

**THE MAURITIUS OFFSHORE BUSINESS ACTIVITIES ACT 1992**  
*(Act No. 18 of 1992)*

## An Act

To provide for the establishment and management of the Mauritius Offshore Business Activities Authority, to regulate offshore business activities from within Mauritius, and for the issue of offshore certificates, and to provide for other ancillary or incidental matters.

ENACTED by the Parliament of Mauritius, as follows -

### PART I - PRELIMINARY

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

This Act may be cited as the Mauritius Offshore Business Activities Act 1992.

#### **2. Interpretation**

(1) In this Act -

"Authority" means the Mauritius Offshore Business Activities Authority established under section 3;

"Board" means the Board of Governors established under section 7;

"certificate" means an offshore certificate issued under section 16(4);

"confidential information" includes any document, books of account, balance sheet, profit and loss account or any matter which is to be treated as secret and confidential under section 15(1);

"corporation" means a body corporate, including a foreign company, a branch of a foreign company, or a partnership, formed or incorporated in Mauritius or elsewhere;

"Court" means the Supreme Court;

"Director" means the Director appointed under section 9;

"domestic bank" has the meaning assigned to it by the Banking Act 1988;

"international company" means a company incorporated or registered by way of continuation under the International Companies Act 1994;  
*(Amended: 4/94)*

"management licence" means an offshore companies management licence issued under section 23;

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

"offshore bank" has the meaning assigned to it by the Banking Act 1988;

"Offshore Banking Licence" has the meaning assigned to it by the Banking Act 1988;

"offshore business activity" means a business or other activity referred to in section 33 and includes an activity conducted by an international company; (*Amended 4/94*)

"offshore company" means a corporation -

- (a) in relation to which there is a valid certificate, and
- (b) which carries on an offshore business activity;

"offshore insurance business" means insurance business conducted by an offshore company and includes offshore captive insurance business;

"offshore insurance company" means an offshore company dealing in offshore insurance business;

"offshore trust" means a trust -

- (a) qualified as an offshore trust under the Offshore Trusts Act 1992;
- (b) in relation to which a declaration of trust is registered under section 29;

"provisional certificate of incorporation" means a certificate issued under section 22(1);

"public sector agency" includes Government ministry or department, any local authority and any statutory corporation;

"Registrar" means the Registrar of Companies under the Companies Act 1984;

"resident in Mauritius" means -

- (a) in relation to an individual, a person who his domicile in Mauritius;
- (b) in relation to a body corporate, a body incorporated or registered under the law of Mauritius;

"Technical Committee" means the Technical Committee established under section 8.

- (2) Any area which is a freeport zone under the Freeport Act 1992 shall be deemed not to be an area within Mauritius.
- (3) Shares and interest in and debentures of an offshore company, international company, and ships registered in Mauritius, shall be deemed to be property not situated in Mauritius. (*Amended; 4/94*)

## **PART II - THE AUTHORITY**

### **3. Establishment of the Authority**

- (1) There is established for the purposes of this Act the Mauritius Offshore Business Activities Authority.
- (2) The Authority shall be a body corporate.

### **4. Objects of the Authority**

The objects of the Authority shall be -

- (a) to license corporations to establish and carry on offshore business activities from within Mauritius and to grant offshore certificates;
- (b) to monitor and supervise the conduct of business activities in the offshore sector;
- (c) to investigate any offshore business activity and any activity of an operator in the offshore sector;
- (d) to ensure that business in the offshore sector is transacted in conformity with offshore legislation and in accordance with established norms of good and honourable conduct, and to preserve and maintain the good repute of Mauritius as a centre for offshore business activities;
- (e) to ensure coordination and cooperation between the public sector agencies, private corporations and non-governmental organisations concerned in any way with offshore business activities;
- (f) to promote Mauritius as a centre for offshore business activities;
- (g) to make recommendations for the creation and the improvement of any facilities likely to enhance the attraction of Mauritius as a centre for offshore business activities;
- (h) to carry out research and commission studies on the offshore business sector and related services;
- (i) to develop national objectives, policies and priorities for the orderly administration of the offshore business activities in Mauritius, and to make recommendations to the Government;
- (j) to advise the Government generally on any matters relating to offshore business activities.

### **5. Role and function of the Authority**

- (1) Notwithstanding any other enactment and subject to subsection (3), the Authority shall be the centre and the channel through which -

- (a) all public sector agencies shall act in any matter and in the exercise of any of their powers, with respect to -
    - (i) offshore business activities;
    - (ii) an offshore company and an offshore trust;
    - (iii) an applicant for a certificate;
  - (b) an offshore company, an offshore trust and an applicant for a certificate shall apply for and shall obtain any permit, licence or other authorisation, or, any other thing they may require, and through which they may communicate with any of the public sector agencies in Mauritius.
- (2) ~~Any investigation,~~ **Subject to Section 124 of Income Tax Act 1995, any investigation, (Finance Act 2000)** 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 an offshore business activity, an offshore company, an offshore trust, and of an applicant for a certificate, be carried out, required, or done by the Authority or any person or body designated by the Authority.
- (3) This section shall not apply to an offshore bank.

## **6. Powers of the Authority**

The Authority shall have power to do such acts and things as are incidental or conducive to the attainment of its objects.

## **7. Administration of the Authority**

- (1) The Authority shall be administered by a Board of Governors.
- (2) The Board shall consist of -
  - (a) a Chairman;
  - (b) a Vice-Chairman;
  - (c) a representative of the Prime Minister's Office;
  - (d) a representative of the Ministry of Finance;
  - (e) a representative of the Attorney-General's Office;
  - (f) three persons of wide business experience designated by the Minister.
- (3) The Chairman and Vice-Chairman of the Board shall be appointed by the Minister.
- (4) The Board may co-opt any person to assist it at any of its meetings.
- (5) The Governors and any co-opted member shall take the oath specified in the First Schedule.

## **8. The Technical Committee**

- (1) There shall be a Technical Committee which shall report on any technical matter referred to it by the Board or the Director.
- (2) The Technical Committee shall consist of -
  - (a) a Chairman, to be appointed by the Minister;
  - (b) a representative of the Prime Minister's Office;
  - (c) a representative of the Ministry of Finance;
  - (d) a representative of the Bank of Mauritius;
  - (e) a representative of the Attorney-General's Office;
  - (f) four other persons designated by the Minister.
- (3) The Technical Committee may co-opt any persons and may set up any sub-committees.
- (4) The members and co-opted members of the Technical Committee shall take the oath specified in the First Schedule.

## **9. Director**

- (1) There shall be a chief executive officer of the Authority who shall -
  - (a) be known as the Director; and
  - (b) be appointed by the Board on such terms and conditions as it thinks fit.
- (2) The Director 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 Authority.
- (3) In the exercise of his functions, the Director shall act in accordance with such directions as he may receive from the Board.
- (4) The Director shall attend the meetings of the Board and the Technical Committee.
- (5) The Director shall take the oath specified in the First Schedule.

## **10. Meetings of the Board**

- (1) The Board shall regulate its meetings and proceedings in such manner as it thinks fit.
- (2) Four members shall constitute a quorum.

## **11. Delegation**

- (1) The Board may delegate to the Director such of its powers as are necessary to discharge efficiently the functions of the Authority.
- (2) Where a delegation under subsection (1) relates to the grant of a certificate, the Director shall not issue a certificate except in accordance with the terms of the delegation, instructions, guidelines or conditions imposed by the Board.

## **12. Staff of the Authority**

- (1) The Board may employ on such terms and conditions as it thinks fit such employees as may be necessary for the proper discharge of the functions of the Authority.
- (2) The employees of the Authority shall be under the administrative control of the Director.
- (3) Every member of staff appointed under this section shall -
  - (i) take the oath specified in the First Schedule;
  - (ii) maintain and aid in maintaining secrecy of any matter relating to this Act which comes to his knowledge.

## **13. Directions and guidelines**

- (1) The Board may -
  - (a) give such directions as are necessary for the processing of applications, for the keeping of registers and for other administrative matters relating to offshore business activity;
  - (b) issue guidelines and codes for the proper guidance of the public and of operators in the offshore sector.
- (2) **The Director may cause to be carried on the business premises of a corporation whose main object is to set up, manage and provide services to Offshore Companies and to International Companies or to act as corporate trustee, an inspection and audit of its books and records as and when the Director deems it necessary in order to ensure compliance with the Guidelines and codes referred to in Sub Section (1). (Finance Act 2000)**

## **14. General Fund**

The Authority shall establish a General Fund -

- (a) into which all money received by the Authority shall be paid, and
- (b) out of which :
  - (i) all payments required to be made by the Authority and all charges on the Authority 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. (*Amended 10/98*)

## 15. Confidentiality

- (1) The Authority and every member, officer or employee shall deal with all documents and other information in its possession or under its control concerning protected persons and all matters concerning such persons in respect of their offshore business activities, as secret and confidential, and shall not seek to identify these persons.
- (2) In this section -
  - "protected person" -
    - (i) means an offshore company, the beneficial owner and shareholder of an offshore company lawfully carrying on offshore business activities under this Act;
    - (ii) includes any person having an interest in such lawful activities whether as client, customer or an employee or officer of an offshore company.
- (3) Except where ordered by the Court for a reason specified in subsection (4), no member, officer, or employee of the Authority shall 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.
- (4) Notwithstanding any other enactment, the Court shall not make an order for disclosure or production of any confidential information except on the application of the Director of Public Prosecutions, and on proof beyond reasonable doubt 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 Economic Crime and Anti Money Laundering Act 2000 (Finance Act 2000)**.
- (5) This section shall be without prejudice to -
  - (a) the obligations of Mauritius under any international treaty, convention or agreement, and the obligations of any public sector agency under any international arrangement or concordat;
  - (b) such disclosure as is necessary for the purpose of administering this Act, and of discharging a function under this Act.

