

THE INSURANCE (AMENDMENT) BILL
(No. XVIII of 2007)

Explanatory Memorandum

The object of this Bill is to amend the Insurance Act 2005 to harmonise the provisions with those relating to other non-bank financial services.

06 July 2007

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A Bill

To amend the Insurance Act 2005 to harmonise the provisions with those relating to other non-bank financial services

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Insurance (Amendment) Act 2007.

2. Interpretation

In this Act -

“principal Act” means the Insurance Act 2005.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “Administrator”;
- (b) in the definition of “Enforcement Committee”, by deleting the words “Part VIA of the Financial Services Development Act 2001” and replacing them by the words “section 52 of the Financial Services Act 2007”;
- (c) by deleting the definition of “matching assets”;
- (d) in the definition of “Minister”, by deleting the words “financial services” and replacing them by the word “finance”;
- (e) in the definition of “Review Panel”, by deleting the words “Part VIA of the Financial Services Development Act 2001” and replacing them by the words “section 54 of the Financial Services Act 2007”;
- (f) in the definition of “technical provisions” , by deleting the words “, and includes, in the case of a long term insurer, mathematical provisions”;
- (g) by inserting in the appropriate alphabetical order the following new definitions -
 - “associate” has the meaning assigned to it by the Second Schedule;
 - “FSC Rules” has the same meaning as in the Financial Services Act 2007;
 - “licensee” means any person licensed under this Act;
 - “registered person” means any person registered under this Act;
- (h) in the definition of “solvency rules”, by deleting the words “section 23” and replacing them by the words “ sections 23 and 130”;
- (i) by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.

4. Section 9 of principal Act amended

Section 9 of the principal Act is amended -

- (a) in subsection (4), by deleting the words “by rules specify” and replacing them by the words “, provide in the FSC Rules”;
- (b) by inserting immediately after subsection (4), the following new subsections (5) and (6), the existing subsection (5) being renumbered (7) accordingly -

(5) (a) Notwithstanding subsection (4), an insurer shall offer to cede to a statutory reinsurer such percentage of its relevant risks as may be prescribed.

(b) For the purposes of paragraph (a) -

“relevant risks” means risks reinsured by way of a treaty;

“statutory reinsurer” means any reinsurer approved by the Commission.

(6) The Commission may exempt any insurer from compliance with the requirements of subsection (5), wholly or in respect of any description of relevant risks, if it is satisfied that it is necessary or appropriate to do so in the circumstances.

5. Section 10 of principal Act amended

Section 10 of the principal Act is amended -

(a) in subsection (1) –

(i) by repealing paragraph (c) and replacing it by the following paragraph -

(c) a business plan together with a feasibility study conducted or certified by an actuary;

(ii) in paragraph (d), by deleting the words “specified in rules” and replacing them by the words “required by the Commission”;

(b) in subsection (2), by inserting immediately after the words “Commission may require” the words “the applicant or”.

6. Section 11 of principal Act amended

Section 11 of the principal Act is amended in subsection (4)(b), by deleting the words “rules” and replacing it by the words “the FSC Rules”.

7. Section 13 of principal Act amended

Section 13(1)(a) of the principal Act is amended by deleting the words “shall not without the approval of the Commission -” and replacing them by the words “shall not without prior written notification to the Commission -”.

8. Section 14 of principal Act amended

Section 14(2) of the principal Act is amended, by inserting immediately after the words “An insurer shall”, the words “, notwithstanding the circumstances which prevent it from maintaining a financially sound condition,”.

9. Section 15 of principal Act amended

Section 15 of the principal Act is amended by repealing subsection (2), the words “(1) Subject to subsection (2), an insurer shall -” in subsection (1) being deleted and replaced by the words “An insurer shall -”

10. Section 16 of principal Act amended

Section 16 of the principal Act is amended -

- (a) in subsection (1) by deleting the words “contingent liabilities” and replacing them by the word “liabilities”;
- (b) by repealing subsection (4), subsection (5) being renumbered subsection (4) accordingly.

