

# 1. Legislative Changes

## The Finance Act 2006

The Finance Act 2006, which was enacted on 7 August 2006, brought amendments to, inter alia, the Banking Act 2004, the Companies Act 2001, the Financial Intelligence and Anti-Money Laundering Act 2002, the Financial Reporting Act 2004 and the Income Tax Act as detailed below:

### A. The Banking Act 2004

#### Section 7 - Grant or refusal to grant banking licence

Subsection (6) of section 7 of the Banking Act 2004 which provided that a banking licence shall, in addition to the name of the licensee and the conditions to which it is subjected, also specify the place or places at which the licensee is authorised to conduct banking business, has been repealed and replaced by a new subsection which now provides that a banking licence should only specify the name of the licensee and the conditions to which it is subjected. Accordingly, it is no longer a requirement for the place or places at which a bank is authorised to conduct banking business to be mentioned in the banking licence.

#### Section 26 - Other prudential requirements

The reference to section 33 in section 26(1) of the Act has been deleted therefrom. The words "Sections 7, 10 and 33" appearing in section 26(1) have accordingly been deleted and replaced by the words "Sections 7 and 10".

#### Section 42 - Regular examinations

Section 42 has been amended to provide that the central bank shall conduct regular examinations of the operations and affairs of every financial institution "at least once every 2 years" instead of "at least once a year" as was formerly the case.

#### Section 46 - Fit and proper person

In order to ensure that third parties to whom

financial institutions are outsourcing some of their functions, are fit and proper, a new subsection (2A) has been added to section 46, which provides that, "No financial institution shall outsource any of its functions to any other person unless the central bank is satisfied that the person meets the requirements of subsection (3)".

#### Section 50 - Automated teller machines

Subsection (1) of section 50 has been repealed and replaced by a new subsection which provides that where any bank sets up automated teller machines for use by customers to make deposits or withdraw cash, it shall inform the central bank accordingly.

In terms of section 50(2) of the Banking Act 2004, where a bank sets up automated teller machines, it was required to provide such security for their operation and such systems for customer authentication, terminal receipts and periodic statements and for physical and logical protection against unauthorized access in any form, as the central bank considered adequate. The words "as the central bank considers adequate" have been deleted from this provision.

Banks are accordingly no longer required to seek the approval of the central bank when, inter alia, providing security for the operation of the automated teller machines as was formerly the case. They are only required to inform the Bank when they set up an automated teller machine for use by customers.

#### Section 62 - Hours of business

In order to enable the Bank to approve and not fix the hours of business of financial institutions, the words "the central bank shall fix -" have been deleted from section 62 and replaced by the words "the central bank shall approve -".

#### Section 64 - Confidentiality

(i) Provision has been made in subsection (1)(a) of section 64 for service providers who by virtue of their

professional relationship with a financial institution have access to the books, accounts, records, financial statements or other documents of the financial institution, whether electronically or otherwise, to make a declaration of confidentiality before they begin to perform any duties under the banking laws.

A definition of "professional relationship" has also been provided in paragraph (b) of this subsection.

- (ii) A new paragraph (l) has been added in subsection (3) to provide that the duty of confidentiality shall not apply when a financial institution, other than a cash dealer, is required to provide information and particulars, and to do any other act, under Sub-Part BA of Part VIII of the Income Tax Act.
- (iii) In the light of the provisions of the Mauritius Revenue Authority Act 2004, the words "the Director-General of the Revenue Authority, the Revenue Commissioner under the Unified Revenue Act," have been deleted in subsection (9), and replaced by the words "the Director-General of the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act 2004,".

#### **Section 70 - Procedures to go into voluntary liquidation**

A new subsection (4) has been added to section 70 to state that the procedures for voluntary liquidation under the Banking Act 2004 shall be in accordance with the sections and Parts of the Companies Act 1984 specified in the Fifteenth Schedule to the Companies Act 2001 and those sections and Parts shall apply to the extent that they are consistent with the provisions of Part X of the Banking Act.

#### **Section 97 - Offences and penalties**

Section 97(11) has been amended by deleting the words "section 34(5)" and replacing them by the words "section 34(5), (6)" thereby making a failure by a financial institution to submit its financial statements on time an offence.

## **B. The Companies Act 2001**

### **Section 2 - Interpretation**

Amendment has been brought to the definition of "small private company" by deleting the words "10 million rupees" appearing in section 2(5) of the Companies Act 2001 and replacing them by the words "30 million rupees". Following the said amendment a company shall qualify as a "small private company" where, inter alia, it is a private company whose turnover in respect of its preceding accounting period is less than 30 million rupees.

### **Section 68 - Company may acquire or redeem its own shares**

Subsection (6) of section 68, which provides that a company shall immediately, following the acquisition or redemption of shares by the company, give notice to the Registrar of the number and class of shares acquired or redeemed, has been amended to provide that except where dispensation has been granted under section 52(5), a company shall immediately following the acquisition or redemption of its shares give such a notice.

### **Section 86 - Pledges**

The words "and any other applicable law" has been added after the words "Code Civil Mauricien" in section 86(1) of the Act, thereby providing that any share or debenture may be given in pledge in all civil and commercial transactions in accordance with the Code Civil Mauricien and any other applicable law.

### **Section 138 - Removal of directors**

Subsection (6) of section 138 has been amended to provide that a person of or over the age of 70 years may, in the case of an application for incorporation of a public company, be appointed with the consent in writing of the proposed shareholders.