## **PART III - ISSUE OF CERTIFICATE**

## 16. Application



- (1) An application for a certificate shall -
  - (a) be made in the form approved by the Authority and in accordance with such regulations as may be made under this Act;
  - (b) be of no effect unless certified by a law practitioner qualified under the Law Practitioners' Act 1984 that it complies with the laws of Mauritius.
- (2) On receipt of an application under subsection(1) the Director may -
  - (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) refer the application to the Board with recommendations, observations and comments.
- (3) The Board may -
  - (a) reject an application without giving any reasons;
  - (b) refer the application back to the Director for further enquiry;
  - (c) approve the application on such terms and conditions as it thinks fit.
- (4) Where an application is approved by the Board, the Director shall, after payment by the applicant of such fee as may be prescribed, issue the certificate on behalf of the Authority subject to such conditions as the Board may impose.
- (5) Where a proposal or a project for the formation of an offshore company is submitted to the Authority, the Board may direct the Director to issue a letter of intent stating the terms and conditions under which a certificate may be issued.
- (6) A letter of intent issued under subsection(5)-
  - (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 Board or the Authority, nor import any obligation on the part of the Board or the Authority to grant a certificate or otherwise determine an application.

## **17. Processing of application**

- (1) A decision on an application for a certificate shall, as far as is reasonably practicable having regard to the particular nature and circumstances of the application, be communicated to the applicant within fifteen days of the application.

- (2) Subject to any other enactment, the Director may seek any approval or permission required from any public sector agency in Mauritius in respect of -
  - (a) the entry, stay and employment in Mauritius of any non-resident officers or employees as may in the opinion of the Board be necessary for conducting the business of an applicant;
  - (b) the holding on lease or otherwise of any immovable property for the purpose of accommodation of such officers or employees, or for the purpose of the office accommodation of an applicant.
- (3) For the purposes of subsection (2), "applicant" -
  - (a) means an applicant for a certificate;
  - (b) includes
    - (i) an offshore company;
    - (ii) a trustee of an offshore trust; or
    - (iii) a person who in his own name or on behalf of any other person submits a project or a proposal for the formation of an offshore company, or for the creation of an offshore trust.

## **18. Validity of certificate**

- (1) A certificate shall be -
  - (a) valid for such period as may be specified in the certificate;
  - (b) deemed to lapse on failure to pay the annual fee within one month after the date when the payment becomes due.
- (2) The Authority may at any time revoke a certificate where it -
  - (a) has reason to believe that an offshore company is acting or has acted -
    - (i) in contravention of this Act or any regulations made under this Act;
    - (ii) in breach of any conditions of the certificate;
  - (b) is of opinion that the revocation is necessary to protect the good repute of Mauritius as a centre for offshore business activities.
- (3) Before revoking a certificate under subsection (2)(a), the Authority -
  - (a) may suspend the certificate;
  - (b) shall afford the holder of the certificate an opportunity to submit any representations in writing.

- (4) When a certificate is suspended under subsection (3), an offshore company shall not, except with the approval of the Authority, transact any business.

**19. Effect of revocation of certificate**

Where a certificate is revoked under section 18(2), the company shall within 3 months -

- (a) start winding up procedures under the Companies Act 1984;
- (b) take any measures and make any arrangements as it deems appropriate in respect of the disposal of its assets and liabilities.

**PART IV - OFFSHORE BUSINESS ACTIVITIES**

**SUB-PART I - GENERAL PROVISIONS**

**20. Regulation of offshore activities**

- (1) Subject to subsection(2), no person shall conduct offshore business activities other than -
- (a) a corporation;
- (b) a trustee empowered by the terms of an offshore trust.
- (2) Subsection (1) shall not apply to an international company.  
*(Amended : 4/94; 10/98)*
- (3) This part shall be in addition to, and not in derogation from, any other enactment regulating the activity or business conducted by an offshore company and an offshore trust.
- (4) The offshore business activity conducted by an offshore company or an offshore trust shall be governed by any regulations made under this Act and any other enactment governing that activity.

**21. Application of other enactments**

- (1) Subject to any derogation, exemption or exclusion provided under this sub-part and sub-part II and subject to any regulations made under section 41, the Companies Act 1984 shall apply to an offshore company.*(Amended : 25/93)*
- (2) Subject to section 24, the Mauritius Accounting and Auditing Standards Committee Act 1989 shall not apply to an offshore company.

**22. Provisional certificate of incorporation**

- (1) Notwithstanding sections 11, 12, 15, 19, 49, 50, 95 and 96 of the Companies Act 1984, the Registrar may incorporate a company and

issue a provisional certificate of incorporation in such form as he may decide, where -

- (a) the memorandum and articles are submitted by a qualified person and accompanied by a declaration in writing by that qualified person that the company is intended to be an offshore company;
  - (b) its objects are expressly limited to offshore business activities.
- (2) A company incorporated under subsection (1) shall not be operational except -
- (a) where a certificate under section 16(4), or a letter of intent under section 16(5), is issued to it, and on notification of it to the Registrar;
  - (b) on submission of all information and documents required under sections 11, 15, 49, 50, and 96 of the Companies Act 1984; and
  - (c) on issue by the Registrar of a certificate under section 19(4) of the Companies Act 1984, and on cancellation by him of the provisional certificate of incorporation issued under subsection (1).
- (3) An incorporation under subsection (1) shall after a period of one year be of no effect and the provisional certificate of incorporation shall lapse, unless revoked earlier.
- (4) For the purposes of subsection 1(a), "qualified person" means a person belonging to a profession or an association listed in the Second Schedule, and includes a corporation holding a management licence.

### **23. Offshore companies management licence**

- (1) A corporation whose main object is to set up, manage and provide services to offshore companies or to act as corporate trustee may apply to the Authority for a management licence. (*Amended: 25/93*)
- (2) The Authority may -
- (a) on application under subsection (1) and on payment of such annual fee as may be prescribed, grant an offshore companies management licence on such terms and conditions as it thinks fit;
  - (b) alter a management licence.
- ~~(3) A management licence shall be -~~
- ~~(a) valid for such period as may be specified in the licence;~~
  - ~~(b) deemed to lapse on failure to pay the prescribed annual fee within one month after the date when the payment becomes due.~~
- (3) (a) A management license shall be**

- (i) valid for such period as may be specified in the licence.
- (ii) Deemed to lapse or failure to pay the prescribed annual fee within one month after the date when the payment becomes due.
- (b) A corporation holding a management license shall file with the Authority its audited accounts within 6 months after the close of its financial year.
- (c) The financial year of a corporation shall be
  - (i) in respect of its first financial year, for any period of 6 to 15 months from the date of its incorporation and in respect of every subsequent financial year, for a period not exceeding 12 months.
  - (ii) Where there is a change in its financial year, for a period not exceeding 18 months.

**(Finance Act 2000)**

- (4) The Authority may at any time revoke a management licence where it -
    - (a) has reason to believe that an offshore company is acting or has acted -
      - (i) in contravention of this Act or any regulations made under this Act;
      - (ii) in breach of any conditions of the certificate;
      - (iii) in breach of any of the guidelines and codes issued under section 13 (1) (b) or under section 127 (5A) (a) of International Companies Act 1994 as the case may be.
  - (b) is of opinion that the cancellation or revocation is necessary to protect the good repute of Mauritius as a centre for offshore business activities.
- (Finance Act 2000)**
- (5) Before revoking a licence under subsection (4), the Authority shall afford the holder an opportunity to submit any representations in writing.

**23A. Nominee Shareholding Companies**

- (1) Any company holding an offshore companies management license may, for the purposes of performing the functions of a nominee company with respect to offshore companies and international companies, from a nominee shareholding company.
- (2) The nominee shareholding company shall –
  - (a) expressly limit its objects to acting as a nominee shareholding company with respect to offshore companies and international companies for the purposes of this Act and the International Companies Act 1994 and to matters ancillary or incidental thereto;
  - (b) be a private company registered under the Companies Act 1984;

- (c) apply for a certificate under the Mauritius Offshore Business Activities Act 1992
- (3) Notwithstanding subsection 2(a) and (b), the sections of the Companies Act 1984 specified in the Third Schedule shall not apply to a nominee shareholding company.

