

THE SECURITIES (AMENDMENT) BILL
(No. XVII of 2007)

Explanatory Memorandum

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

06 July 2007

R. Sithanen
*Deputy Prime Minister, Minister of Finance and
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A Bill

To amend the Securities 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 Securities (Amendment) Act 2007.

2. Interpretation

In this Act -

“principal Act” means the Securities Act 2005.

3. Principal Act amended

The principal Act is amended by deleting the words “depository, clearing and settlement facility” and the words “depository, clearing and settlement facilities” wherever they appear and replacing them by the words “clearing and settlement facility” and the words “clearing and settlement facilities” respectively.

4. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “SRO rules”;
- (b) in the definition of “clearing and settlement facility” as newly amended, by deleting the words “either immobilised or”;
- (c) 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”;
- (d) in the definition of “futures contract”, by deleting the words “or a financial instrument”;
- (e) in the definition of “licence”, by deleting the words “granted under this Act” and replacing them by the words “issued by the Commission”.
- (f) by deleting the definition of “licensee” and replacing it by the following definition -
 - “licensee” means a person -
 - (a) holding or deemed to hold a licence; and
 - (b) approved or deemed to be approved by the Commission;
- (g) in the definition of “Minister”, by deleting the words “financial services” and replacing them by the word “finance”;
- (h) 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”;
- (i) by deleting the definition of “securities” and replacing it by the following definition –

“securities” means –

- (a) shares or stocks in the share capital of a company, whether incorporated in Mauritius or elsewhere, other than a collective investment scheme;
- (b) debentures, debenture stock, loan stock, bonds, convertible bonds or other similar instruments;
- (c) rights warrants, options or interests in respect of securities mentioned in paragraphs (a) and (b);
- (d) treasury bills, loan stock, bonds and other instruments creating or acknowledging indebtedness and issued by or on behalf of or guaranteed by the Government of the Republic of Mauritius or the government of another country, a local authority or public authority, as may be prescribed;
- (e) shares in, securities of, or rights to participate in, a collective investment scheme;
- (f) depository receipts or similar instruments;
- (g) options, futures, forwards and other derivatives whether on securities or commodities;
- (h) any other transferable securities, interests or assets as may be approved by the Commission; or
- (i) any such other instruments as may be prescribed;
- (j) in the definition of “securities exchange”, by adding immediately after the words “sales of securities” the words “in accordance with the rules of securities exchange”;
- (k) by deleting the definition of “securities transaction” and replacing it by the following definition –

“securities transaction” means a sale, transfer, purchase, exchange or conversion of securities or other dealings thereof;
- (l) by inserting in the appropriate alphabetical order, the following new definition –

“prospectus” –

 - (a) means a notice, circular, advertisement or request inviting applications or offers from the public to subscribe for or purchase, or offering to the

public for subscription or purchase, a share in, or debenture of, a company or proposed company; and

- (b) includes a statement attached to or intended to be read with the prospectus;
- (m) by deleting the words “Financial Services Development Act 2001” wherever they appear and replacing them by the words “Financial Services Act 2007”.
- (n) by deleting the definition of “SRO” and replacing it by the following definition -
 “SRO” has the same meaning as in the Financial Services Act 2007;

5. Section 6 of principal Act amended

Section 6 of the principal Act is amended in subsection (2)(f), by deleting the word “depository,”.

6. Section 9 of principal Act amended

Section 9 of the principal Act is amended in subsection (1), by deleting the words “under this Act”.

7. Section 10 of principal Act amended

Section 10 of the principal Act is amended in subsection (1), by deleting the words “under this Act”.

8. Section 11 of principal Act amended

Section 11 of the principal Act is amended by deleting the words “and complies with the conditions of a securities trading systems licence” and replacing them by the words “a licence issued by the Commission”.

9. Section 12 of principal Act amended

Section 12 of the principal Act is amended -

- (a) in the title, by deleting the words “under this Sub-Part”; and
- (b) in subsection (2)(c) by deleting the word “depository,”.

10. Section 13 of principal Act amended

Section 13 of the principal Act is amended –

- (a) in subsection (2), by inserting immediately after paragraph (f) the following new paragraph -
 - (fa) rules and conditions relating to the expiry of futures contracts or other derivatives, and to the modes of corresponding delivery and settlement;
- (b) in subsection (3), by inserting immediately after the words “shall be” the words “of no effect unless”.

11. Section 14 of principal Act amended

Section 14 of the principal Act is amended -

- (a) in subsection (2)(c), by deleting the words “immobilisation or”;
- (b) in subsection (3), by inserting immediately after the words “shall be” the words “of no effect unless”.