### **Section 187 - Registered office**

Section 187(1) of the Act has been amended to provide that every company shall, in addition to having a registered office in Mauritius, also cause its name and the word "Registered Office" to be permanently displayed in a conspicuous place in

legible romanised letters on the outside of its registered office.

#### **Section 220 - Sending of financial statements to shareholders who elect not to receive annual report**

The words “in accordance with section 212” appearing in section 220(a) of the Act have been deleted and replaced by the words “in accordance with sections 210 and 212 respectively”. Following the said amendment, section 220(a) of the Act provides that the Board of a company shall cause to be sent to every shareholder of the company referred to in sections 218 and 219(2), not less than 21 days before the annual meeting of the shareholders the financial statements for the most recently accounting period completed and signed in accordance with section 210 and any group financial statements for the most recently completed accounting period and signed in accordance with sections 210 and 212 respectively.

### **C. The Financial Intelligence and Anti-Money Laundering Act 2002**

#### **Section 5 - Limitation of payment in cash**

The words “350,000 rupees” have been deleted in section 5(1) and replaced by the words “500,000 rupees” thereby authorizing payment in cash up to a maximum of Rs500,000 as compared to Rs350,000 as was formerly the case.

#### **Section 10 - Functions of the FIU**

A new paragraph (g) has been added to subsection 10(2) to enable the FIU to undertake and assist in research projects in order to identify the causes of money laundering and terrorist financing and its consequences.

#### **Section 19 - Offences relating to obligation to report and keep records and to disclosure of information prejudicial to a request**

With the enactment of the Mutual Assistance in Criminal and Related Matters Act 2003, section 23 of the Financial Intelligence and Anti-Money Laundering Act 2002 with respect to the provision of assistance by the FIU to overseas countries was repealed. Accordingly, the words “to which section 23 applies”

appearing in section 19(2)(a) and (b) of the Act have been deleted and replaced by the words “under the Mutual Assistance in Criminal and Related Matters Act 2003”.

#### **Section 19A-Establishment of National Committee**

In the light of the amendments brought about by the Bank of Mauritius Act 2004, reference to the former Managing Director of the Bank of Mauritius has been rectified by deleting the words “Managing Director” appearing in section 19A(2) of the Act and replacing them by the words “a Deputy Governor”.

### **D. The Financial Reporting Act 2004**

#### **Section 33 - Licencing of auditors**

In accordance with section 33(1) of the Financial Reporting Act 2004, no person shall hold any appointment, or offer any services for remuneration, as an auditor, unless he holds a licence under the Act.

A derogation has been brought to the above provision. The words “No person” in subsection (1) have been deleted and replaced by “Subject to subsection (1A), no person” and a new subsection (1A) has been inserted immediately after subsection (1), which provides that subsection (1) shall not apply to the auditor of a small private company under the Companies Act 2001.

#### **Section 35 - Audit practice by a firm**

Paragraph (d) of section 35(4) which provided that the Council shall not approve the proposed name or any proposed change in the name of an audit firm where the proposed name or proposed change in the name is in breach of the Business Registration Act 2002, has been deleted therefrom.

### **E. The Income Tax Act**

One of the major amendments brought about by the Finance Act 2006 to the Income Tax Act is the addition in Part VIII of the Act of a new Sub-Part BA entitled “Deduction of tax at source”. The essence of those amendments is given below.

In terms of the provisions of this new Sub-Part BA,

income tax at the rate of 15 per cent is chargeable on, inter alia, interest payable to depositors by banks and non-bank deposit taking institutions at the time the interest is made available to the depositor. No income tax shall however be deducted from the interest payable to a depositor unless the aggregate amount of deposits held by the depositor in a financial institution including its branches exceeds, at any time in an income year, 2,000,000 rupees and in respect of interest which accrued prior to 1 October 2006.

Section 111D of the Act further provides that banks and non-bank deposit taking institutions are required to remit to the Director-General, the income tax so deducted, electronically or in such other manner as may be approved by the Director-General, where the income tax is deducted at any time during the first 15 days of a month, not later than the 22nd day of that month and where the deduction is effected between the 16th day and the end of the month, not later than 7 days from the end of that month.

Section 111K of the Act also provides that banks and non-bank deposit taking institutions shall, not later than 31 July in every year, give to each depositor, a statement of income tax deduction, in duplicate, in respect of the preceding income year and submit to the Director-General a statement giving, in respect of the preceding income year, the particulars of the payee, the amount or sum made available and income tax deducted therefrom as well as the aggregate amount of interest payable by the bank or non-bank deposit taking institution including its branches, where such aggregate amount exceeds 5,000 rupees, whether or not income tax has been deducted.

Subsection (4) of section 111K of the Act further provides that notwithstanding the duty of confidentiality imposed under section 64 of the Banking Act 2004 and the confidentiality provisions under any other enactment, banks and non-bank

deposit taking institutions shall comply with the requirements of Sub-Part BA.

A new section 146A has also been added to the Act entitled "Offences relating to deduction of tax at source" which provides as follows:

**"146A. Offences relating to deduction of tax at source**

Any person who -

- (a) fails to pay the amount of income tax required to be deducted under section 111C;
- (b) fails to give the statement of income tax deduction as required under section 111K(1)(a) and (3);
- (c) fails to submit the statement of particulars as required under section 111K(1)(b), (2) and (3);
- (d) submits a statement referred to in paragraph (b) or (c) which is false or misleading in any material particular;
- (e) without lawful authority, discloses to any person, other than the Director-General, any information concerning any person subject to tax deduction under Sub-Part BA; or
- (f) otherwise contravenes any provision of Sub-Part BA of Part VIII,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years."