*(Amended 9/97)*

## **SUB-PART II - OFFSHORE COMPANIES**

### **24. Legal regime applicable to offshore companies**

- (1) Subject to this sub-part, the sections of the Companies Act 1984 specified in the Third Schedule shall not apply to offshore companies.
- (2) Notwithstanding subsection (1) an offshore company shall file with the Authority every year an audited profit and loss account and balance sheet prepared in accordance with internationally accepted accounting standards. *(Amended: 4/94)*
- (3) **(a) An Offshore Company shall file with the Authority the audited accounts specified in subsection (2) 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 of 6 to 15 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.**

**(Finance Act 2000)**

### **25. .... *(Deleted 4/94)***

### **26. Property of an offshore company**

- (1) Subject to subsection (2), an offshore company shall not hold-
  - (a) immovable property in Mauritius;
  - (b) any share, or any interest in any company incorporated under the Companies Act 1984, other than in a foreign company or in another offshore company or in an offshore trust or an international company;
  - (c) any account in a domestic bank in Mauritian Rupee.
- (2) An offshore company may -
  - (a) open and maintain with a domestic bank an account in Mauritian rupees for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;

- (b) open and maintain with a domestic bank an account in foreign currencies with the approval of the Bank of Mauritius;
- (c) where authorised by the terms of its certificate, or where otherwise permitted under any other enactment, lease, hold, acquire or dispose of an immovable property or any interest in immovable property situated in Mauritius.
- (d) invest in any securities listed in the stock Exchange established under the Stock Exchange Act 1988 and in other debentures.

*(Amended: 4/94; 9/97; 10/98)*

**27. Dealings with residents**

Notwithstanding any other enactment, the Minister, on the recommendation of the Authority may authorise any offshore company engaged in any offshore business activities to deal or transact with residents on such terms and conditions as it thinks fit. *(Amended : 10/98)*

**28. Continuation of offshore company**

- (1) A foreign company incorporated under the laws of any country other than Mauritius, may where it is so authorised by the laws of that country, apply to the Registrar to be registered as being continued in Mauritius as if it has been incorporated in Mauritius under the Companies Act 1984 and a company incorporated under the Laws of Mauritius may apply to the Registrar to be deregistered in Mauritius for the purpose of being continued in another country.

*(Amended : 25/93)*

- (2) An application under subsection (1) shall be supported by -
  - (a) a copy of the certificate of incorporation;
  - (b) a copy of the resolution authorising the continuation of the company in Mauritius;
  - (c) a copy of its memorandum and articles;
  - (d) a list of its directors, managers and secretaries;
  - (e) a statement of the charges on the companies' assets;
  - (f) a notice of its registered office;
  - (g) such other documents as may be required by the Registrar.
- (3) The Registrar may issue a certificate of incorporation to the company under section 19(4) of the Companies Act 1984 on being satisfied that -
  - (a) the company is not in the process of winding up or liquidation;
  - (b) no receiver of its property has been appointed;

- (c) there is no scheme or order in force in relation to the company whereby the rights of creditors are suspended or restricted;
  - (d) there is in relation to the company a letter of intent issued by the Authority under section 16(5).
- (4) A certificate issued under subsection (3) shall be effective on the deregistration of the company in the place of its previous registration.
  - (5) The secretary of a company incorporated under subsection (3) shall within one month of the deregistration of the company in the place of its previous registration, file a certificate to that effect with the Registrar.
  - (6) The incorporation of a company under subsection(3) shall not operate -
    - (a) to create a new legal entity;
    - (b) to prejudice or affect the continuity of the company;
    - (c) to affect the property of the company;
    - (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against the company or any other person; or
    - (e) to affect any rights, powers, authorities, duties, functions, liabilities or obligations of the company or any other person.

### **SUB - PART III OFFSHORE TRUSTS**

#### **29. Declaration of an offshore trust**

- (1) On appointment, a resident trustee of an offshore trust shall submit to the Authority a declaration that -
  - (a) the settlor of the trust is not a resident of Mauritius;
  - (b) the trust property does not include any immovable property situated in Mauritius or money in a domestic bank in Mauritian currency, unless permitted under any other enactment;
  - (c) the trust he holds qualifies as an offshore trust under the Offshore Trusts Act 1992.
- (2) The Director shall file the declaration in a Register of Offshore Trusts and shall give the declaration a reference number.
- (3) On filing the declaration, the Director shall send to the resident trustee a letter of registration notifying him of the registration of the declaration and of the registration number of the declaration.
- (4) The registration number shall be the reference by which that offshore trust shall be identified and may be used officially to refer to that offshore trust.



### **30. Non-disclosure**

No declaration of trust shall contain any mention of -

- (a) the name of the settlor;
- (b) the name of the beneficiary, unless he is a Mauritian resident or a body corporate resident in Mauritius.

### **31. Disqualification as an offshore trust**

- (1) Where at any time after a declaration of trust, a trust ceases to be qualified as an offshore trust under the Offshore Trusts Act 1992, the trust shall, for all purposes, be deemed a resident trust.
- (2) A resident trustee shall inform the Authority as soon as possible after the trust ceases to qualify as an offshore trust.

### **32. Offence by resident trustee**

A resident trustee who -

- (a) provides in a declaration of trust any false information, or information misleading in any material particular;
- (b) fails to submit a declaration in respect of an offshore trust ;
- (c) knowingly declares that a trust qualifies as an offshore trust whereas it does not by reason of-
  - (i) the domicile of the settlor;
  - (ii) the location of the trust property or the currency in which the money is held on trust;

shall commit an offence, and shall on conviction be liable to a fine of not less than 100 000 rupees but not exceeding 300 000 rupees, and to imprisonment for a term not exceeding 8 years.

## **SUB-PART IV - APPROVED ACTIVITIES**

### **33. Offshore business activities**

- (1) An offshore business activity is any business or other activity -
  - (a) approved under section 34;
  - (b) which is carried on -
    - (i) from within Mauritius;
    - (ii) except in the case of an offshore company, an offshore bank and a resident trustee of an offshore trust, with a person not resident in Mauritius; and

- (iii) in a currency other than the Mauritian Rupee.
- (2) An offshore company or the trustee of an offshore trust shall not be treated as carrying on business with persons resident in Mauritius by reason only that -
- (a) it makes or maintains professional contact with any counsel and attorney, accountant, book-keeper, trust company, management company, investment adviser or other similar person carrying on business within Mauritius;
  - (b) it prepares and maintains books and records within Mauritius;
  - (c) it holds within Mauritius meetings of its directors or members;
  - (d) it acquires or holds any lease of any property for the purposes of its operation or as accommodation for its officers or employees;
  - (e) it holds an account in a domestic bank in Mauritian currency for the purpose of conducting its routine operational transactions.
  - (f) It holds an account in a domestic bank in foreign currencies with the approval of the Bank of Mauritius.

*(Amended 10/98)*

### **34. Approved activities**

The following activities shall be approved offshore business activities-

- (a) offshore insurance;
- (b) offshore funds management;
- (c) international financial services;
- (d) operational headquarters;
- (e) international consultancy services;
- (f) shipping and ship-management;
- (g) aircraft financing and leasing;
- (h) international licensing and franchising;
- (i) international data processing and other information technology services;
- (j) offshore pension funds;
- (k) international trading;
- (l) international assets management;
- (m) international employment services;
- (n) any other activity approved by the Authority.

*(Amended 10/98)*

### **35. Offshore banking.**

- (1) Notwithstanding this Act, a company incorporated or registered under the Companies Act 1984 which seeks to conduct offshore banking business from within Mauritius shall apply for an Offshore Banking Licence under the Banking Act 1988.

- (2) Subject to such exemptions as may be made by regulations under section 48 of the Banking Act 1988, an offshore bank shall in the conduct of its activities be governed by the Banking Act 1988.

*(Amended 10/98)*

**36. Offshore insurance business.**

- (1) The Minister may make regulations providing for the conduct, operation and supervision of the offshore insurance business, and regulating the activities of an offshore insurance company.
- (2) The Insurance Act 1987 shall not apply to an offshore company applying for registration or conducting business as an offshore insurance company from within Mauritius.
- (3) Regulations under subsection (1) may provide -
- (a) for the classification of the offshore insurance business;
  - (b) for its administration, supervision and control of the business, investigation, suspension and cancellation;
  - (c) for restrictions on the business;
  - (d) for regulating offshore insurance companies;
  - (e) for the insolvency and winding-up of offshore insurance companies;
  - (f) for re-insurance, insurance agents and brokers; and
  - (g) any other matter relating to offshore insurance business.
- (4) Notwithstanding the other provisions of this section, pending the coming into operation of any regulations made under subsection (1) an offshore insurance company existing at the commencement of this Act shall continue to be governed by the Insurance Act 1987 and any regulations made under that Act which are in force at the commencement of this Act.

**37. Other business activities**

Subject to any other enactment, the Minister may make such regulations as he thinks fit to provide for the supervision, conduct and regulation of any offshore business activity conducted by offshore companies from within Mauritius.

**PART V - MISCELLANEOUS**

**38. Exemption**

- (1) Notwithstanding any other enactment, the Authority shall be exempt from the payment of any duty, levy, charge, fee, rate or tax ~~including sales tax.~~ **(Finance Act 2000)**
- (2) An offshore company, an offshore bank and ~~an offshore trust~~ **an offshore trust, a shareholder of an Offshore Company and a holder of a debenture issued by an Offshore Company (Finance Act 2000)** shall be exempt from payment of any duty, levy, charge, fee or tax imposed by enactments listed in the Fourth Schedule in respect of -
  - ~~(a) its offshore business activities or offshore banking business activities;~~
  - (a) in the case of an Offshore Company or Offshore Trust, its offshore business activities or, in the case of an Offshore Bank, its offshore banking activities. (Finance Act 2000).**
  - (b) in the case of an offshore company, its dealings with residents, with the approval of the Minister;
  - (c) in the case of an offshore trust, its dealings with the approval of the Authority;
  - (d) in the case of an offshore bank, its dealings with residents with the approval of the Bank of Mauritius
  - (e) in the case of a shareholder of an Offshore Company or a holder of a debenture issued by an Offshore Company, any security, charge, pledge or other encumbrances created over the shares or debentures issued by the Offshore Company to the shareholders or debenture holder; as the case may be. (Finance Act 2000)**
  - (f) any authorised dealing in property situated in Mauritius;
  - (g) any fee or charge otherwise required for the incorporation of a company other than those prescribed by this Act and regulations made under this Act.

