change in its financial year, for a period not exceeding 18 months.

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

(5) Notwithstanding any other enactment, the Commission may exempt any class of corporation holding a Category 1 Global Business Licence from filing with the Commission audited financial statements on such terms and conditions as may be specified in FSC Rules.

PART VI – PROTECTION OF CONSUMERS OF FINANCIAL SERVICES

31. Advertisement

(1) No person, other than a person licensed, authorised or approved under a relevant Act, shall publish or cause to be published an advertisement in connection with the conduct of an activity or provision of a service which requires a licence, approval, authorisation or registration under a relevant Act.

(2) No person licensed, authorised or approved under a relevant Act, shall publish or cause to be published an advertisement in connection with the conduct of an activity or provision of a service which requires a licence, approval, authorisation or registration under a relevant Act in a manner which is unclear, false or misleading in any material particular.

(3) Where the Commission is satisfied that a person has contravened this section, it may direct the person to immediately cease or modify the advertisement.

32. Protection of consumers of financial services and financial products

(1) For the purposes of discharging its functions under this Act, the Commission may develop and promote such programmes and initiatives, where it deems it necessary in collaboration with financial institutions or bodies representing the financial services industry, to inform and educate consumers or potential consumers of financial products and financial services.

(2) Any consumer of a financial product or of financial services who is aggrieved by any act or omission of a licensee may make a complaint in writing to the Commission.

(3) The Chief Executive shall examine any complaint made under subsection (2) and shall take such action as he thinks fit.

(4) The Commission may, in accordance with the powers under section 42, request such information as may be required for the purposes of subsection (3).

(5) The Commission shall, where possible, give a reply to the complainant within 3 months as from the date it receives the complaint.

(6) Where in the course of an examination of a complaint it is suspected that there is a breach of a relevant Act, the Chief Executive may conduct an investigation under section 44.

(7) The Chief Executive shall not examine a complaint where it is made 12 months after the date of the act or omission unless otherwise authorised by the Board.

(8) The Commission may make such FSC Rules or provide such guidelines as may be necessary for the purposes of this section.

PART VII – SELF-REGULATORY ORGANISATIONS

33. Declaration or recognition of an SRO

(1) The Commission may, subject to such terms and conditions as it thinks fit, declare or recognise that a company or organisation shall be an SRO in relation to a specified sector or industry, or any part thereof, where the Commission is satisfied that the company or organisation –

- (a) has a constitution and internal rules and policies which are consistent with this Act and any enactment applicable to such sector or industry, or part thereof;
- (b) has the capacity and the financial and administrative resources necessary or desirable to carry out its functions and the regulatory or supervisory functions it shall perform as SRO, including dealing with breaches of the law or of applicable standards or guidelines;
- (c) shall not discriminate unreasonably against a person in offering access to its services or in carrying out its functions as SRO;
- (d) is a fit and proper person;
- (e) is managed or controlled by officers or controllers who are fit and proper persons; and
- (f) satisfies such other criteria as may be specified in FSC Rules.

(2) The Commission may, by written arrangement, delegate a power or function of the Commission to an SRO.

(3) An arrangement under subsection (2), shall provide for –

- (a) any power or function delegated to the SRO by the Commission under subsection (2);
- (b) the terms and conditions upon which the power or function has been delegated and may be exercised by the SRO;
- (c) the persons authorised to exercise the delegation on behalf of the SRO; and
- (d) for the submission to the Commission of periodical reports in respect of the exercise of a delegated power or function by the SRO.

34. Rules of an SRO

(1) An SRO may make rules, not inconsistent with this Act, any regulations made under this Act or FSC Rules or any other applicable enactment, with respect to the matters for

which it has regulatory or supervisory functions, including such functions as may be delegated to it by the Commission.

(2) Rules made by an SRO under subsection (1), and amendments thereto, shall be of no effect unless approved by the Commission.

(3) The Commission shall be taken to have granted approval for the purposes of subsection (1) where it has not objected to them within one month after they were submitted to the Commission for such approval.

(4) The rules of an SRO may make provision with respect to shareholding and voting rights in SRO in the interests of the members of SROs, the consumers, investors and of the users of their services.

35. Restriction on decision-making

An SRO shall not make a decision under its rules that adversely affects the rights of a person unless –

- (a) the SRO has given the person an opportunity to make representations about the matter; or
- (b) the SRO considers, on reasonable grounds, that any delay in making the decision will prejudicially affect a class of consumers, investors or members of the sector or industry as may be applicable.

36. Obligations of and in relation to officers of an SRO

An SRO shall notify the Commission, in the manner specified in the FSC Rules, as soon as practicable before or after a person is appointed as an officer of the SRO.

37. Powers to direct an SRO

(1) The Commission may, after giving an SRO reasonable opportunity to make representations about the matter, give a written direction to the SRO –

- (a) suspending, for the period specified in the direction, a specified provision of its constitution or its rules;
 - (b) requiring, subject to the Companies Act 2001 or any other enactment, the amendment of its constitution as specified in the direction so as to bring it in conformity with this Act, any regulations made under this Act or the FSC Rules;
 - (c) requiring the amendment of its rules as specified in the direction so as to bring them in conformity with the relevant Act; or
 - (d) for the implementation or enforcement of its constitution or its rules.
- (2) Where the Commission has reasonable grounds to believe that –

- (a) an officer of an SRO is not a fit and proper person; or
- (b) a particular person's appointment or continuing in office as an officer of an SRO is likely to be detrimental to the SRO or to affect prejudicially the interest of investors and consumers of financial services or of members of the relevant sector or industry,

the Commission may, after giving the officer and the SRO reasonable opportunity to make representations, direct the SRO not to appoint the officer, or to remove the officer from office.

(3) Subsections (1) and (2) shall not limit the directions that the Commission may give to an SRO.

38. Termination of arrangements and revocation of declaration or recognition

- (1) The Commission may revoke a declaration or recognition where –
 - (a) the SRO has failed to commence operation within 3 months after an arrangement under this Part has been entered into;
 - (b) the Commission is not satisfied that the SRO is properly performing or is able to perform the functions or powers delegated to it, or its other functions and powers;
 - (c) the Commission is satisfied that the SRO has committed a material breach of an arrangement or of a relevant Act or other applicable enactment;
 - (d) it appears to the Commission that the SRO is involved in a financial crime;
 - (e) the SRO fails to comply with a direction of the Commission.
- (2) The Commission shall not revoke a declaration or a recognition unless –
 - (a) the SRO is agreeable to the revocation; or
 - (b) the Commission has notified the SRO of its intention and the reasons for the Commission's action, and has given the SRO a reasonable opportunity to make representations to the Commission thereon.

(3) The Commission shall cause notice of the revocation under subsection (1) to be published in the *Gazette*.

39. Amendments to the constitution of an SRO

Notwithstanding the Companies Act 2001, an amendment to the constitution of an SRO shall be of no effect unless it is approved by the Commission.

40. Protection for an SRO

An SRO, an officer or employee of an SRO or a member of a committee of an SRO shall not be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance, in good faith, of their functions and duties in connection with the regulatory or supervisory functions of the SRO, including those delegated to it by the Commission.

41. Annual report of SRO

(1) An SRO shall file with the Commission, within 90 days of its balance sheet date, an annual report which shall include –

- (a) a report on the corporate governance policy of the SRO and any other information required by the Commission;
- (b) financial statements prepared and audited in accordance with International Financial Reporting Standards and such other auditing standards as may be issued under the Financial Reporting Act 2004; and
- (c) such other requirements as may be specified in FSC Rules.

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

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

(4) Where, in the course of his audit, the auditor of a SRO has reason to believe that –

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

- (d) serious irregularities have occurred,

he shall forthwith report in writing the matter to the Commission.

(5) Any report under subsection (4) shall not constitute a breach of the duties of the auditor.