12. Section 15 of principal Act amended

Section 15 of the principal Act is amended in subsection (2), by inserting immediately after the words “shall be” the words “of no effect unless”.

13. Section 18 of principal Act amended

Section 18 of the principal Act is amended in subsection (1), by repealing paragraph (b) and replacing it by the following paragraph –

- (b) the directors include in their number directors who have experience in the operations of such securities exchange.

14. Section 20 of principal Act amended

Section 20 of the principal Act is amended by repealing subsection (3).

15. Section 21 of principal Act amended

Section 21 of the principal Act is amended by deleting the words “ “stock exchange” and “securities exchange” and “ “stock exchange” or “securities exchange” ” and replacing them by the words “ “stock exchange”, “securities exchange”, “commodities exchange”, “derivatives exchange” or “futures exchange” ”.

16. Section 23 of principal Act amended

Section 23 of the principal Act is amended by deleting the words “under this Act” appearing after the words “securities exchange” and replacing them by the words “by the Commission”.

17. Section 26 of principal Act amended

Section 26 of the principal Act is amended by deleting the words “under this Act” appearing after the words “clearing and settlement facility” and replacing them by the words “by the Commission”.

18. Section 29 of principal Act amended

Section 29 of the principal Act is amended in subsection (1), by deleting the words “under this Act” wherever they appear and replacing them by the words “by the Commission”.

19. Section 30 of principal Act amended

Section 30 of the principal Act is amended by deleting the words “under this Act” wherever they appear and replacing them by the words “by the Commission”.

20. Section 34 of principal Act repealed and replaced

Section 34 of the principal Act is repealed and replaced by the following section -

34. Applications for licences

An application for a licence under this Act shall be made in accordance with Part IV of the Financial Services Act 2007 and in such form and manner as may be specified in FSC Rules.

21. Sections 35 to 49 of principal Act repealed

Sections 35 to 49 of the principal Act are repealed.

22. Section 56 of principal Act amended

Section 56 of the principal Act is amended in subsection (3), by inserting immediately after the word “listed” the words “or traded”.

23. Part IV of principal Act is repealed

Part IV of the principal Act is repealed.

24. Section 76 of principal Act amended

Section 76 of the principal Act is amended -

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

(1) The Commission shall, on filing of a prospectus, issue an acknowledgement of filing on such terms and conditions as it may deem appropriate.

- (b) in subsection (3) -

(i) in paragraph (a), by deleting the words “granted provisional registration” and replacing them by the words “issued with an acknowledgement of filing”;

(ii) in paragraph (b), by deleting the words “granted effective registration” and replacing them by the words “issued with an acknowledgement of filing”;

- (c) in subsection (4), by deleting the words “declare the registration to be effective” and replacing them by the words “grant a registration”;

- (d) in subsection (5), by deleting the word “effective”;

- (e) by adding immediately after subsection (5), the following new subsection -

(6) No action shall lie against the Commission or any member of the Commission for any damage or loss suffered as a result of any prospectus being acknowledged or registered by the Commission.

25. Section 78 of principal Act amended

Section 78 of the principal Act is amended in subsection (1), by deleting the words “is effective” and replacing them by the words “is granted”.

26. Section 79 of principal Act amended

Section 79 of the principal Act is amended –

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

79. Subscription of securities

- (b) in subsections (1)(a) and (2), by deleting the words “has become effective” and replacing them by the words “is granted”.

27. Section 97 of principal Act amended

Section 97 of the principal Act is amended –

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

(1) No person shall promote or operate a collective investment scheme or any closed-end fund which is not authorised or recognised by the Commission.

(b) in subsection (4), by deleting the word “rules” and replacing it by the words “FSC Rules”;

28. Section 102 of principal Act amended

Section 102 of the principal Act is repealed and replaced by the following section -

102. Application of licensing provisions

An application for a licence, approval, authorisation and recognition under this Sub-Part shall be made in accordance with Part IV of the Financial Services Act 2007 in such form and manner as maybe specified in FSC Rules.

29. Section 120 of principal Act amended

Section 120 of the principal Act is amended –

(a) by repealing subsection (2) and replacing it by the following subsection -

(2) For the purposes of this Part and sections 42 to 47 and 53 of the Financial Services Act 2007, reference to a licensee shall include a reporting issuer, a member of an exchange and their officers.

(b) by adding immediately after subsection (2) the following new subsection -

(3) The Commission shall have, in addition to such powers as are contained in this Part, all the powers conferred on it by virtue of Part VIII and Sub-Part A and Sub-Part B of Part IX of the Financial Services Act 2007.