11. Section 19 of principal Act repealed

Section 19 of the principal Act is repealed.

12. Section 22 of principal Act amended

Section 22(1)(a) of the principal Act is amended by inserting immediately before the word “assume”, the words “without the written approval of the Commission,”.

13. Section 30 of principal Act amended

Section 30(2) of the principal Act is amended by deleting the words “specified under rules made by the Commission” and replacing them by the words “as may be approved by the Commission”.

14. Section 40 of principal Act amended

Section 40(1) of the principal Act is amended by deleting the words “rules made by the Commission” and replacing them by the words “FSC Rules”.

15. Section 43 of principal Act amended

Section 43(2) of the principal Act is amended in paragraphs (a) and (c), by deleting the word “rules” and replacing it by the words “FSC Rules”.

16. Section 45 of principal Act amended

Section 45(e) of the principal Act is amended, by deleting the word “rules” and replacing it by the words “the FSC Rules”.

17. Section 49 of principal Act amended

Section 49 of the principal Act is amended by repealing subsection (5) and replacing it by the following subsection -

(5) An insurer which is a foreign company and is required by the law of the country where it is established to prepare and furnish to a public authority in that country any documents, shall furnish to the Commission copy of such of those documents, as may be specified by the Commission.

18. Section 50 of principal Act amended

Section 50(2)(a) of the principal Act is amended by deleting the words “rules” and replacing it by the words “the FSC Rules”.

19. Section 53 of principal Act amended

Section 53 of the principal Act is amended -

- (a) in subsection (3), by inserting immediately after the words “shall be kept” the words “in Mauritius at the principal place of business of the insurer or such other place as may be approved by the Commission”;
- (b) in subsection (5), by deleting the words “in rules specify” and replacing them by the words “specify in the FSC Rules”.

20. Section 70 of principal Act amended

Section 70 of the principal Act is amended -

- (a) in subsection (5) –
 - (i) by repealing paragraph (a) and replacing it with the following paragraph -
 - (a) the objectives of the business of the applicant are consistent with this Act and are limited to the business stated in the application and operations arising directly from it;
 - (ii) in paragraph (b), by deleting the word “rules” and replacing it by the words “the FSC Rules”;
- (b) in subsection (6)(b), by deleting the word “rules” and replacing it by the words “the FSC Rules”;

- (c) in subsection (7), by deleting the words “conditions and restrictions” and replacing them by the words “conditions, restrictions and limitations”;
- (d) in subsection (8)(b), by deleting the word “conditions” and replacing it by the words “conditions, restrictions and limitations”.

21. Section 71 of principal Act amended

Section 71(2) of the principal Act is amended by deleting the word “rules” and replacing it by the words “the FSC Rules”.

22. Section 72 of principal Act amended

Section 72 of the principal Act is amended -

- (a) in subsection (2)(a), by deleting the word “its” and replacing it by the word “his”;
- (b) in subsection (4) –
 - (i) in paragraph (a), by deleting the word “and”;
 - (ii) by adding immediately after paragraph (b), the following new paragraph (c), the full stop at the end of paragraph (b) being deleted and replaced by the words “; and” -
 - (c) provide such other document and information as the Commission may require.

23. Section 73 of principal Act amended

Section 73(1) of the principal Act is amended by deleting the word “rules” and replacing it by the words “the FSC Rules”.

24. Section 82 of principal Act amended

Section 82 of the principal Act is amended by repealing subsection (2) and replacing it by the following subsection –

- (2) The Commission may specify in the FSC Rules the form and particulars of the report referred to in subsection (1).

25. Section 85 of principal Act amended

Section 85 of the principal Act is amended -

- (a) in subsection (1), by deleting the words “the Commission may make rules and guidelines on” and replacing them by the words “the Commission may provide in the FSC Rules and guidelines for”;

- (b) in subsection (2), deleting the words “the rules and guidelines may provide for -” and replacing them by the words “FSC Rules and guidelines may include -”.