PART VIII – POWERS OF THE COMMISSION

42. Request for information

(1) Every licensee shall furnish to the Commission all such information and produce such records or documents at such time and place as may be required of him in writing by the Chief Executive.

(2) (a) For the purposes of subsection (1), a licensee includes a controller of the licensee, a past licensee or any person who ought to be licensed under any relevant Act.

(b) Subsection (1) applies to information, records or documents required in connection with the exercise by the Commission of its functions under a relevant Act or any other enactment including the Financial Intelligence and Anti-Money Laundering Act 2002 and the Prevention of Terrorism Act 2002.

(3) The Chief Executive may require any information or document supplied to the Commission to be verified or authenticated in such manner as he may specify at the cost of the person supplying it.

43. On-site inspections

(1) The Commission may, at any time, cause to be carried on the business premises of a licensee an inspection and an audit of its books and records to check whether the licensee –

- (a) is complying or has complied with the requirements of any applicable enactment, or guidelines or the conditions of its licence, authorisation or registration; or
- (b) satisfies criteria or standards set out in or made under any of the relevant Acts under which it is regulated, or any regulations made thereunder.

(2) For the purposes of subsection (1), the Chief Executive may –

- (a) direct, orally or in writing-
 - (i) the licensee; or
 - (ii) any other person whom the Chief Executive reasonably believes has in its possession or control a document or thing that may be relevant to the inspection,

to produce the document or thing as specified in the direction;

- (b) examine, and make copies of or take extracts from, any document or thing that he considers may be relevant to the inspection;
- (c) retain any document or thing it deems necessary; and
- (d) direct a person who is or apparently is an officer or employee of the licensee to give information about any document or thing that he considers may be relevant to the inspection.

(3) The licensee, its officers and employees shall give the Chief Executive full and free access to the records and other documents of the licensee as may be reasonably required for the inspection.

(4) Any person who -

- (a) intentionally obstructs the Chief Executive in the performance of any of his duties under this section; or
- (b) fails, without reasonable excuse, to comply with the directions of the Chief Executive in the performance of his duties under this section,

shall commit an offence.

(5) For the purposes of this section, “Chief Executive” shall include any person designated in writing by the Chief Executive or the Commission.

44. Investigations

(1) Where the Chief Executive has reasonable cause to believe that a licensee –

- (a) has committed, is committing or is likely to commit, a breach of –
 - (i) any of the relevant Acts;
 - (ii) any condition of his licence, authorisation or registration; or
 - (iii) any direction issued by the Commission under a relevant Act;
- (b) has carried out, is carrying or is likely to carry out, any activity which may cause prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system;
- (c) has failed or is failing to take such measures as are required pursuant to the Financial Intelligence and Anti-Money Laundering Act 2002,

the Chief Executive may order that an investigation be conducted into the business or any part of the business of the licensee or its associate.

(2) For the purposes of this section, a person duly authorised in writing by the Chief Executive as an investigator shall have all the powers of the Chief Executive under section 43 and may direct the licensee, or any of its officers, its employees, and its associates or any witness -

- (a) to produce to the investigator, at a reasonable time and place specified in the direction, any specified document or other thing that may afford such evidence and that is in his possession or under his control;
- (b) to give explanations or further information about any documents or things produced; or
- (c) to attend before the investigator at a reasonable time and place and answer under oath questions relating to the investigation.

(3) For the purposes of an investigation, the investigator may –

- (a) enter any premises used or apparently used by the licensee for business purposes, at any reasonable time;
- (b) search for any document or other thing that he considers may be relevant to the investigation;
- (c) administer oath, affirmation or declaration;
- (d) seize any document, article, object or any electronically stored information which the investigator deems necessary; and
- (e) summon any licensee, or its officers, employees and associates, or any witness necessary for the conduct of the investigation.

(4) An investigator duly authorised by the Chief Executive to conduct an investigation shall show his authorisation to the person being investigated.

(5) The investigator shall, as soon as practicable, after completion of his investigation submit his report to the Chief Executive who shall transmit the report to the Board together with his observations, comments and recommendations.

(6) Subject to section 124 of the Income Tax Act and the Financial Intelligence and Anti-Money Laundering Act 2002, any investigation, inspection or filing of documents or request for information which any public sector agency in Mauritius may be empowered to carry out, to require or to do under any other enactment shall, in respect of a corporation holding a global business licence or of an applicant for a global business licence, be carried out, required, or done by the Commission or any person or body designated by the Commission.

(7) For the purposes of this section –

- (a) “associate” means –
- (i) in relation to a relationship with an individual –
 - (A) a spouse, a person living: “en concubinage” under the common law, any child or step child or any relative residing under the same roof as that person;
 - (B) a succession in which the person has an interest;
 - (C) a partner of that person;
 - (ii) in relation to a relationship with any person –
 - (A) any company in which the person directly or indirectly holds 10 per cent of the voting rights or an unlimited right to participate in earnings and in the assets upon winding up;
 - (B) any controller of that person;
 - (C) any trust in which the person has a substantial ownership interest or in which he fulfils the functions of a trustee or similar function;
 - (D) any company which is a related company;
- (b) “licensee” includes –
- (i) any person who has been a licensee;
 - (ii) any person who is a present or past officer, partner or controller of the licensee;
 - (iii) any person who ought to have been licensed under this Act;
 - (iv) an SRO.

(8) (a) Any person who in relation to a question put to him by the investigator in the performance of his duties under this section –

- (i) says anything that the person –
 - (A) knows to be false or misleading in a material particular;
or
 - (B) is reckless as to whether it is false or misleading in a material particular; or

- (ii) refuses, without reasonable excuse, to answer,
shall commit an offence.

(b) Any person who intentionally obstructs an investigator, when acting in the execution of his powers under this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

(9) Where the Commission finds that there was reasonable cause for the investigation and the Commission determines that the licensee concerned ought, for that reason, to pay all or any specified part of the expenses of or incidental to the investigation, the licensee shall be liable to make payment accordingly, and those expenses, or the specified part thereof, may be recovered by the Commission.

45. Tampering with evidence

Any person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, information stored on a computer or other device or other thing that the person knows or ought reasonably to know is relevant to an on-site inspection or investigation under a relevant Act, shall commit an offence.

46. Power to give directions

(1) Where the Chief Executive has reasonable cause to believe that –

- (a) a licensee has contravened or is likely to contravene a relevant Act;
- (b) a licensee is conducting its affairs in an improper or financially unsound way;
- (c) a licensee is involved in financial crime; or
- (d) a direction is necessary or desirable to protect the interests of clients of a licensee,

the Chief Executive may give the licensee a written direction as he deems appropriate in the circumstances.

(2) Without prejudice to the generality of subsection (1), the Chief Executive may direct a person –

- (a) in the case of a contravention of a relevant Act, to do a specified act, or refrain from doing a specified act, for the purpose of –
 - (i) remedying the effects of the contravention; or
 - (ii) taking such measures as may be necessary to ensure that contraventions do not occur;

- (b) to comply with the whole or a specified part of any enactment;
- (c) to comply with any FSC Rules, relevant guideline or such other similar instruments issued by the Commission or a SRO;
- (d) to cause an auditor approved by the Commission to audit the records of the licensee, at the expense of the licensee, and give the report to the Commission;
- (e) to cause a person approved by the Commission to prepare a report on the licensee's affairs, at the expense of the licensee, and give the report to the Commission;
- (f) to remove or to take steps to remove a specified officer or employee of the licensee from office or employment, or ensure that a specified officer or employee of the licensee does not take part in the management or conduct of the business of the licensee except as permitted by the Commission;
- (g) to appoint a specified person to a specified office including the office of director of the licensee for a period specified in the direction;
- (h) to abide by any undertaking given under section 51;
- (i) to establish compliance programs, internal controls, corrective advertising or changes in the management of a licensee.