*(Amended 10/98)*

### **39. Offences**

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 300,000 rupees and to imprisonment for a term not exceeding 8 years.

### **40. Jurisdiction**

- (1) The Intermediate Court shall have jurisdiction to try all offences under this Act and regulations made under this Act and may impose any penalty provided in them.

- (2) Sections 152 and 153 of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Act.

#### **41. 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 -
- (a) provide for the taking of fees and levying of charges;
  - (b) provide that any person who contravenes them shall commit an offence, and shall on conviction be liable to a fine not exceeding 300 000 rupees and to imprisonment for a term not exceeding 8 years.

#### **42. Consequential amendments**

- (1) The Banking Act 1988 is amended -
- (a) in section 2 -
    - (i) by inserting in its appropriate place the following definition -

"Authority" means the Mauritius Offshore Business Activities Authority established under the Mauritius Offshore Business Activities Act 1992;
    - (ii) by deleting the definition of "offshore banking" and replacing it by the following -

"offshore banking" -

      - (a) subject to paragraph (b)(ii), means banking business conducted with non-residents and offshore companies in currencies other than the Mauritian rupee, including -
        - (i) offshore lending and trade financing;
        - (ii) offshore fund management and related corporate and financial advisory services;
        - (iii) trusteeship of offshore trusts;
      - (b) includes -
        - (i) the making of credits in currencies other than the Mauritian rupee for financing holders of Export Processing Zone

Certificates and Export Service Zone  
Certificates; and

- (ii) such other business with residents of Mauritius as the Authority may approve;
- (iii) by deleting the definition of "offshore company" and replacing it by the following -

"offshore company" has the meaning assigned to it by the Mauritius Offshore Business Activities Act 1992;
- (b) in section 3, by adding the following new subsection -
  - (11) An offshore bank shall not in any way be in a worse position than a correspondent bank in its relations with a domestic bank.
- (c) in section 14(5) -

by adding after the words "freely convertible currency" the following words ",any subsequent fluctuation arising in the conversion of that currency into the Mauritian Rupee being disregarded."
- (d) in section 38, by adding the following new subsection -
  - (4) This section shall not apply to an offshore bank.
- (e) in section 39, by deleting subsection (12) and replacing it by the following subsection -
  - (12) In this section -
    - (a) "bank" means a domestic bank;
    - (b) "professional relationship" includes a relationship between a bank and a computer bureau or a printer, being a relationship that has been approved by the central bank.
- (f) by adding after section 39 the following new section 39A -

39A. Confidentiality in respect of offshore banks.

  - (1) The central bank and every officer or employee of the central bank shall deal with all documents, records of banks, accounts, statements and other information in its possession or under its control concerning offshore banks, its officers and customers, as secret and confidential.
  - (2) Except where ordered by the Supreme Court for a reason specified under subsection (3), no officer or employee of the central bank shall 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.

- (3) The Court shall not make an order for disclosure or production of any information which under this section is to be treated as confidential except on the application of the Director of Public Prosecutions, and on proof beyond reasonable doubt 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.
  - (4) This section shall be without prejudice to -
    - (a) the obligations of Mauritius under any international treaty, convention or agreement;
    - (b) to the obligations of the central bank under any concordat or arrangement.
  - (g) in section 48, by adding the following new paragraph -
    - (d) for the exemption of offshore banks from the requirements of any provision of this Act.
- (2) The Companies Act 1984 is amended -
- (a) in section 2 -
    - (i) by deleting the following definitions -
      - (A) "offshore certificate";
      - (B) "Offshore Companies Committee"
      - (C) "Secretary for Offshore Companies"
    - (ii) by deleting the definition of "company" and replacing it by the following -

"company" means a company formed and registered under this Act or an existing company;
    - (iii) by deleting the definition of "offshore company" and replacing it by the following definition -

"offshore company" has the meaning assigned to it by the Mauritius Offshore Business Activities Act 1992;

- (iv) by deleting the definition of "shareholder" and replacing it by the following -
    - "shareholder" -
      - (a) has the meaning assigned to it by section 19(7);
      - (b) includes, in the case of an offshore company, a nominee.
  - (b) in section 12 by deleting subsection (3);
  - (c) in section 95, by deleting the following words "except for an offshore company, which shall have at least one of its directors ordinarily resident in Mauritius";
  - (d) by deleting sections 104 (3), 311B, 311C, 311D.
- (3) The Exchange Control Act is amended -
- (a) in section 1 (b) by inserting in their appropriate place the following definitions -
    - "offshore bank" has the meaning assigned to it by the Banking Act 1988;
    - "offshore company" has the meaning assigned to it by the Mauritius Offshore Business Activities Act 1992;
    - "offshore trust" has the meaning assigned to it by the Offshore Trusts Act 1992;
  - (b) by adding after section 42 the following new section -
    - 43. Exemption from application of Act.  
This Act shall not apply to -
      - (a) an offshore bank;
      - (b) an offshore company;
      - (c) an offshore trust;
      - (d) a trustee to the extent of his dealings in his capacity as trustee of the offshore trust.
- (4) The Income Tax Act is amended -
- (a) in section 2(1) -
    - (i) by deleting the definition of "offshore business"
    - (ii) by deleting the definition of "offshore company" and replacing it by the following definition -



"offshore company" has the same meaning as in the Mauritius Offshore Business Activities Act 1992;

- (iii) by deleting the definition of "trustee" and replacing it by the following -

"trustee" (i) in relation to a "unit trust scheme", has the meaning assigned to it by the Unit Trust Act 1989;

(ii) in relation to an "offshore trust" means the trustee of a trust qualified as an offshore trust under the Offshore Trusts Act 1992;

(iii) in any other case, means the trustee of a trust;

- (iv) by inserting in their proper alphabetical place the following definitions -

"Authority" means the Authority established under the Mauritius Offshore Business Activities Act 1992;

"offshore business activity" has the meaning assigned to it by the Mauritius Offshore Business Activities Act 1992;

"offshore trust" has the meaning assigned to it by the Offshore Trusts Act 1992;

- (b) in section 7(1)

(i) by deleting in paragraph (zk) the words "offshore business" and replacing them by the words "offshore business activity";

(ii) by deleting the full stop at the end of paragraph (zn) and replacing it by a semi-colon;

(iii) by adding immediately after paragraph (zn) the following new paragraph -

(zo) any distribution out of the net income to a non resident beneficiary under the terms of the offshore trust.

- (c) by deleting section 54D and replacing it by the following section -

54D. Allowance for expatriate staff.

Every taxpayer who is certified by the Authority as being an expatriate staff of an offshore company, offshore bank or offshore trust shall be allowed a relief by way of deduction from the income tax otherwise payable by him of an amount equal to 50 percent of the

income tax payable on the emoluments derived by him from the offshore company, offshore bank or offshore trust, as the case may be.

- (d) by adding after section 59B the following new section 59C, the existing sections 59C and 59D being renumbered sections 59D and 59E accordingly -

59C. Offshore trusts

- (1) The chargeable income of an offshore trust shall be the difference between -
- (a) the net income derived by the offshore trust from the accumulation and investment of the trust property, and
  - (b) the sum of -
    - (i) reasonable management expenses incurred by the trustee; and
    - (ii) the aggregate amount distributed to the beneficiaries under the terms of an offshore trust.
- (2) Any amount specified in subsection (1)(b)(ii) shall be deemed to be a charge on the income of the offshore trust.
- (3) Where an offshore trust ceases to qualify as an offshore trust, it shall be deemed to be a resident trust and its chargeable income shall be computed in accordance with section 59A.

- (e) by adding after the new section 59E the following new section 59F -

59F Option by offshore operators

- (1) An offshore operator liable to income tax may opt to pay tax on its chargeable income from its offshore business activities at the rate specified in paragraph 6(b) of the First Schedule.
- (2) In subsection (1), offshore operator means -
- (i) an offshore bank chargeable under section 59;
  - (ii) an offshore trust chargeable under section 59C;
  - (iii) an offshore company chargeable under section 59D.

- (f) by adding immediately after section 60A the following new section -

60B. Exemption from sections 60 and 60A.

Any person charged to tax at zero rate under paragraph (6) of the First Schedule shall be exempted from the requirements of sections 60 and 60A in respect of the chargeable income or that part of the chargeable income computed in accordance with sections 59, 59C and 59D.