26. Section 87 of principal Act amended

Section 87 of the principal Act is amended by adding immediately after subsection (6), the following new subsection –

- (7) No action shall lie against the Commission or any member of the Commission for any damage or loss suffered as a result of any long-term policy filed with the Commission.

27. Section 93 of principal Act amended

Section 93 of the principal Act is amended in subsection (1), by deleting the words “Where the Commission” and the word “rule” and replacing them by the words “Without prejudice to the powers of the Commission under the Financial Services Act 2007, where the Commission” and the words “the FSC Rules” respectively.

28. Section 94 of principal Act amended

Section 94 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by deleting the words “The Commission may, for the proper discharge of its functions, by notice in writing require a licensee or registered person to provide it –” and replacing them by the words “Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, the Chief Executive may, for the purpose of carrying out the functions of the Commission under this Act or any FSC Rules, by notice in writing, require a licensee or registered person to provide to the Commission –”;
 - (ii) in paragraph (b), by deleting the words “the Commission may require” and replacing them by the words “the Chief Executive may require”;
- (b) by inserting immediately after subsection (1) the following new subsection –
 - (1A) Subsection (1) shall apply to information, records or documents required in connection with the exercise by the Commission of its functions under this Act, or any other enactment including the Financial Intelligence and Anti-Money Laundering Act 2002 and the Prevention of Terrorism Act 2002.”
- (c) in subsections (3) and (4), by deleting the word “Commission” and replacing it by the words “Chief Executive”.

29. Section 95 of principal Act amended

Section 95 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection -

(1) Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, the Chief Executive may, at any time, inspect the affairs or any part of the affairs of a licensee or registered person in order to verify whether the licensee or registered person, as the case may be, is conducting its business according to sound insurance principles.

30. Section 96 of principal Act amended

Section 96 of the principal Act is amended -

- (a) in subsection (1) –
 - (i) by deleting the words “Where the Chief Executive has reasonable suspicion” and replacing them by the words “Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, where the Chief Executive has reason to believe”;
 - (ii) by repealing paragraphs (a)), the existing paragraphs (b), (c), (d), (e) and (f) being relettered (a), (b), (c) (d) and (e) respectively;
 - (iii) in paragraph (c) as relettered, by deleting the words “insurance business sector” and replacing them by the words “financial services sector”;
- (b) in subsection (3), by deleting the words “subsection (1)” and replacing them by the words “subsection (2)”;
- (c) in subsection (6), by deleting the words “subsection (4)” and replacing them by the words “subsection (5)”;
- (d) by repealing subsections (9) to (13), the existing subsection (14) being renumbered (9) accordingly.

31. Section 97 of principal Act amended

Section 97(1) of the principal Act is amended by deleting the words “Where, at any time,” and replacing them by the words “Without prejudice to the powers of the Chief Executive under the Financial Services Act 2007, where, at any time”.

32. Section 99 of principal Act repealed

Section 99 of the principal Act is repealed.

33. Section 102 of principal Act amended

Section 102(a) of the principal Act is amended by adding immediately after subparagraph (iii), the following new subparagraphs, the full stop at the end of subparagraph (iii) being deleted and replaced by a semi-colon –

- (iv) a corporation whose licence has expired, or has been cancelled, revoked, suspended or surrendered;
- (v) a person who has carried out or is carrying out any activity in the insurance sector without the appropriate licence under this Act.

34. Section 103 of principal Act repealed

Section 103 of the principal Act is repealed.

35. Section 104 of principal Act repealed and replaced

Section 104 of the principal Act is repealed and replaced by the following section -

104. Duties and powers of administrator

Where an administrator is appointed by the Commission pursuant to its powers under the Financial Services Act 2007, he shall -

- (a) have the powers, and shall carry out the duties, of an administrator under the Financial Services Act 2007; and
- (b) carry out the activities of a licensee in accordance with section 98.

36. Section 105 of principal Act repealed

Section 105 of the principal Act is repealed.