(3) The Chief Executive shall not give a direction under subsection (2)(e) and (f) unless he is satisfied that –

- (a) the licensee has contravened a relevant Act and the officer or employee of the licensee was concerned in the contravention; or
- (b) the officer or employee has contravened a relevant Act or has been knowingly concerned in financial crime.

(4) A direction under this section may specify the time by which, or period during which, it shall be complied with.

(5) A licensee who has been given a direction shall comply with the direction notwithstanding anything in its constitution or any contract or arrangement to which it is a party.

(6) The Chief Executive shall not give a direction under this section before giving the person to whom it is to be addressed reasonable opportunity to make written representations on the matter.

(7) The Chief Executive may revoke a direction under this section at any time, by written notice to the licensee.

47. Compliance with directions

(1) Any person to whom a direction or interim direction is given under this Act shall comply with the direction or interim direction.

(2) No person shall knowingly hinder or prevent compliance with a direction or interim direction given under this Act.

(3) Any person who contravenes subsection (1) or (2) shall commit an offence.

(4) Notwithstanding subsection (3), where any person fails to comply with a direction or interim direction under this Act and a time period is specified for compliance, the person shall commit a separate offence for each day for which the direction or interim direction is not complied with after the time period for compliance has elapsed, and shall, on conviction, in respect of each offence, be liable to a fine of 5,000 rupees per day.

48. Appointment of administrator

(1) Subject to subsection (2), the Commission may appoint a person as an administrator in relation to the whole or part of the business activities of a person whose licence has been suspended, revoked or otherwise terminated.

(2) The Commission shall not appoint as an administrator –

- (a) a body corporate;
- (b) an undischarged bankrupt;
- (c) any officer, actuary or auditor of the person whose licence has been suspended, revoked or otherwise terminated;
- (d) a person restrained or disqualified from managing a company under the Companies Act 2001;
- (e) a mortgagee of any property of the person whose licence has been suspended, revoked or otherwise terminated;
- (f) an officer of any body corporate which is a mortgagee of the property of the person whose licence has been suspended, revoked or otherwise terminated.

(3) The remuneration payable to an administrator shall be determined by the Commission and be recovered from the person under administration.

(4) Where the Commission appoints an administrator under subsection (1), it shall give notice in writing of the appointment to the person whose licence has been suspended, revoked or otherwise terminated.

(5) The administrator shall manage the whole of the business entrusted to his administration and for the purpose of doing so –

- (a) shall comply with such directions given to him by the Commission under subsection (6);
- (b) shall manage the business honestly and in good faith and shall exercise care, diligence and skill that a reasonable person would exercise in comparable circumstances.

(6) The Commission may give such directions to the administrator as to his powers and duties as it deems desirable in the circumstances of the case.

(7) The administrator may apply to the Commission for instructions as to the manner in which he shall conduct the management of the business of the person under administration or any matter arising in the course of that management.

(8) Where a licence is suspended and the suspension is cancelled, the powers and duties of the administrator shall cease upon the cancellation of the suspension of the licence and he shall use his best endeavours to facilitate the return of the management of the business to the licensee.

(9) Where a licence is revoked or otherwise terminated, the powers and duties of the administrator shall cease –

- (a) on the appointment of a liquidator; or
- (b) where no liquidator is appointed –
 - (i) on the winding up of the business of the licensee; or
 - (ii) on such time as may be determined by the Commission.

49. Injunctive relief and locus

(1) The Commission may apply to the Judge in Chambers or to any other court of competent jurisdiction for an order in respect of any matter relating to its functions under section 6.

(2) Without prejudice to subsection (1), an order under that subsection may direct the person to do a specified act or refrain from doing a specified act, for the purposes of –

- (a) preventing a contravention of the relevant Acts;
- (b) compelling any person to comply with a lawful request, direction or instruction made, issued or given by the Commission under the relevant Acts;
- (c) remedying the effects of a contravention;

- (d) preserving the assets of a licensee;
- (e) compensating persons who have suffered loss because of a contravention; or
- (f) ensuring that the person does not commit further contraventions of the relevant Acts.

(3) The Commission shall not be required, as a condition of the making of an interim order under this section, to give an undertaking as to damages.

(4) The power of the Judge in Chambers under this section may be exercised whether or not the person has previously engaged, intends to engage or continue to engage in doing or refraining from doing any of the specified acts relating to the purposes referred to in subsection (2).

(5) Without prejudice to the other provisions of this section, the Commission shall have a right –

- (a) to institute and conduct proceedings in any court against any licensee for the proper application of this Act;
- (b) to ask for and obtain declaratory orders from the Supreme Court;
- (c) to seek guidance and directions from the Supreme Court on any point of law or as to the interpretation of any provision of this Act;
- (d) to intervene in any proceedings in which a licensee is a party.

50. Freezing of assets

(1) Where, on an application by the Commission, the Judge in Chambers is satisfied that the Commission has reasonable grounds to suspect that a person (“the suspect”) has committed or is committing an offence under the relevant Acts or has been involved in a financial crime, the Judge in Chambers may order -

- (a) the prohibition by the suspect or any other person acting on his behalf or any person holding assets on his behalf from disposing, transferring or pledging any of his assets or make any withdrawal from any account or deposit at any bank or financial institution;
- (b) the attachment in the hands of any person named in the order of all moneys and other property due or owing, or belonging to, or held on behalf of the suspect;
- (c) the suspect to make a full disclosure within such time as may be specified in the order, of all his possessions, and the nature and source of such possessions;

- (d) any person named in the order to make a full disclosure of all moneys and property held on behalf of the suspect; or
 - (e) the opening, in the presence of a person authorised by the Commission, of any safe deposit box held on behalf of the suspect.
- (2) Where an order is made under subsection (1)(a) and (b), the Commission may -
- (a) give public notice of the order, unless the Commission reasonably believes that such notice is likely to obstruct the conduct of any investigation under this Act; and
 - (b) give notice of the order to all notaries and to the head offices of all banks and branches, investment dealers, cash dealers and financial institutions and any other person who may hold or be vested with property belonging to or held on behalf of the suspect.
- (3) An order under subsection (1) shall be served on the suspect and on each person named in the order.
- (4) Where a notice is published under subsection (2), any person who allows, procures or facilitates the disposal of money or property belonging to the suspect shall commit an offence.
- (5) The Judge in Chambers may, on application and on good and sufficient cause shown, authorise such reasonable amounts to be withdrawn from a bank or other financial institutions for the subsistence of the suspect on such conditions as the Judge thinks fit.
- (6) The Commission shall be a party to any application under subsection (5).
- (7) An order under subsection (1)(a) and (b) shall remain in force -
- (a) where an investigation is being carried out by the Commission or by the Commissioner of Police, until the completion of the investigation, or until such time as the Commission or the Commissioner of Police decides not to proceed with the investigation, or recommend that the order be lifted; or
 - (b) where the suspect has been charged with an offence, until the final determination of that charge by a court of law or until such time as the Director of Public Prosecutions decides not to proceed with the charge.

51. Enforceable undertakings

- (1) Where a person is unable to comply with the requirements of a direction under any of the relevant Acts, the Commission may accept a written undertaking from that person in connection with any matter relating to its functions under the relevant Acts.

(2) Where a person revokes or varies an undertaking under subsection (1), the revocation or variation, as the case may be, shall be of no effect unless the prior approval of the Commission is obtained.

(3) Without prejudice to such directions as the Commission may issue, where the Commission considers that the person has breached the undertaking, the Commission may apply to the Judge in Chambers for an order under this section.

(4) The Judge in Chambers may make -

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to do a specified act, or refrain from doing a specified act, for the purposes of -
 - (i) remedying the effects of the breach;
 - (ii) compensating persons who have suffered loss because of the breach; or
 - (iii) ensuring that the person does not commit further breaches of the undertaking or of the relevant Acts;
- (c) any other order that the Judge in Chambers considers appropriate.

(5) The Commission shall publish in the *Gazette*, or make available to any person who asks for it, a copy of the undertaking.