- (g) in the First Schedule by deleting
  - (i) paragraph 1 and replacing it by the following paragraph
    - 1. On chargeable income under sections 34B, 34C, 59B or 59E -----15
  - (ii) paragraph 6 and replacing it by the following paragraph-
    - 6. (a) On chargeable income under sections 59, 59C and 59D -----0
    - (b) Where the tax payer opts to pay tax on its chargeable income under section 59, and 59D - .....up to a maximum of 35%

(5) The Insurance Act 1987 is amended -

- (a) in section 2 -
  - (i) by deleting the definitions of "affiliate", "offshore certificate", "offshore company", "offshore insurance business", "offshore insurer";
  - (ii) by deleting in paragraph (b) of the definition of "insurer", immediately after the word "insurer", the words - "and, save where otherwise stated, an offshore insurer";
- (b) in section 14 (2), by deleting paragraph (c);
- (c) in section 15, by deleting the words "subject to section 15 A, the Controller" and replacing them by the words "The Controller";
- (d) by deleting section 15 A;
- (e) in section 19(1) by deleting after the words "A body corporate", the words, - "other than an offshore insurer";
- (f) in section 22(1) by deleting after the word "insurer" the words, - "other than an offshore insurer";
- (g) in section 25(6), by deleting the definition of "insurer";
- (h) in section 27, by deleting subsection (11);
- (i) in section 28, by deleting subsection (5);
- (j) in section 29(2), by deleting after the word "insurer" the words, - "other than an offshore insurer,";

- (k) in section 30(1), by deleting -
    - (i) in paragraph (a) after the word "insurers" the words - "other than offshore insurers,";
    - (ii) in paragraph (b) after the word "insurer", the words - "other than an offshore insurer,";
  - (l) in section 36, by deleting subsection (5);
  - (m) in section 47, by deleting subsection (6);
- (6) The Non-Citizens (Property Restriction) Act is amended -
- (a) in section 2, by inserting in their appropriate places the following definitions -
    - (i) "Authority" means the Mauritius Offshore Business Activities Authority established under the Mauritius Offshore Business Activities Act 1992;
    - (ii) "offshore certificate" means an offshore certificate issued under section 16(4) of the Mauritius Offshore Business Activities Act 1992;
    - (iii) "offshore company" has the meaning assigned to it in the Mauritius Offshore Business Activities Act 1992;
  - (b) in section 3(3), by adding the following new paragraph -
    - (c) in the case of an offshore company,
  - (c) by adding after section 5 the following new section 6 -
    - 6. Offshore company.**
    - (1) Subject to subsection (2), an offshore company or an applicant for an offshore certificate who wishes to hold or purchase or otherwise acquire a property shall apply to the Authority.
    - (2) The Minister may -
      - (a) make regulations to provide for the manner in which applications submitted by the Authority on behalf of an offshore company or an applicant for an offshore certificate, shall be processed;
      - (b) delegate to the Authority, subject to such directions as he thinks fit, his powers to issue a certificate.
    - (3) Any certificate issued by the Authority under powers delegated by the Minister shall be deemed to be a certificate issued under section 3(2) of this Act.
- (7) The following regulations are revoked -

- (a) the Offshore Companies Regulations 1990;
- (b) the Offshore Companies Regulations No 2 of 1990

**43. The Statutory Bodies (Accounts and Audit) Act amended.**

- (1) The Statutory Bodies (Accounts and Audit) Act is amended in Part II of the Schedule, by adding the following item in its proper alphabetical place -  
  
Mauritius Offshore Business Activities Authority
- (2) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Corporation.
- (3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Corporation.

**44. Transitional provisions**

- (1) A corporation to which an offshore certificate has been granted under the Companies Act 1984 shall be deemed to have been issued with an offshore certificate under section 16(4).
- (2) Subject to subsection (3), an offshore company in operation at the commencement of this Act shall elect to be qualified as an exempt status or an ordinary status company in accordance with section 24 and shall within one month of the commencement of this Act, inform the Authority.
- (3) An existing offshore insurance company shall be deemed to have an ordinary status for the purpose of section 24.
- (4) Notwithstanding section 7, the Minister and the Governor of the Bank of Mauritius shall be the Chairman and the Vice-Chairman of the Board respectively as from the commencement of this Act till such time as another Chairman or Vice-Chairman is designated.

*(Amended 10/98)*

**45. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation, and different dates may be fixed in respect of different provisions.

Passed by the National Assembly on the ninth day of June one thousand nine hundred and ninety-two.

ANDRE POMPOM  
Clerk of the National Assembly

**THE MAURITIUS OFFSHORE BUSINESS ACTIVITIES ACT 1992**  
(Act No. 18 of 1992)

**FIRST SCHEDULE**  
(Sections 7, 8, 9, 12)

**OATH**

I.....being  
appointed.....do hereby swear/solemnly affirm that I will, to the best of  
my judgment, act for the furtherance of the objects of the Authority and shall not, on  
any account and at any time, disclose, otherwise than with the authorisation of the  
Authority or where it is strictly necessary for the performance of my duties, any  
confidential information obtained by me in virtue of my official capacity.

Taken before me, ..... The Master and Registrar of the Supreme  
Court on DATE.....

## **SECOND SCHEDULE**

(Section 22(4))

- |                    |   |   |
|--------------------|---|---|
| <b>Profession</b>  | - | Barrister, Attorney-at-Law, Notary  |
| <b>Association</b> | - | Institute of Chartered Accountants in England and Wales;                    |
|                    | - | Institute of Chartered Accountants of Scotland;                             |
|                    | - | Institute of Chartered Accountants of Ireland                               |
|                    | - | The Association of Certified Accountants                                    |
|                    | - | Chartered Institute of Management Accountants                               |
|                    | - | Institute of Chartered Secretaries and Administrators of the United Kingdom |

## THIRD SCHEDULE

(Section 24(1))

### Sections of the Companies Act 1984 not applicable to offshore companies

Sections	Contents
Section 4 (4)	Inspection of documents by the public
Section 12	Minimum Capital of Rs 25,000.- for a Company incorporated locally.
Section 13	Membership of holding company <i>(Added by Regulations: GN No. 66 of 1994)</i>
Section 15	Inclusion of word “Limited” in name <i>(Added by Regulations: GN No. 66 of 1994)</i>
Section 19(1)	The requirement of a notarial deed
Section 19(1) 19(2) 19(3)	The requirement of a notarial deed for the registration of companies.
Section 25	No constructive Notice of certain matters
Section 35	Authorised Mutual Fund <i>(Added by Regulations: GN No. 18 of 1995)</i>
Section 57 (1) (e)	Prohibited transactions in shares
Section 67 ) Section 68 ) Section 69 )	Disproportionate rights
Section 77	Debentures to bearer <i>(Added by Regulations: GN No. 18 of 1995)</i>
Section 81	Lodging of particulars of charges.
Section 86(1) (a)	Instrument of Transfer <i>(Added by Regulations: GN No. 66 of 1994)</i>
Section 95	Requirements as to nationality of director
Section 101 (3)	Powers of directors.
Section 104	Prohibition of tax-free payments to directors.
Section 108	Remuneration of officers.
Section 110 (1)	Corporate Secretary <i>(Added by Regulations: GN No. 66 of 1994)</i>



Section 136	Lodging of copies of resolutions and agreements.
Section 145	Trusts contracted under foreign law.
Section 147	Annual return by a company having a share capital.
Section 148	Annual return by a company limited by guarantee.
Section 149	Annual return by private companies.
Section 150	Annual return by public companies.
Section 152	Accounting periods for group accounts.
Section 153	Date of closing of Financial Year.
Section 154	Profit & Loss Account & Balance Sheet.
Section 155	Laying of group accounts before holding company.
Section 156	Requirements of Sixth Schedule.
Section 184	Remedy in cases of oppression.
Section 200	Investigation
Section 201	Declared companies
Section 202	Investigation of declared companies
Section 203	Investigation of other companies.
Section 204	Inspector's Reports.
Section 206	Investigation of related corporation.
Section 207	Investigation of financial or other control of corporation.
Section 208	Procedure & powers of inspector.
Section 209	Costs of investigation.
Section 210	Report of inspector admissible in evidence
Section 211	Suspension of proceedings in relation to declared company.
Section 212	Power to require information as to person interested in shares or debentures.
Section 213	Power to impose restrictions on shares or debentures.
Section 214	Inspectors appointed in other countries.

Section 232	Pooling of assets of related companies.
Section 233	Guidelines for orders to contribute or pool assets.
Section 250	Foreign companies
Section 307	Balance Sheets
Section 308	Fee payable on registration of foreign company.
Section 313	Prohibition of large partnerships.
Section 340	Fees to be paid in accordance with the Eighth Schedule.

## **FOURTH SCHEDULE**

(Section 38)

Land (Duties and Taxes) Act 1984

Licences Act

Local Government Act 1989

Registration Duty Act

Stamps Duty Act 1990

Transcription and Mortgage Act

**SUBSEQUENT REGULATIONS MADE UNDER THE MOBAA ACT OF 1992**

**A. Government Notice No. 114 of 1992**

**THE MAURITIUS OFFSHORE BUSINESS ACTIVITIES ACT 1992**

Regulations made by the Minister under section 41 of the  
Mauritius Offshore Business Activities Act 1992

1. These regulations may be cited as the Mauritius Offshore Business Activities (Fees) Regulations 1992.
2. There shall be paid to the Authority the fees set out in the Schedule in respect of -
  - (a) the processing of application for an offshore certificate;
  - (b) the annual fee of an offshore company;
  - (c) a declaration of an offshore trust;
  - (d) an offshore companies management licence.