37. Section 106 of principal Act amended

Section 106(b)(ii) of the principal Act is amended by deleting the word “rule” and replacing it by the words “FSC Rule”.

38. Section 111 of principal Act amended

Section 111(3) of the principal Act is amended by deleting the words “the rules, the conditions of its licence” and replacing them by the words “the FSC Rules, the conditions, restrictions and limitations of its licence”.

39. Section 112 of principal Act amended

Section 112(2) of the principal Act is amended by deleting the words “section 27B(2) of the Financial Services Development Act 2001” and replacing them by the words “section 54 of the Financial Services Act 2007”.

40. Section 113 of principal Act amended

Section 113 of the principal Act is amended by deleting the words “27B(2) of the Financial Services Development Act 2001” and replacing them by the words “section 53(4) of the Financial Services Act 2007”.

41. Section 114 of principal Act amended

Section 114(1) of the principal Act is amended by deleting the word “rules” and replacing it by the words “the FSC Rules”.

42. Section 115 of principal Act repealed

Section 115 of the principal Act is repealed.

43. Section 116 of principal Act amended

Section 116 of the principal Act is amended –

- (a) in subsection (1), by deleting the word “rule” and replacing it by the words “FSC Rule”;
- (b) in subsection (3)(c), by deleting the words “section 33 of the Financial Services Development Act 2001” and replacing them by the words “section 83 of the Financial Services Act 2007”.

43A. Section 117 of principal Act amended –

Section 117 of the principal Act is amended in subsection (4), paragraph (g), by deleting the words “under section 103”.

44. Section 119 of principal Act repealed

Section 119 of the principal Act is repealed.

45. Section 122 of principal Act amended

Section 122 of the principal Act is amended by deleting the word “rules” and replacing it by the words “the FSC Rules”.

46. Section 123 of principal Act amended

Section 123(2) of the principal Act is amended by deleting the word “rules” and replacing it by the words “the FSC Rules”.

47. Section 124 of principal Act repealed

Section 124 of the principal Act is repealed.

48. Section 126 of principal Act amended

Section 126 of the principal Act is amended by deleting the words “rules made under section 130” and replacing them by the words “FSC Rule”.

49. Section 130 of principal Act amended

Section 130 of the principal Act is amended -

- (a) in the heading, by deleting the word “rules” and replacing it by the words “the FSC Rules”;
- (b) in subsection (1), by inserting immediately after the word “rules” the words “to be known as the FSC Rules”;
- (c) in subsection (3), by deleting the word “rules” wherever they appear and replacing it by the words “FSC Rules”;
- (d) in subsection (4), by deleting the word “rule” and replacing it by the words “any FSC Rule”.

50. Section 131 of principal Act amended

Section 131 of the principal 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”.

51. Section 132 of principal Act amended

Section 132(1) of the principal Act is amended in the third paragraph, by deleting the words “et dirigeants des sociétés” and replacing them by the words “,dirigeants des sociétés et des professionnels”.

52. Third Schedule to principal Act amended

The Third Schedule to the principal Act is amended -

- (a) in item 2 –
 - (i) in paragraph (a), by inserting immediately after the words “repealed Act” the words “or licensed under the repealed Financial Services Development Act 2001”;
 - (ii) by adding immediately after paragraph (d) the following new paragraphs -
 - (e) Sections 24(1), 26(6) and 62 of the repealed Act shall, until the effective date, remain in force in relation to an existing insurer as if they have not been repealed.

- (f) During the period referred to in paragraph (e) above, notwithstanding section 15, an existing insurer not maintaining the solvency margin determined in accordance with the solvency rules, shall satisfy the Commission that it has an appropriate contingency plan structured on an annual basis or as the Commission may determine, that will ensure the existing insurer's compliance with section 15 by the effective date.
 - (g) During the time specified for the contingency plan, the Commission may take any such action under the Act as it deems appropriate.
- (b) in item 3, by deleting the words "1 January 2007" and replacing them by the words "1 January 2008".

53. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.