(6) The Commission shall delete from the copy of the undertaking any information that the person giving the undertaking has requested not to be released, provided that the Commission is satisfied that the information -

- (a) is confidential and has a commercial value that would be diminished if it were to be released generally;
- (b) should not be disclosed on grounds that it would be against the interest of the public; or
- (c) consists of personal details of an individual.

(7) Where information has been deleted from a copy of an undertaking under this section, the Commission shall insert a note on the copy stating that certain information has been deleted.

**PART IX – ENFORCEMENT COMMITTEE AND
FINANCIAL SERVICES REVIEW PANEL**

Sub-Part A – Enforcement Committee

52. Establishment of Enforcement Committee

(1) The Board shall set up an internal committee which shall be known as the Enforcement Committee.

(2) The Enforcement Committee shall consist of –

- (a) 2 members appointed every year by the Board;
- (b) not more than 2 employees being of a grade not lower than Executive and not involved in investigations of the licensee under section 44, designated by the Board;
- (c) such other person having the necessary expertise as may be co-opted by the Enforcement Committee.

(3) The Enforcement Committee may exercise the disciplinary powers of the Commission under section 7(1)(c) to impose an administrative sanction on a licensee.

(4) The Enforcement Committee shall have such other functions as may be conferred upon it under the relevant Acts.

(5) The members of the Enforcement Committee shall be appointed on such terms and conditions as the Board may determine.

53. Disciplinary proceedings

(1) Where the Chief Executive has reasonable cause to believe that a licensee –

- (a) has contravened any relevant Act, any direction or order issued under a relevant Act or any condition of the licence;
- (b) is carrying out his business in a manner which threatens the integrity of the financial system of Mauritius or is contrary or detrimental to the interest of the public;
- (c) has committed a financial crime;
- (d) no longer fulfils any condition or criteria specified under the relevant Act for the grant of a licence;
- (e) no longer carries out the business activity for which it is licensed;
- (f) has failed to commence business within 6 months from the date on which it is licensed;

- (g) is not a fit and proper person,

he may refer the matter to the Enforcement Committee for such action as the Enforcement Committee may deem appropriate.

(2) Where a matter is referred under subsection (1) or under a relevant Act and the Enforcement Committee intends to impose an administrative sanction under section (7)(1)(c) against a licensee, it shall issue a notice to the licensee stating –

- (a) the intention of the Enforcement Committee to impose an administrative sanction;
- (b) the type and terms of the administrative sanction; and
- (c) the right of the licensee to make written representations to the Enforcement Committee within such time as the Enforcement Committee deems appropriate in the circumstances, but not exceeding 21 days from the date of the notice.

(3) Where, after considering the written representations under subsection (2)(c) or where no written representations are received within the time specified in the notice under subsection (2) and the Enforcement Committee decides to impose an administrative sanction, it shall issue a written notification to the person stating the type and the terms of the administrative sanction.

(4) Any licensee who is aggrieved by the decision of the Enforcement Committee under subsection (3) –

- (a) may, within 21 days of the issue of the written notification, forward, by registered post, an application to the Review Panel specifying the reasons for a review of the decision; and
- (b) shall, at the same time, forward a copy of his application by registered post to the Commission.

(5) Where a licensee is unable to make an application within the period of 21 days referred to in subsection (4)(a) and he proves to the satisfaction of the Review Panel that his inability to do so was due to illness or any other reasonable cause, the Review Panel may accept to hear the belated application on such terms and conditions as it may determine.

(6) Notwithstanding an application under subsection (4)(a) but subject to subsection (7), the decision of the Enforcement Committee under subsection (3) shall be given effect immediately after the period of 21 days from the date of the decision.

(7) The Review Panel may, after hearing the Commission, suspend the implementation of the decision of the Enforcement Committee under subsection (3) on such terms and conditions as may be determined by the Review Panel.

(8) Notwithstanding any action taken by the Enforcement Committee, the Commission may direct a licensee to take such remedial action as it thinks fit.

(9) Any administrative penalty under section 7(1)(c)(v) shall be a debt due to the Commission and may be recovered by the Commission as a civil debt in a court of competent jurisdiction.

(10) Any administrative penalty paid to the Commission shall be credited to the Fund.

(11) For the purposes of this Sub-Part –

“licensee” includes any person who is a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee.

Sub-Part B – Financial Services Review Panel

54. Establishment of the Financial Services Review Panel

(1) There is set up for the purposes of this Sub-Part an ad-hoc review panel which shall be known as the Financial Services Review Panel.

(2) The Review Panel shall –

- (a) on application by an aggrieved party, review any decision made by the Enforcement Committee, Commission or an SRO under a relevant Act or such other body or organisation as may be provided under a relevant Act; and
- (b) have such other functions as may be conferred upon it by any relevant Act.

(3) Notwithstanding subsection (2), the Review Panel shall not hear an application against a decision of the Commission –

- (a) not to grant a licence under any relevant Act;
- (b) to conduct an investigation under section 44;
- (c) under Part VII.

55. Membership of the Review Panel

(1) The Review Panel shall consist of –

- (a) a Chairperson, who shall be a barrister-at-law of not less than 5 years standing and who shall, from time to time, be appointed by the Minister on such terms and conditions as the Minister may determine;

(b) a Vice-Chairperson, who shall be the Solicitor-General or his representative; and

(c) the Financial Secretary or his representative.

(2) In the exercise of its functions, the Review Panel shall not be subject to the direction or control of any other person or authority.

(3) The Review Panel shall sit on an ad-hoc basis and at any sitting 2 members shall constitute a quorum.

(4) The members of the Review Panel shall take the oath of confidentiality specified in Part I of the Third Schedule.

56. Termination of appointment

(1) The Chairperson of the Review Panel may resign by giving one month's notice in writing to the Minister.

(2) The Chairperson of the Review Panel shall cease to hold office where he is unfit to be the Chairperson because of breach of trust, misconduct or default in the discharge of his duties.

57. Staff of the Review Panel

The Commission shall extend such technical, administrative and secretarial assistance as may be necessary to enable the Review Panel to properly discharge its functions under the relevant Acts or under any other enactment.

58. Composition of Review Panel for particular matters

(1) The Review Panel may co-opt such other person having experience in the field of business, finance or law for the purposes of dealing with a particular application for review.

(2) A person co-opted under subsection (1) shall be deemed to be a member of the Review Panel for the purposes of that particular application for review.

59. Disclosure of interests by members of the Review Panel

Any member of the Review Panel shall, in relation to any matter before the Review Panel, in which he or any person related to him by blood or marriage has a pecuniary or other material interest –

(a) disclose the nature of the interest in writing to the Chairperson and where the member is the Chairperson, to the other members of the Review Panel, before the meeting convened to discuss that matter; and

(b) not take part in any deliberations of the Review Panel relating to that matter without the approval of the other members of the Review Panel.

60. Decision of Review Panel

Any decision of the Review Panel shall not be altered or set aside, or a new decision taken thereon, by the Commission, Enforcement Committee or SRO, as the case may be, except by the Review Panel or with the consent of the parties to the proceedings and with the concurrence of the Review Panel.

61. Conduct of reviews

(1) Where the subject of an application for review is a decision of the Enforcement Committee, the Commission shall be a party to the proceedings.

(2) The Commission may, in respect of any other decision, be a party to the review proceedings.

(3) Any party to the proceedings before the Review Panel may be represented by counsel or attorney or other representative duly authorised by him who shall be allowed reasonable opportunity to present the case and in particular, to inspect documents which the Review Panel proposes to consider in determining the case.

(4) The Review Panel shall not be bound by the rules of evidence but may remain guided by them on any matter as it considers appropriate in the circumstances.

62. Proceedings of Review Panel

(1) For the purposes of sections 54 and 63, the Review Panel shall hold hearings which shall be conducted in public unless otherwise directed by the Review Panel.