Made by the Minister on 17 July 1992.

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**SCHEDULE  
(Regulation 2)**

	US \$
1. Processing Fee	
(a) offshore company (exempt status)	250
(b) offshore company (ordinary status)	500
2. Annual Fee	
(a) offshore company (exempt status)	250
(b) offshore company (ordinary status)	1500
3. Declaration of an offshore trust	250
4. Offshore companies management licence	1500

**B. Government Notice No. 127 of 1992**

**THE MAURITIUS OFFSHORE BUSINESS ACTIVITIES ACT 1992**

Regulations made by the Minister under section 36 of the  
Mauritius Offshore Business Activities Act 1992

1. These regulations may be cited as the Offshore Insurance Regulations 1992.
2. In these regulations-

“captive insurance business” means insurance business where the insured is a related corporation of the insurer;

“insurance business”

- (a) means the business of undertaking liability, by way of insurance, including reinsurance-
  - (i) to protect persons against loss or liability in respect of risks to which the persons may be exposed; or
  - (ii) to pay a sum of money or other thing of value upon the happening of an event; and
- (b) includes captive insurance business;

“insurer” means an offshore company conducting insurance business;

“policy-holder” in relation to an insurance policy, means the person who is entitled to enforce any benefit provided for in the policy;

“reinsurance” means a contract whereby an insurer insures the risk insured by him or part of that risk, with another insurer;

“related corporation” has the meaning given to it by Section 2 (1) of the Companies Act 1984.

3. (1) Insurance business carried on by insurers shall be classified as-
  - (a) long term insurance business;
  - (b) general insurance business.
- (2) For the purpose of these regulations-
  - (a) “long term insurance business” means insurance business of any or substantially any one of the following classes-
    - (i) life assurance business;
    - (ii) pension business; or
    - (iii) permanent health insurance business;

(b) “general insurance business” means insurance business other than long term insurance business.

- (3) The classes of insurance business are defined in accordance with the First schedule.
- (4) The undertaking of liability under a contract whose principal object is life assurance business shall be taken to constitute the carrying on of that business, and no other notwithstanding that the contract contains subsidiary provision giving cover for accident or disability benefits, or both.
- (5) The reinsurance of risks under a contract of insurance shall be treated as insurance business of the class to which the contract would have belonged if it had been entered into by the reinsurer.

4. No insurer shall-

- (a) carry on insurance business unless it has a paid up share capital of not less than the amount set out in the second column of the Second Schedule in respect of the type of insurance business specified in the first column;
- (b) transfer or amalgamate any of its insurance business without the approval of the Authority.

5. (1) Every insurer shall-

- (a) have and maintain the margin of solvency determined in accordance with this regulation; and
- (b) shall furnish to the Authority at the end of its financial year a certificate of in the form set out in the Third Schedule in accordance with the type of insurance business that is carried on.

(2) Where the margin of solvency of an insurer is less than that required under paragraph (1), the insurer shall-

- (a) make good the deficiency without delay;
- (b) not assume any new risks unless the deficiency is made good.

(3) Any risks assumed in contravention of paragraph (2) shall be null and void.

(4) No insurer shall declare, distribute or pay any dividend-

- (a) where its margin of solvency is less than that required under paragraph (1);
- (b) where the effect of such declaration, distribution or payment would be to reduce its margin of solvency to less than that required under paragraph (1).

(5) The minimum margin of solvency of an insurer shall be determined as follows:-

- (a) in the case of an insurer carrying on general insurance and reinsurance business, the value of its admitted assets shall exceed the amount of its admitted liabilities by not less than US \$200,000 or 15% of the premium

income, net of reinsurance premiums in the preceding financial year, whichever is the higher;

- (b) in the case of an insurer carrying on captive insurance business, the value of its admitted assets shall exceed the amount of its admitted liabilities by not less than US \$100,000 or 15% of the premium income net of reinsurance premiums, in the preceding financial year, whichever is the higher;
- (c) in the case of an insurer carrying on long term insurance business, the amount of its admitted liabilities in respect of policies issued shall not exceed the amount of its long term insurance fund, as certified by the insurer's actuary.

(6) For the purpose of calculating the margin of solvency under paragraph (5)-

- (a) "admitted assets of an insurer" means any property, security, item or interest owned by it but shall not include-
  - (i) an asset that is mortgaged or charged for the benefit of a person other than the insurer, to the extent that it is so mortgaged or charged;
  - (ii) a loan to, debenture of, or share in any related corporation;
  - (iii) an unpaid premium that has become due to the insurer more than 1 year previously;
  - (iv) an intangible asset;
  - (v) operational assets, including supplies, furniture, motor vehicles, office equipment and computers, in excess of their written-down values;
  - (vi) prepaid expenses and deferred charges;
  - (vii) amounts owed and due by reinsurers for more than 6 months;

(b) “admitted liabilities” subject to sub-paragraph (c) means-

- (i) in the case of an insurer carrying on long term insurance business, liabilities shown in the balance sheet and the valuation liabilities as certified by the insurer’s actuary;
- (ii) in the case of an insurer carrying on general insurance business, liabilities shown as current, contingent or prospective liabilities in the accounts of the insurer in respect of policies issued;

(c) “admitted liabilities” shall not include:-

- (i) a liability in respect of share capital or a reserve in lieu of capital approved by the Authority;
- (ii) a liability in respect of such matters as the Authority may by notice in writing direct.

(7) An insurer shall make adequate provision in his accounts for liabilities in respect of unexpired risks, outstanding and incurred claims, including provisions for claims incurred but not reported, computed in accordance with internationally approved methods.

(8) An insurer who carries on long term insurance business and another class of insurance business shall maintain and keep separate the relevant margin applicable to each class.

(9) (1) An insurer carrying on long term insurance business shall not less than once every 3 years, cause an investigation into its financial position to be made by its actuary.

(2) An investigation under paragraph (1) shall include:-

- (a) a valuation of the liabilities of the insurer attributable to the insurer’s long term insurance business;
- (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the insurer in respect of that business and where any rights of any long term insurance policy-holders to participate in profits relate to particular parts of a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(3) A copy of the report of the actuary shall be submitted to the Authority within 6 months after the period to which the investigation relates.

(4) The actuary’s report shall include-

- (a) a statement of the valuation basis used;



- (b) a statement showing the extent to which account has been taken of the nature and term of the assets available to meet the liabilities valued;
  - (c) the actuary's opinion on the value of the assets mentioned in item (b);
  - (d) a list of the assets so mentioned and their values, giving any equities held separately; and
  - (e) a consolidated revenue account for the period covered by the report.
- (5) The basis of valuation adopted shall be such as to place a proper value upon the liabilities having regard to the mortality experience among the persons whose lives have been insured by the insurer, to the average rate of interest from investments and the expenses of management, including commission and shall be such as to ensure that no policy instead as an asset.
- (6) Where, after an investigation, there is established a surplus which the actuary has recommended as available for distribution, the insurer shall not transfer or otherwise apply assets representing any part of that surplus unless the insurer has allocated to policy-holders of participating policies at least 90 per centum of that surplus.
7. (1) Every insurer carrying on long term insurance business shall have and maintain a long term insurance fund.
- (2) An insurer shall pay all monies received in respect of any class of long term insurance business carried on by it into an appropriately named sub-fund of the long term insurance fund.
- (3) The long term insurance fund of an insurer shall not be liable or chargeable for or in respect of any contract or transaction of the insurer other than that of the long term insurance business carried on by the insurer, and shall not be applied directly or indirectly for any other purpose.

Made by the Minister on 13 August 1992.

## FIRST SCHEDULE

### (Regulation 3)

For the purpose of determining the classes of long term insurance business and of general insurance business and of general insurance business under regulation 3-

“life assurance business” means the business of undertaking liability under contracts upon human life or contracts to pay annuities on human life, but excludes permanent health insurance business and personal accident insurance business;

“pension business” means the business of effecting and carrying on of-

- (a) contracts to manage pension funds or the investment of pension funds;
- (b) contracts of the kind mentioned in paragraph (a) that are combined with contract of insurance covering either conservation of capital or payment of a minimum interest; or
- (c) contracts on a group basis to provide pensions during the lifetime of employees as from their retirement and to their dependants should they die in service or on pension;

“permanent health insurance business” means the business of undertaking liability under contracts to provide specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract;

“personal accident insurance business” means the business of undertaking liability under contracts, otherwise than incidentally on a contract whose principal object is some other class of insurance business, to pay a certain sum or certain sums of money to, or provide any other benefit for a particular person in the event of an accident or sickness causing the death or injury or disability of a particular person.

SECOND SCHEDULE

(Regulation 4)

Minimum paid up share capital

Type of Insurance Business	Amount
General Insurance Business	US \$ 200,000 or equivalent in currency another
Long term Insurance Business	US \$ 250,000 or equivalent in currency another
Reinsurance Business	US \$ 300,000 or equivalent in currency another
Captive Insurance Business	US \$ 100,000 or equivalent in currency another

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THIRD SCHEDULE

( regulation 5 (1) (b) )

FORM A

Certificate as to solvency of an insurer who carries  
on long term insurance business

I hereby certify that to the best of my knowledge and belief the admitted liabilities as at  
.....  
in respect of policies issued under each class of long term insurance business by  
.....  
do not exceed the amount of the respective insurance funds.