30. Sections 121, 123, 125 and 127 to 132 of principal Act repealed

Sections 121, 123, 125, and 127 to 132 of the principal Act are repealed.

31. Section 122 of principal Act amended

Section 122 of the principal Act is amended -

- (a) in subsection (1), by deleting the words “the Commission may” and replacing them by the words “the Chief Executive may, without prejudice to his powers under the Financial Services Act 2007,”;
- (b) in subsection (2) –
 - (i) by repealing paragraph (b) and replacing it by the following paragraph -
 - (b) the nature, amount and other details relating to the investment transaction;
 - (ii) in paragraph (d), by deleting the words “made for the purposes of this subsection” and replacing them by the words “or specified in FSC Rules”.

32. Section 124 of principal Act repealed and replaced

Section 124 of the principal Act is repealed and replaced by the following section -

124. Investigations

Without prejudice to his powers under the Financial Services Act 2007, where the Chief Executive has reasonable cause to believe that a person has engaged or is engaging in conduct in relation to securities that is not in the interest of the investing public or the public interest, the Chief Executive may order that an investigation be conducted under section 44 of the Financial Services Act 2007.

33. Section 126 of principal Act repealed and replaced

Section 126 of the principal Act is repealed and replaced by the following section –

126. Power to give directions

Without prejudice to his powers under the Financial Services Act 2007, the Chief Executive may, in relation to activities governed by this Act, direct a person, *inter alia* –

- (a) to do a specific act or refrain from doing a specific act for the purpose of compensating persons who have suffered loss because of a contravention of this Act, any regulations made under this Act or any FSC Rules by the person;

- (b) to comply with the rules of a securities exchange, a clearing and settlement facility or an SRO.

34. Section 135 of principal Act amended

Section 135 of the principal Act is amended –

- (a) by deleting subsection (1) and replacing it by the following subsection -

(1) Unless otherwise provided under this Act, the Financial Services Act 2007, any regulations made under these Acts or any FSC Rules, the Commission or the Chief Executive, as the case may be, shall give notice of, and publish, any decision in such form and manner as it or he thinks fit.

- (b) in subsection (2), by inserting immediately after the words “settlement facility”, the words “or a trading facility”.

35. Section 136 of principal Act amended

Section 136 of the principal Act is amended -

- (a) in subsection (1), by inserting immediately after the words “this Act”, the words “or the Financial Services Act 2007”;
- (b) by deleting subsection (4) and replacing it by the following subsection -

(4) Notwithstanding subsection (1), the following shall not be reviewable -

- (a) a decision to refuse a licence, authorisation, approval, or recognition under Part III or Part VIII;
- (b) a decision to conduct an investigation under section 124;
- (c) any decision under section 146; and
- (d) any interim decision or direction.

36. Section 143 of principal Act amended

Section 143 of the principal Act is amended –

- (a) in subsection (1), 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”;

(b) by deleting subsection (3).

37. Section 144 of principal Act repealed

Section 144 of the principal Act is repealed.

38. Section 154 of principal Act amended

Section 154 of the principal Act is amended in subsection (2), by inserting immediately after paragraph (h) the following new paragraph –

(ha) types of securities that may be listed or traded on an exchange;

39. Section 155 of principal Act amended

Section 155 of the principal Act is amended –

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

(1) The Commission may, for the purposes of this Act, make rules to be known as FSC Rules and such rules shall be published in the *Gazette*.

(b) in subsection (2), by inserting immediately after paragraph (x), the following new paragraphs –

(xa) the taking of fees and the levying of charges;

(xb) any form of trading of securities including turnaround trading and short selling, and of lending and borrowing of securities; and

40. Section 157 of principal Act amended

Section 157 of the principal Act is amended in subsection (1)(d)(i), by deleting the words “177 to 183” and replacing them by the words “177 to 182”.

41. Section 159 of principal Act amended

Section 159 of the principal Act is amended in subsection (7) by deleting the words “5 years” and replacing them by the words “3 years”.

42. Section 160 of principal Act amended

Section 160 of the principal Act is amended in subsection (4), by deleting the words “5 years” and replacing them by the words “3 years”.

43. Section 162 of principal Act amended

Section 162 of the principal Act is amended -

- (a) in subsections (1) and (3), by deleting the words “5 years” and replacing them by the words “3 years”;
- (b) in subsections (2) and (4), by deleting the words “beyond the 5 year period “ and “expiry of the 5 year period” and replacing them by the words “beyond 3 years” and “expiry of the 3 year period”, respectively.

44. Schedule to principal Act amended

The Schedule to the principal Act is amended by repealing Part III.

45. Commencement

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