(2) The Review Panel shall sit at such place and time as the Chairperson may determine.

(3) Subject to the relevant Acts, the Review Panel shall regulate its proceedings as it thinks fit and shall ensure that proceedings are conducted in a manner which is consistent with the rules of natural justice and procedural fairness.

(4) The Chairperson of the Review Panel may make rules, not inconsistent with this Act, for or with respect to the proceedings of the Review Panel.

(5) Regulations may provide for the payment of costs by the parties in relation to the matter before the Review Panel.

63. Powers of Review Panel

(1) For the purpose of reviewing a decision, the Review Panel may –

- (a) administer oath, affirmation or declaration;
- (b) proceed in the absence of a party who, by notice, has been given a reasonable period to attend the proceedings; or

(c) from time to time, adjourn the proceedings.

(2) The Review Panel may, for the purposes of a hearing, summon a person to appear before the Review Panel to –

(a) give evidence; or

(b) produce documents in the possession, custody or control of the person or persons named in the summons.

(3) A member of a Review Panel hearing an application for review may –

(a) require a person appearing before the Review Panel to give evidence either on oath or affirmation; and

(b) administer an oath or affirmation or a declaration.

64. Protection of persons before Review Panel

(1) A law practitioner or other person appearing before the Review Panel on behalf of a party shall have the same protection and immunity as a law practitioner has in appearing for a party in proceedings before the Supreme Court.

(2) Subject to this Act, a person summoned to attend or to appear before the Review Panel as a witness shall have the same protection, and shall, in addition to the penalties provided by this Act, be subject to the same liabilities as a witness in proceedings before the Supreme Court.

65. Offences relating to proceedings of Review Panel

Any person who, without reasonable cause –

(a) fails to attend the Review Panel after having been summoned to do so under section 63(2);

(b) refuses to take an oath before the Review Panel, or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Review Panel or to produce documents when required to do so under section 63(2)(b);

(c) knowingly gives false evidence, or evidence which he knows to be misleading, before the Review Panel;

(d) at any hearing of the Review Panel –

(i) wilfully insults a member;

(ii) wilfully interrupts or disturbs the proceedings; or

- (e) do any other act or thing that would, if the Review Panel were a court of law, constitute a contempt of the court,

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 3 years.

66. Determination of Review Panel

- (1) On the hearing of an application for review, the Review Panel may –
 - (a) confirm, amend or cancel a decision made by the Enforcement Committee, Commission or SRO;
 - (b) remit the matter to the Enforcement Committee, Commission or SRO, as the case may be, for reconsideration in accordance with any directions or recommendations of the Review Panel; or
 - (c) make such order as it deems appropriate.
- (2) Where there is a disagreement among the members of the Review Panel, the decision of the majority shall be the determination of the Review Panel.
- (3) Any determination of the Review Panel shall be in writing, and shall include the reasons for the determination, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.
- (4) The Review Panel shall cause its determination to be served on each party to the proceedings.
- (5) Subject to subsection (6), a determination of the Review Panel shall come into operation on the date of the determination.
- (6) The Review Panel may specify in the determination the date on which the determination is to come into operation.
- (7) Any determination of the Review Panel shall be published in such form and manner as the Review Panel thinks fit except that the names of the parties and any information which the Review Panel considers to be sensitive shall be omitted.

67. Judicial review

Any party who is dissatisfied with the determination of the Review Panel may apply to the Supreme Court for a judicial review of the determination.

Sub-Part C – Financial Services Fund

68. Financial Services Fund

- (1) There shall be established by the Commission a Financial Services Fund into which shall be paid by licensees such contributions as may be specified in FSC Rules.

- (2) The funds of the Fund shall be used –
 - (a) to promote the education of consumer of financial services; and
 - (b) to meet the expenses of the Review Panel.
- (3) No disbursement of money shall be made from the Fund except –
 - (a) for the purposes of the Fund; and
 - (b) with the authorisation of the Managing Committee set up under section 69.

69. Administration of the Fund

(1) The Fund shall be administered by a Managing Committee which shall consist of a Chairperson and not more than 4 other persons suitably qualified, designated by the Minister.

(2) The Managing Committee shall be convened by the Chairperson at such time and place as he thinks fit.

(3) The Managing Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

- (4) The Managing Committee shall –
 - (a) furnish to the Minister such information with respect to its activities in such manner and at such time, as he may specify; and
 - (b) comply with such directions of a general character as the Minister considers necessary in the public interest.

70. Annual report of Managing Committee

(1) The Managing Committee shall, not later than 4 months after the close of every financial year, cause to be published a report of its activities together with its audited accounts in respect of the previous financial year.

(2) The Managing Committee shall forward a copy of every report referred to in subsection (1) to the Minister and to the Commission.

PART X – GLOBAL BUSINESS

71. Global Business

(1) Subject to the other provisions of this section, a resident corporation which proposes to conduct business outside Mauritius may apply to the Commission for a Category 1 Global Business Licence or a Category 2 Global Business Licence.

(2) Where an applicant for a Category 1 Global Business Licence proposes to conduct any business for which a licence, authorisation, registration or approval is required under any other enactment, it shall apply for such licence, authorisation, registration or approval as may be required before commencing business.

(3) No application for a Category 2 Global Business Licence shall be made by a resident corporation unless it is a private company and it proposes to conduct a business activity other than those set out in the Fourth Schedule.

(4) (a) In considering an application for or a renewal of a Category 1 Global Business Licence, the Commission shall have regard to whether the conduct of business will be or is being managed and controlled from Mauritius.

(b) In determining whether the conduct of business will be or is being managed and controlled from Mauritius, the Commission shall have regard to such matters as it may deem relevant in the circumstances and without limitation to the foregoing may have regard to whether the corporation –

- (i) shall have or has at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement;
- (ii) shall maintain or maintains at all times its principal bank account in Mauritius;
- (iii) shall keep and maintain or keeps and maintains, at all times, its accounting records at its registered office in Mauritius;
- (iv) prepare or proposes to prepare its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius;
- (v) provides for meetings of directors to include as least 2 directors from Mauritius.

(5) A corporation holding a Category 1 Global Business Licence shall at all times be administered by a management company.

(6) For the purposes of this section, “resident corporation” means a body corporate formed or registered in Mauritius and with regard to an applicant for a Category 1 Global Business Licence includes any trust whose proper law is the laws of Mauritius, *soci t * or partnership or any body of persons.

72. Application for a Category 1 Global Business Licence or a Category 2 Global Business Licence

(1) An application for a Category 1 Global Business Licence or a Category 2 Global Business Licence shall be –

- (a) made through a management company in such form and in such manner as may be approved by the Commission;
- (b) of no effect unless certified by a law practitioner that it complies with the laws of Mauritius.

(2) On receipt of an application under subsection (1), the Chief Executive may within 7 days of the application –

- (a) require the applicant to give such further information as may be necessary to determine the application;
- (b) seek the opinion of any public sector agency that is likely to be concerned with the application;
- (c) approve the application on such terms and conditions as he thinks fit where he is satisfied that the application meets all the requirements set out under this Act or in FSC Rules or any guidelines;
- (d) refer the application to the Board with recommendations, observations, or comments.

(3) Where the Chief Executive refers an application to the Board, the Board may –

- (a) reject the application without giving any reasons;
- (b) refer the application back to the Chief Executive for further enquiry;
- (c) approve the application on such terms and conditions as it thinks fit where it is satisfied that the application meets all the requirements set out under this Act or in FSC Rules or any guidelines.

(4) The Chief Executive or the Board shall not approve an application where the Chief Executive or the Board, as the case may be, is of the opinion that the proposed activity of the applicant –

- (a) is unlawful or contrary to public interest; or
- (b) may cause prejudice to the good repute of Mauritius as a centre for financial services.

(5) The Chief Executive shall provide a monthly report to the Board on all applications approved under subsection (2).