Date: .....

*Government notice no. 18 of 1995*

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**THE MAURITIUS OFFSHORE BUSINESS  
ACTIVITIES ACT 1992**

**Regulations made by the Minister under sections 21(1) and 41(1)(a)  
of the Mauritius Offshore Business Activities Act 1992**

**Part 1 - Preliminary**

1. These regulations may be cited as the Mauritius Offshore Business Activities (Companies) Regulations 1995.

2. In these regulations-

Act means the Mauritius Offshore Business Activities Act 1992;

Court has the meaning given to it in the Companies Act 1984;

limited life company means an offshore company designated as such by the Registrar under regulation 3 (3);

offshore investment company means an offshore company whose business consists of investing its funds mainly in securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds;

register means the register of companies kept under the Companies Act 1984;

Registrar means the Registrar of Companies appointed under section 4 of the Companies Act 1984.

**Part 11 - Limited Life Companies**

3. (1) An offshore company may apply to the Registrar for designation as a limited life company at the time of incorporation, or at the time of applying for continuation or at any other time after incorporation or registration by way of continuation.

(2) An application in respect of an offshore company to which a certificate of incorporation or a certificate of registration by way of continuation has been issued, shall be accompanied by a certified copy of the relevant extract of its Memorandum and Articles limiting the life or duration of the company to a period not exceeding 50 years from the date of incorporation; or, where necessary, of a resolution of the company altering its Memorandum for that purpose.

(3) The Registrar shall designate an offshore company as a limited life company where he is satisfied that -

(a) the company has at least 2 subscribers or members; and

(b) the Memorandum of the offshore company limits the life of the company to a period not exceeding 50 years from the date of its incorporation.

(4) On designating an offshore company as a limited life company, the Registrar shall certify in the certificate of incorporation or in the certificate of registration by way of continuation that the company is a limited life company, stating the date of the designation.

4. A limited life company may by special resolution alter its Memorandum extending the duration of the company to such period or periods not exceeding in aggregate 150 years from the date of the incorporation of the company.

5. Notwithstanding any provision to the contrary in the Companies Act 1984, the Articles of a limited life company may -

(a) prohibit the transfer of any share or other interest of a member of the company absolutely or may provide that the transfer of any share or other interest of a member requires either the unanimous resolution of all the members, or a resolution passed by such proportion of the members as the Articles may specify;

(b) distinguish for the purpose of paragraph (a) between various interests in the company, including interest in the profits of the company, interest in the capital of the company, or interest in management of the company;

(c) provide that a person shall cease to be a member of the company upon the happening of any one or more of the events specified in the Articles, and may further provide that the rights of such former members shall be limited to an entitlement to receive such value for their shares in the company as may be determined by the Articles;

(d) provide that the affairs of the company may be managed by its members in their capacity as such, or by some person designated as manager with such rights, powers and duties as may be specified in the Articles;

(e) designate a person to be the liquidator of the company in the event of the company being in dissolution by operation of regulation 6;

(f) provide that where the company dissolves by virtue of regulation 6(2)(c)-

(i) the liquidator designated in the Articles shall discharge any liabilities existing immediately before dissolution and distribute any surplus assets remaining after dissolution among the former members according to their respective rights;

(ii) any one or more of the members of the dissolved company may retain the assets of the company and continue its business as a new enterprise not incompatible with the provisions of the Act, and any member who does not wish to continue in the new enterprise shall be entitled to receive such

value for their share in the dissolved company as may be determined by the Articles;

- (g) provide that a member shall be liable generally to the creditors of the company, or that a member shall be liable upon dissolution of the company, after application of all the assets of the company, to the creditors of the company and to other members for their unreturned capital.

6. (1) In addition to the sections listed in the Third Schedule to the Act, sections 215 to 296 of the Companies Act 1984 shall not apply to a limited life company, the dissolution of which shall be governed by this Part.

(2) A limited life company dissolves-

- (a) when the period fixed for the duration of the company expires; or
- (b) where the members of the company pass a special resolution requiring the company to be wound up and dissolved; or
- (c) subject to the Articles of the company, upon the happening of any one or more of the following events-
  - (i) the bankruptcy, death, insanity, retirement, resignation, withdrawal, expulsion, termination, cessation or dissolution of a member;
  - (ii) the transfer of any share or other interest in the company in contravention of the Articles of the company;
  - (iii) the redemption, repurchase or cancellation of all the shares of a member of the company; or
  - (iv) the occurrence of any event (whether or not relating to the company or a member) on which it is provided in the Articles that the company is to be dissolved.

(3) Where a limited life company dissolves by virtue of paragraph (2) and, in the Articles of the Company, no liquidator is designated to act, the members of the dissolved company shall by special resolution appoint a liquidator for the purposes of the winding up, and if they fail to pass such a resolution, the Court may on the application of a member or creditor appoint a liquidator.

7. (1) A liquidator shall, on being appointed in accordance with regulation 6, proceed -

- (a) to identify all assets of the company;
- (b) to identify all creditors of and claimants against the company;
- (c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;

- (d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;
- (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) to send a copy of the statement of account to all members if so required by the plan of liquidation contemplated by regulation 9.

(2) A transfer of all or substantially all of the assets of a limited life company for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of paragraph (1)(c) and (d).

**8.** (1) In order to perform the duties prescribed under regulation 7, a liquidator has all powers of the company that are not reserved to the members under the Companies Act 1984 or in the Memorandum or Articles, including, but not limited, to the power -

- (a) to take custody of the assets of the company and, in that connection, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding up and liquidation of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain solicitors, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorisation to do so in the plan of liquidation as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and

- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

(2) A liquidator shall not, without the permission of the Court, carry on for a period in excess of 2 years the business of a limited life company that is being wound up and dissolved under the Act.

9. (1) Where a voluntary winding-up and liquidation is being effected -

- (a) a plan of liquidation shall be authorised by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of liquidation as a class or series of shares are entitled to vote on the plan of liquidation as a class or series only if the Memorandum or Articles so provide;
- (b) where a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of liquidation, shall be given to each member, whether or not entitled to vote on the plan of liquidation; and
- (c) where it is proposed to obtain the written consent of members, a copy of the plan of liquidation shall be given to each member, whether or not entitled to consent to the plan of liquidation.

(2) After approval of the plan of liquidation by the members in accordance with paragraph (1), the articles of liquidation shall be executed by the company and shall contain -

- (a) the plan of liquidation; and
- (b) the manner in which the plan of liquidation was authorised.

(3) Articles of liquidation shall be submitted to the Registrar who shall retain and register them in the Register and within 30 days immediately following the date on which the articles of liquidation are submitted to the Registrar, the company shall cause to be published in the Gazette a notice stating --

- (a) that the company is in liquidation;
- (b) the date of commencement of the liquidation; and
- (c) the names and addresses of the liquidators.

(4) A liquidator shall, upon completion of a winding up and liquidation, submit to the Registrar a statement that the winding up and liquidation has been completed and upon receiving the notice, the Registrar shall--

- (a) strike the limited life company off the Register; and
- (b) issue a certificate of liquidation certifying that the company has been liquidated.



(5) Where the Registrar issues a certificate of liquidation certifying that the limited life company has been liquidated--

- (a) the certificate is prima facie evidence of compliance with all legal requirements;
- (b) the liquidation of the company is effective from the date of the issuance of the certificate.

### **Part III - Offshore Investment Companies**

**10.** (1) Notwithstanding sections 57(1)(c), 60 and 62 of the Companies Act 1984 an offshore investment company may, subject to the provisions of this Part, issue ordinary or preference shares redeemable at the option or request of the shareholder.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company other than redeemable shares.

**11.** Subject to regulation 12, an offshore investment company may, under this Part, redeem shares out of--

- (a) profits, gains or revenue, whether realised or unrealised; and
- (b) the paid up capital, the share premium account, or any other reserves.

**12.** An offshore investment company shall not redeem shares unless--

- (a) they are fully paid;
- (b) immediately after the redemption--
  - (i) the company is able to pay its debts as they become due in the normal course of business; and
  - (ii) the value of the company's assets is greater than the value of its liabilities including contingent liabilities; and
  - (iii) the valuation of assets and the estimate of liabilities for the purposes of subparagraph (ii) are reasonable, having regard to the most recent financial statements, and to such other facts as are known, and circumstances as prevail at the time of the redemption.

**13.** (1) Shares redeemed under this Part shall be treated as cancelled on redemption, and the amount of the offshore investment company's issued capital shall be reduced by the nominal value of those shares accordingly.

(2) The redemption of shares is not to be taken as reducing the amount of the company's authorised share capital.

**14.** (1) Where pursuant to these regulations a company has redeemed or is about to redeem shares, it may by a directors' resolution issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued and the issue of such shares shall not be taken as increasing the amount of its issued share capital.

(2) Where new shares are issued before the redemption of the old shares, the new shares shall not be deemed to have been issued unless the old shares have been redeemed within one month after the issue of the new shares.