(6) Where an application is approved under this section, the Chief Executive shall, on payment by the applicant of such fee as may be specified in the FSC Rules, issue a Category 1 Global Business Licence or a Category 2 Global Business Licence, as the case may be, on behalf of the Commission subject to such terms and conditions as the Commission may deem necessary.

(7) Where a proposal or a project for the formation of a corporation which intends to carry out a global business is submitted to the Commission, the Commission may issue a letter of intent stating the terms and conditions under which a Category 1 Global Business Licence or a Category 2 Global Business Licence, as appropriate, may be issued.

(8) A letter of intent issued under subsection (7) –

- (a) may be revoked at any time without any reason being given;
- (b) shall not imply or be construed in any way as a promise or an undertaking by the Commission, nor import any obligation on the part of the Commission, to grant a Global Business Licence or otherwise determine an application.

73. Conduct of global business

(1) A resident corporation holding a Category 1 Global Business Licence shall be held to be conducting business outside Mauritius in accordance with section 71, notwithstanding the following dealings and transactions with residents of Mauritius –

- (a) opening and maintaining with a bank an account in Mauritius currency for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;
- (b) subject to the Non-Citizens (Property Restrictions) Act, leasing, holding, acquiring or disposing of an immovable property or any interest in immovable property situated in Mauritius;
- (c) investing in any securities listed on a securities exchange licensed under the Securities Act 2005;
- (d) opening and maintaining with a bank an account in foreign currency;
- (e) holding any share, debenture, security or any interest in or otherwise dealing or transacting with corporation holding a Global Business Licence;
- (f) entering into a business relationship with the holder of a Management Licence or a law practitioner or qualified auditor in Mauritius;
- (g) employing staff resident in Mauritius.

(2) A corporation holding a Category 2 Global Business licence shall be held to be conducting business outside Mauritius notwithstanding acts done under subsection (1)(d), (e) and (f).

(3) The Commission may approve in writing the conduct of any business or dealings with residents of Mauritius other than those provided under subsection (1), where in the opinion of the Commission such dealings are incidental to the

conduct of business outside Mauritius by a corporation holding a Category 1 Global Business Licence.

74. Validity of Category 1 Global Business Licence or Category 2 Global Business Licence and effect of its revocation

(1) A corporation holding a licence issued under section 72(6) shall pay to the Commission such annual licence fee as may be specified in the FSC Rules.

(2) Subject to the other provisions of this section, a Global Business Licence shall lapse where the annual licence fee in respect of the licence is not paid within the time specified in the FSC Rules.

(3) When a Global Business Licence has lapsed under subsection (2) or is suspended under subsection (6), the corporation shall not, except with the approval of the Commission, transact any business.

(4) (a) Where a Global Business Licence has lapsed under subsection (2), the corporation may, within the time specified in FSC Rules, apply for the reinstatement of the licence subject to such terms and conditions and to the payment of such fee and additional charge, as may be specified in FSC Rules.

(b) Where an application is submitted under paragraph (a), the Commission may, subject to such terms and conditions as may be specified in FSC Rules, issue the Category 1 Global Business Licence or Category 2 Global Business Licence, as the case may be, as from the date it had lapsed.

(5) Where the Commission is satisfied on reasonable grounds that the revocation of the Global Business Licence is necessary to protect the good repute of Mauritius as a centre for financial services, to prevent or mitigate damage to the integrity of financial services industry or any part thereof, or to protect the public in general, it may revoke a Global Business Licence.

(6) Prior to revoking a Global Business Licence under subsection (5), the Commission –

- (a) may suspend a licence;
- (b) shall give to the holder of the Global Business Licence prior notice of its intention and the reasons for doing so; and
- (c) shall afford the holder of the licence an opportunity to make representations in writing.

(7) Where a Global Business Licence is revoked, the Chief Executive –

- (a) shall forthwith cause notice of the revocation to be published in the *Gazette*;

- (b) may issue such directions to the corporation as may be necessary in the circumstances, including for the orderly dissolution of its business and the discharge of its liabilities.

75. Power of Inquiry

(1) A corporation holding a Global Business Licence shall, when so required by the Commission in exercising its general powers of supervision, furnish all such information and produce such documents as may be required of him by the Commission in order to ensure and monitor compliance with the relevant Acts or any other relevant enactment.

(2) Where the Chief Executive has reasonable cause to believe that a corporation holding a Global Business Licence –

- (a) has committed, is committing or is likely to commit a breach of –
 - (i) any of the relevant Acts or guidelines;
 - (ii) any condition of its licence; or
 - (iii) any direction issued by the Commission;
- (b) has carried out, is carrying or is likely to carry out any activity which may cause serious prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system,

the Chief Executive may make an inquiry into the business or any part of the business of the corporation.

(3) For the purposes of this section –

- (a) any reference to Chief Executive shall include any person designated by the Chief Executive or the Commission;
- (b) the Chief Executive may –
 - (i) by notice, request the production of any document to be inspected at such reasonable time and place, including the registered office or the business premises of the holder of a Global Business Licence, as may be specified in the notice;
 - (ii) take copies of or extracts from, any document so produced;
 - (iii) issue directions.

(4) For the purposes of this section, any reference to a holder of a Global Business Licence shall include –

- (a) any person who has held a Global Business Licence;

- (b) any person who is a present or past officer, or controller of the holder of a Global Business Licence.

(5) The Chief Executive shall, in respect of every inquiry carried out, make a written report to the Board together with his observations, comments and recommendations.

(6) Any person who –

- (a) fails to comply with the requirements of subsection (1) or (3)(b)(i); or
- (b) obstructs the Chief Executive from performing his duties under subsection (3)(b)(ii) and (iii),

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

76. Registered agent

(1) A corporation holding a Category 2 Global Business Licence shall, at all times, have a registered agent in Mauritius who shall be a management company.

(2) A registered agent shall be responsible for providing such services as the company may require in Mauritius including –

- (a) the filing of any return or document required under this Act and the Companies Act 2001; and
- (b) the receiving and forwarding of any communication from, and to, the Commission or the Registrar.

(3) A registered agent shall be subject to such obligations in relation to appointment, change of registered address or registered agent and such other matters for the purposes of subsection (2) as may be prescribed.

77. Management licence

(1) A company whose main activity is to –

- (a) set up, administer, manage and provide nominee and other services to –
 - (i) a corporation which proposes to apply for, or holds, a Global Business Licence; and
 - (ii) such class of corporations as may be prescribed; or
- (b) act as corporate trustee or qualified trustee under the Trusts Act 2001,

shall apply to the Commission for a management licence.

(2) For the avoidance of doubt, an application for a management licence shall be subject to the regulation of financial services under Part IV.

(3) The Chief Executive may, in addition to the matters set out in section 53(1), act in accordance with that section in relation to a holder of a licence under this section where he is of the opinion that an administrative sanction is necessary to protect the good repute of Mauritius as a centre for global business.

78. Nominee company

(1) Any company holding a management licence may, for the purposes of performing the functions of a nominee company and subject to the approval of the Commission, form a nominee company.

(2) The nominee company shall –

- (a) be a private company registered under the Companies Act 2001;
- (b) expressly limit its objects to acting as a nominee company with respect to corporations and to matters ancillary or incidental thereto;
- (c) pay, to the Commission, such fees as may be specified in FSC Rules.

79. Special Provisions for Global Business

(1) Parts VIII and IX of this Act shall not apply to a corporation holding a Global Business licence unless the corporation also holds a licence, authorisation, approval or registration for the conduct of a financial services activity under a relevant Act.

(2) The Commission may, by FSC Rules, provide for exceptions, limitations or restrictions to any requirement under this Part with regard to an applicant for or to any corporation holding a Global Business Licence or any class of applicant for or corporation holding a Global Business Licence.

PART XI – ADMINISTRATION

80. Staff of the Commission

(1) The Commission may employ, on such terms and conditions as it thinks fit, such persons as may be necessary for the proper discharge of its functions.

(2) Every employee shall be under the administrative control of the Chief Executive.

(3) An employee of the Commission may, with the concurrence of the Bank of Mauritius, be posted to the Bank of Mauritius for such period as may be determined by the Board and on such terms and conditions as the Board thinks fit.

(4) An employee of the Bank of Mauritius may, with the concurrence of the Board, be posted to the Commission for such period as may be determined by the Bank of Mauritius and on such terms and conditions as the Bank of Mauritius thinks fit.

81. Conditions of service of employees

The Commission may make provisions to govern the conditions of service of employees and, in particular, to deal with –

- (a) the appointment, discipline, dismissal, pay and leave of, and the security to be given by, employees;
- (b) appeals by employees against dismissal or other disciplinary measures; and
- (c) the establishment and maintenance of provident and pension fund schemes and the contributions payable to those schemes and the benefits derived therefrom.

82. General Fund

(1) The Commission shall establish a General Fund –

- (a) into which all money received by the Commission shall be paid; and
- (b) out of which –
 - (i) all payments required to be made by the Commission and all charges on the Commission shall be effected;
 - (ii) shall be paid into the Capital Fund established under the Finance and Audit Act, such surplus money not required for the purposes of subparagraph (i) as the Board may determine.

(2) The Commission shall derive its funds from –

- (a) fees or other charges levied under the relevant Acts; and
- (b) any other source as may be approved by the Minister.

(3) The Commission shall, not later than 3 months before the commencement of each financial year, submit to the Minister an estimate of its income and expenditure for that financial year.

83. Confidentiality

(1) Every member of the Board, the technical committee, the Enforcement Committee, the Chief Executive, and every employee of the Commission shall –

- (a) before he begins to perform any duties under the relevant Acts, take an oath of confidentiality in the form set out in Part II of the Third Schedule; and

- (b) maintain during or after his relationship with the Commission, the confidentiality of any matter relating to the relevant Acts which comes to his knowledge.

(2) Subject to subsection (3) and except for the purposes of administering the relevant Acts or where he is authorised to do so by the Commission, no person referred to in subsection (1) shall communicate to any unauthorised person any matter relating to the relevant Acts.

(3) (a) The Commission shall furnish, when so required by the Bank of Mauritius, such information as may be required for the purposes of assisting the Bank of Mauritius in the discharge of its functions.

(b) Subject to paragraph (c), the Bank of Mauritius may publish, in whole or in part, any information furnished under paragraph (a).

(c) No information shall be published by the Bank of Mauritius where such publication would entail the disclosure of the financial affairs of any individual or enterprise without the consent in writing of the individual or enterprise.

(4) Every person referred to in subsection (1) shall, in relation to a corporation holding a Category 1 Global Business Licence or a Category 2 Global Business Licence, deal with all the documents and other information in his possession or under his control concerning that corporation as secret and confidential.

(5) Except where ordered by the Supreme Court for a reason specified in subsection (6), no person referred to in subsection (1) shall, in relation to a corporation holding a Category 1 Global Business Licence or a Category 2 Global Business Licence be required to produce or divulge to any court, tribunal, committee of enquiry or other authority in Mauritius or elsewhere any document, information or other matter coming to his notice, or being in his possession or control for any reason.

(6) Notwithstanding any other enactment, the Supreme Court shall, in relation to a corporation holding a Category 1 Global Business Licence or a Category 2 Global Business Licence, not make an order for disclosure or production of any confidential information except on the application of the Director of Public Prosecutions, and on being satisfied that the confidential information is *bona fide* required for the purpose of any enquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering under the Financial Intelligence and Anti-Money Laundering Act 2002.

(7) Subsections (4), (5) and (6) shall be without prejudice to –

- (a) the obligations of Mauritius under any international treaty, convention or agreement, and to the obligations of any public sector agency under any international arrangement or concordat;
- (b) such disclosure as is necessary for the purpose of administering the relevant Acts, and of discharging a function under those Acts;

- (c) disclosure, under condition of confidentiality for the sole purpose of exercising its supervisory functions in relation to a financial institution carrying out any services or business activities under the relevant Acts –
 - (i) to the Bank of Mauritius; and
 - (ii) to any other institution which performs in a foreign country functions similar to those of the Commission under this Act;
- (d) the duty of the Commission to pass on information to the FIU established under the Financial Intelligence and Anti-Money Laundering Act 2002, pursuant to section 22 of that Act.

(8) Notwithstanding the above provisions, the Commission shall, upon the request of the holder of a global business licence, issue a certificate of good standing certifying that the name of the licensee is on the register and it is of good standing in terms of fees and reporting obligations, as applicable, under section 30.

(9) Any person who contravenes this section 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.

84. Disclosure of interest

(1) Where any member of the Board, the technical committee or their spouse or next of kin has any direct or indirect interest in relation to any matter before the Board or technical committee, as the case may be, he shall –

- (a) disclose at or before the meeting convened to discuss that matter, the nature of his interest; and
- (b) not take part in any deliberation or any decision-making process in relation to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the Board or committee, as the case may be.

85. Annual report of Commission

(1) The Commission shall, not later than 6 months after the close of every financial year, cause to be published a report on its activities together with its audited accounts in respect of the previous financial year.

(2) The Commission shall forward a copy of every report referred to in subsection (1) to the Minister.

(3) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts before the National Assembly.

PART XII – MISCELLANEOUS

86. Administration of relevant Acts by Commission

The Commission shall administer the relevant Acts with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them in conformity with the provisions of this Act.

87. Exchange of information and mutual assistance

(1) Notwithstanding section 83, the Commission may exchange information with a supervisory body any information relevant to the enforcement of the relevant Acts for the purpose of discharging the functions of that body.

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

(3) The Commission may, pursuant to section 7(4), in furtherance of its objects and functions, enter into an agreement or arrangement for the exchange of information with a foreign or domestic supervisory institution, a law enforcement agency or an international organisation where the Commission is satisfied that the domestic or foreign supervisory institution, the law enforcement agency or the international organisation, as the case may be, has the capacity to protect the confidentiality of the information imparted.

(4) Subject to the Mutual Assistance in Criminal and Related Matters Act 2003, any agreement or arrangement between the Commission and a foreign supervisory body may provide that the Commission shall provide such assistance to the foreign supervisory institution as may be required for the purposes of its regulatory and supervisory functions.

88. Immunity and protection

- (1) No action shall lie against the Commission or any of the following persons –
- (a) a member of the Board;
 - (b) a member of a technical committee;
 - (c) a member of the Enforcement Committee;
 - (d) a member of the Review Panel;
 - (e) the Chief Executive;
 - (f) an employee of the Commission;
 - (g) a person to whom functions or powers of the Commission have been delegated under a relevant Act; or

- (h) a person appointed by the Commission, or appointed by a licensee in accordance with a direction of the Commission, to investigate the affairs of a licensee or a matter relevant to a relevant Act,

for anything done or omitted to be done by the Commission or the person in the performance, in good faith, of the Commission's or the person's functions, or the exercise, in good faith, of the Commission's or the person's powers, under a relevant Act.

(2) This section shall be in addition to, and not in derogation of, the Public Officers' Protection Act, and for the purposes of that Act, every person specified in subsection (1) shall be deemed to be a public officer or a person engaged or employed in the performance of a public duty.

89. Exemption

Notwithstanding any other enactment, the Commission shall be exempted from payment of –

- (a) any duty or registration fee in respect of any document under which the Commission is the sole beneficiary; and
- (b) any other duty, rate, charge, fee or tax.

90. Offences and penalties

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

(2) Any person who contravenes this Act or any regulations made under this Act shall commit an offence and shall, where no specific penalty is provided, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

91. Prosecution

(1) Notwithstanding any disciplinary proceedings under section 53, the Commission may, subject to subsection (3), institute criminal proceedings against any person in respect of any offence under the relevant Acts.