**15.** Where a payment is made for a purported redemption of shares in breach of the provisions of this Part, the amount paid out may be recovered by the offshore investment company from --

- (a) the shareholder, unless he received the payment in good faith;
- (b) the directors of the offshore investment company, or the directors of the company entrusted with the management of the investment fund, who shall be liable jointly and severally to the company for so much of the amount irregularly paid out which has not been recovered from the shareholders.

**16.** Sections 37 to 47 and sections 49 and 135A of the Companies Act 1984 shall not apply to an offshore investment company unless --

- (a) it applies for listing on the Mauritius Stock Exchange;
- (b) it proposes to invite the public in Mauritius to subscribe to, to deposit money with, or to lend money to the company.

**17.** Notwithstanding regulation 16, an offshore investment company shall -

- (a) comply with such disclosure requirements as are prescribed in the jurisdiction where the company makes a public offering and with the conditions attached to its offshore certificate;
- (b) not commence business unless it is allowed to do so under the laws of that jurisdiction;
- (c) provide to the Authority such information and documents in its custody or in the custody of any of its agents, manager, administrator, custodian or any other functionary as the Authority may require.

#### **PART IV - General Provisions**

**18.** An offshore company shall not be required to cause a notice to be published of the matters referred to in section 30(1) of the Companies Act 1984.

**19.** Without prejudice to the powers of the Registrar or of the Supreme Court under section 182, where the approval of the Court is required in respect of a compromise, an arrangement, an amalgamation, a reconstruction or a take over scheme under Part VII of the Companies Act 1984, it shall be sufficient for an offshore company to approve the compromise, arrangement, amalgamation, reconstruction or take over scheme by a special resolution, and the effect shall be as if the Court has given approval to the scheme under that Part of the Act.

**20.** The Third Schedule to the Act is amended by inserting at their appropriate numerical places the following entries--

Section 35 ...	...	Authorised Mutual Fund
Section 77...	...	Debentures to Bearer

**21.** These regulations shall be deemed to have come into operation on 1 July 1993.

Made by the Minister on 2 February 1995.

**Government Notice No. 96 of 1995**

**THE MAURITIUS OFFSHORE BUSINESS  
ACTIVITIES ACT 1992**

Regulations made by the Minister under sections 21(1) and 41(1)(a) of the Mauritius Offshore Business Activities Act 1992

1. These regulations may be cited as the Mauritius Offshore Business Activities (Companies) (Amendment) Regulations 1995.
2. In these regulations -  
  
“principal regulations” means the Mauritius Offshore Business Activities (Companies) Regulations 1995.
3. The principal regulations are amended by adding after regulation 19 the following regulation---

19A. For the purpose of Sub-Part II of Part V of the Companies Act 1984, a member of the Institute of Chartered Accountants of India shall be qualified for appointment as auditor of an offshore company, notwithstanding---

- (a) the qualifications in respect of membership specified under section 161(1)(a) of that Act; and
- (b) the fact that the auditor or any member of the auditing firm is not ordinarily resident in Mauritius under Section 163 of that Act.

Made by the Minister on 27 June 1995.

## **GOVERNMENT NOTICE NO. 11 OF 1997**

### **THE MAURITIUS OFFSHORE BUSINESS ACTIVITIES ACT 1992**

#### **Regulation made by the Minister by the Minister under section 21(1) and 41(1) (a) of the Mauritius Offshore Business Activities Act 1992**

1. These regulations may be cited as the Mauritius Offshore Business Activities (Companies ) (Amendment) Regulations 1997.
2. In these regulations –  
“Act” means the Mauritius Offshore Business Activities Act 1992;  
“principal regulations” means the Mauritius Offshore Business Activities (Companies) Regulations 1995
3. Regulation 2 of the principal regulations is amended by inserting in their appropriate alphabetical places the following new definitions –  
“ Articles “ means articles of association of a company;  
“Authority” means the Authority established under the Mauritius Offshore Business Activities Act 1992  
“ Court” has the same meaning as in the Companies Act 1984  
“ Director” has the same meaning as in the Companies Act 1984  
“ Officer” has the same meaning as in the Companies Act 1984  
“ Registrar” has the same meaning as in the Companies Act 1984  
“ Special resolution” has the same meaning as in section 134 of the Companies Act 1984
4. Regulation 10 of the principal regulations is amended by repealing paragraph (I) and replacing it by the following paragraph –  
  
Notwithstanding sections 57(1)(c), 60 and 62 of the Companies Act 1984 but subject to the provisions of this Part, an offshore investment company may, where it is so authorised by its Articles of Association, issue ordinary or preference shares redeemable at the option or request of the company or of the shareholder.
5. The principal regulations are amended –  
(a) by inserting immediately after Part III the following new parts –

#### **Part IV – Indemnity for Directors, Officers and Auditors**

18. (1) Subject to paragraph (2), any provision, whether contained in a company’s articles or in any contract with company or otherwise, purporting to exempt the director the director or any officer of the company or any other person employed by the company as auditor from, or to indemnify him against, any liability arising in the exercise of his duties, which by virtue of any rule would otherwise attach to him in respect of any negligence, default breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void.

- (2) Notwithstanding paragraph (1), a company may where it is so authorised by its articles or in any contract with the company or otherwise –
  - (a) indemnify any such director, officer or auditor against such liability incurred by him –
    - (i) in defending any proceedings ( whether civil or criminal ) in which judgement is given in his favour or in which he is acquitted;
    - (ii) in connection with any application relating to the proceedings in which relief is, under the Companies Act 1984, granted to him by the Court; or
  - (b) cause any such director, officer or auditor to be insured against such liability

### **Part V –Reduction of share capital**

19. (1) A company having a share capital may, where it is so authorised by its articles, by special resolution reduce its share capital in any way.

- (2) Notwithstanding paragraph (1), the company may –
  - (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
  - (b) cancel any paid up capital which is lost or unrepresented by available assets
  - (c) pay off any paid – up share capital which is in excess of the needs of the company; or
  - (d) alter its memorandum by reducing the amount of its share capital and of its shares accordingly
- (3) A special resolution under this Part is referred to as resolution for reducing share capital.
- (4) The company shall in no circumstances reduce its share capital unless a written application for the reduction is made to the Authority accompanied by the special resolution to that effect.
- (5) Where the Authority is satisfied –
  - (a) on reasonable grounds that the company satisfies the solvency test; and
  - (b) that the sufficient reasons for the reduction of capital and such other information which the Authority thinks fit have been provided

it shall make a recommendation to the registrar for the granting of the application.
- (6) The Registrar, upon receipt of the recommendation under paragraph (5) may grant the application in such form and subject to such conditions as he deems appropriate.
- (7) For the purpose of this regulation –
  - (a) a company shall be regarded as satisfying the solvency test where –
    - (i) the company is able to pay its debts as they become due in the normal course of business; and

- (ii) the value of the company's assets is greater than the value of its liabilities including contingent liabilities
  - (b) and in particular for the purpose of subparagraph (a) (ii), account may be taken of –
    - (i) the most recent financial statements of the company;
    - (ii) all other circumstances that all directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities;
    - (iii) any valuation of assets or estimates of liabilities that are reasonable in the circumstances;
    - (iv) the likelihood of the contingency occurring; and
    - (v) any claim the company is entitled to make and can reasonably expect to be met or reduce or extinguish the contingent liability.
  - (c) by relettering Part IV as Part VI and renumbering 18, 19, 20 and 21 as regulations 20, 21, 22 and 23.
6. The Third Schedule to the Act is amended by inserting in their appropriate numerical places the following new entries –

Section 62 ...	...	Reduction of share
Section 63 ...	...	Confirmation of reduction of shares
Section 64 ...	...	Effect of confirmation
Section 74 ...	...	Debenture holder's representative
Section 114...	...	Indemnity for officers

Made by the Minister on 24<sup>th</sup> January 1997.

**THE MAURITIUS OFFSHORE BUSINESS ACTIVITIES AUTHORITY ACT 1992**

**Regulations made by Minister under sections 21(1) and 41(1) (a) of the Mauritius Offshore Business Activities Authority Act 1992**

1. These regulations may be cited as the Mauritius Offshore Business Activities (Companies)(Amendment No.2) Regulations 1997.
2. In these regulations –  
  
“principal regulations” means the Mauritius Offshore Business Activities (Companies) Regulations 1995.
3. Regulations 16 and 17 of the principal regulations are repealed and replaced by the following –

**Part III A – Offshore Investment Companies and other offshore companies**

16. Sections 37 to 47 and sections 49, 135A and 325 of the Companies Act 1984 shall not apply to an offshore investment company or to any other offshore company unless-
  - (a) it applies for listing on the Mauritius Stock Exchange
  - (b) it proposes to invite the public in Mauritius to subscribe to, to deposit money with, or to lend money to the company.
17. Notwithstanding regulation 16, an offshore investment company, or any other offshore company, shall –
  - (a) comply with such disclosure requirements as are prescribed in the jurisdiction where the company makes a public offering and with the conditions attached to its offshore certificate;
  - (b) not commence business unless it is allowed to do so under the laws of that jurisdiction;
  - (c) provide to the Authority such information and documents in the custody or in the custody of any of its agents, manager, administrator, custodian or other functionary as the Authority may require;
  - (d) provide to the Registrar of Companies copies of all documents filed from time to time in the jurisdiction where the company makes a public offering.

Made by the Minister on 9.12.1997