(2) No statement or representations made by a licensee to the Enforcement Committee or before the Review Panel shall be used as evidence in any criminal proceedings against the licensee.

(3) Any action taken under Part IX shall not debar criminal proceedings on reference by the Director of Public Prosecutions for any offence under a relevant Act.

(4) No prosecution for an offence under any of the relevant Acts shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

92. Jurisdiction

Notwithstanding –

- (a) section 114(2) of the Courts Act; and
- (b) section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try an offence under this Act or any regulations made under this Act and may impose any penalty provided under this Act.

93. FSC Rules

(1) The Commission may make such FSC Rules as it thinks fit for the purposes of the relevant Acts.

(2) Any FSC Rules made by the Commission under the relevant Acts shall not require the prior approval of the Minister and –

- (a) may provide for the taking of fees and levying of charges; and
- (b) shall be published in the *Gazette*.

94. Regulations

(1) The Minister may –

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

(2) Any regulations made under this Act may provide –

- (a) for the taking of fees and levying of charges;
- (b) for the payment of costs in relation to matters before the Review Panel;
- (c) for a code of ethics for the members of the Board and the employees of the Commission relating to –
 - (i) acceptance of gifts or any other reward;
 - (ii) restricting the holding of shares and other interests in any licensee or the disclosure of such interests; and

- (iii) acting as, or accepting a function as, an officer of a licensee or employment with a licensee during or after the termination of their employment with the Commission;
- (d) that any person who contravenes any regulations under this Act or under any relevant Act or any FSC Rules made under this Act 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.

95. Repeal and savings

- (1) The following enactments are repealed –
 - (a) the Financial Services Development Act 2001;
 - (b) the Financial Services Development (Amendment) Act 2005.
- (2) Notwithstanding the repeal of the enactment specified in subsection (1)(a) –
 - (a) the Board established immediately before the commencement of this Act shall, at the commencement of this Act, be deemed to have been established under this Act;
 - (b) the Chief Executive or any employee appointed with the terms and conditions immediately before the commencement of this Act shall, at the commencement of this Act, be deemed to have been appointed under this Act on the same terms and conditions;
 - (c) any licence issued, authorisation or approval granted and in force immediately before the commencement of this Act shall, at the commencement of this Act, be deemed to have been issued or granted under this Act and shall remain valid for the period specified in the licence, authorisation or approval;
 - (d) any act or thing done, or document executed, under that enactment and in force immediately before the commencement of this Act shall, at the commencement of this Act, be deemed to have been done or executed under this Act; and
 - (e) all proceedings, judicial or otherwise, commenced before and pending immediately before the commencement of this Act, by or against the Commission shall, at the commencement of this Act, be deemed to have commenced and may be continued, by or against the Commission under this Act.

96. Transitional provisions

Where at the commencement of this Act, the conduct of the business of a holder of a Category 1 Global Business Licence does not meet the requirements of section 71, the

licensee shall take such measures as may be necessary to comply with the provisions thereof by 30 June 2012, failing which the licence shall lapse.

97. Consequential amendments

(1) The Banking Act 2004 is amended by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(2) The Bank of Mauritius Act 2004 is amended by deleting the words “Financial Services Development Act” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(3) The Financial Intelligence and Anti-Money Laundering Act 2002 is amended by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(4) The Income Tax Act is amended –

(a) in section 124(1), by deleting the words “section 27(6) of the Financial Services Development Act 2001” and replacing them by the words “section 44(6) of the Financial Services Act 2007”;

(b) by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(5) The Non-Citizens (Property Restriction) Act is amended by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(6) The Prevention of Corruption Act 2002 is amended in section 2, in the definition “financial institution”, by repealing paragraph (a) and replacing it by the following paragraph –

(a) the Financial Services Act 2007;

(7) The Prevention of Terrorism Act 2002 is amended in the First Schedule, by deleting the words “Financial Services Development Act 2001” and replacing them by the words -

Financial Services Act 2007

(8) The Protected Cell Companies Act is amended -

(a) in the long title, by deleting the words “a qualified global business” and replacing them by the words “global business”;

(b) in section 2 –

- (i) in subsection (1) –
 - (A) by deleting the definition of “qualified global business”;
 - (B) by inserting in the appropriate alphabetical order, the following new definition –
 - “global business” has the same meaning as in the Financial Services Act 2007;
- (ii) in subsection (2), by deleting the words “the Financial Services Development Act 2001” and replacing them by the words “the Financial Services Act 2007”;
- (c) in section 3, by repealing paragraph (a) and replacing it by the following paragraph -
 - (a) the Financial Services Act 2007 in so far as it relates to Part VI; and
- (d) in section 4(1), by deleting the words “a qualified global business” and replacing them by the words “global business”;
- (e) in the Schedule, by deleting the words “QUALIFIED GLOBAL BUSINESS” and replacing them by the words “**GLOBAL BUSINESS**”.

(9) The Registration Duty Act is amended by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(10) The Securities (Central Depository, Clearing and Settlement) Act is amended in section 2, in the definition of “Commission”, by deleting the words “Financial Services Development Act 2001” and replacing them by the words “Financial Services Act 2007”.

(11) The Statutory Bodies (Accounts and Audit) Act is amended in Part II of the Schedule –

- (a) by deleting the following items –
 - Financial Services Commission established under the Financial Services Development Act 2001
 - Financial Services Promotion Agency established under Part VIII of the Financial Services Development Act 2001
- (b) by inserting in the appropriate alphabetical order the following item –
 - Financial Services Commission established under the Financial Services Act 2007

(12) The Statutory Bodies Pensions Funds Act is amended in the Schedule –

(a) by deleting the following items –

Financial Services Commission established under the Financial Services Development Act 2001

Financial Services Promotion Agency established under Part VIII of the Financial Services Development Act 2001

(b) by inserting in the appropriate alphabetical order the following item -

Financial Services Commission established under the Financial Services Act 2007

(13) The Trusts Act 2001 is amended by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

(14) A reference in any enactment to the Financial Services Development Act 2001 shall be construed as a reference to the Financial Services Act 2007.

98. Commencement

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

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

FIRST SCHEDULE*(section 2)***Relevant Acts**

Insurance Act 2005
Protected Cell Companies Act
Securities Act 2005
Securities (Central Depository, Clearing and Settlement) Act
Trusts Act 2001

SECOND SCHEDULE*(section 2)***Financial Business Activities**

Assets Management
Credit Finance
Custodian services (non-CIS)
Distribution of financial products
Factoring
Leasing
Occupational Pension Scheme
Pension fund administrators
Pension Scheme Management
Retirement Benefits Scheme
Superannuation Funds
Registrar and Transfer Agent
Treasury management

Such other financial business activity as may be specified in FSC Rules

THIRD SCHEDULE
(sections 55 and 83)

PART I

OATH OF OFFICE

IN THE SUPREME COURT OF MAURITIUS

I,, do swear/solemnly affirm/declare that I will well and truly serve the Republic of Mauritius as a member of the Financial Services Review Panel established under the Financial Services Act 2007 and I will do right to all people according to law, without fear or favour, affection or ill-will. (So help me God).

Taken before me,

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

Part II

OATH OF CONFIDENTIALITY

IN THE SUPREME COURT OF MAURITIUS

I being appointed do hereby swear/solemnly affirm/declare that I will, to the best of my judgment, act for the furtherance of the objects of the Commission established under the Financial Services Act 2007 and shall not, on any account and at any time, disclose, otherwise than with the authorisation of the Commission or where it is strictly necessary in the performance of my duties, any confidential information obtained by me during or after my relationship with the Commission.

Taken before me,

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

FOURTH SCHEDULE*(section 71(3))***Business activities**

Banking

Financial services

Carrying out the business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary

Providing of registered office facilities, nominee services, directorship services, secretarial services or other services for corporations

Providing trusteeship services by way of business