

The Securities (Amendment) Act 2021: strengthening Mauritius' future on the global capital market

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The Securities (Amendment) Act 2021 (**Amendment Act**) passed on 30 June 2021, assented and gazetted on 3 July 2021, shall bring vital amendments to the Securities Act 2005 (**Act**). The Act shall come into operation on a date to be fixed by proclamation.

The Amendment Act shall progress and strengthen the capital market sector in Mauritius in line with the key recommendations of the Financial Sector Blueprint Report issued in 2018. It is also expected to build up and keep Mauritius on par with global best practices and developments in the financial sector.

At a quick glance, the key changes effected shall be:

- the establishment of additional securities exchanges alongside the existing Stock Exchange of Mauritius Ltd (**SEM**);
- novel clearing and settlement facilities in addition to the Central Depository and Settlement Co. Ltd (CDS);
- the introduction of "retail investors", being investors, other than sophisticated investors, and thereby recognising foreign funds whose securities are marketed to retail investors in or from Mauritius; and
- dispensing with the need for foreign reporting issuers to be registered with the Financial Services Commission (**FSC**).

The introduction of Afrinex Ltd

The SEM will no longer be the sole official securities exchange in Mauritius with the introduction of Afrinex Ltd to the Act. References to the SEM will now be replaced by "The Official Exchanges of Mauritius" which shall comprise both the SEM and Afrinex Ltd as listed in the new Third Schedule (**Official Exchange**) of the Act. Furthermore, Afrinex Clearing House Ltd will be introduced as another clearing house in addition to the CDS, thereby replacing references to the CDS in the Act with the "Official Clearing and Settlement Facility" and listing the two entities in the new Second Schedule (**Official Clearing and Settlement Facility**) of the Act.

Definition of "reporting issuer"

The definition of "reporting issuer" under section 86 of the Act shall be amended so that an issuer whose securities are listed on a securities exchange in Mauritius or an issuer who has more than 100 shareholders will no longer be considered as a reporting issuer and thus section 86(1) of the Act will be read as follows:

"In this Act, 'reporting issuer' means an issuer (a) who by way of a prospectus, has made an offer of securities either before or after the commencement of this Act; or (b) who has made a takeover offer by way of an exchange of

securities or similar procedure."

An "issuer" is defined in the Act as a person or any other entity that issues, has issued or is going to issue securities. In accordance with other leading listing jurisdictions, the requirement for foreign reporting issuers to be registered with the FSC shall be waived. The amendments to section 86 of the Act will encourage foreign funds to be listed on the securities exchange at a lesser cost and will simplify the overall administrative process. It should be noted that, although certain disclosure obligations will no longer be required towards the FSC, the issuer will still be required to adhere to its disclosure obligations towards the market and the investor community.

Filing of quarterly statements for CIS

The obligation to file with the FSC and make public comparative quarterly financial statements in accordance with section 88 of the Act shall no longer apply to permitted CIS activities which will be newly defined as "the marketing to a sophisticated investor in Mauritius of units or shares of an entity that carries out the activities of a collective scheme and that is established in a foreign country where such marketing is undertaken (a) by a CIS manager established in Mauritius; (b) by a person carrying out the activities of an investment dealer outside Mauritius; or (c) in accordance with such other provisions as the Commission (FSC) may determine".

Moreover, the current definition of "sophisticated investor" under the Act shall be enlarged to cover:

- a collective investment scheme;
- a pension fund or its management company;
- a closed-end fund; and
- an investor that warrants, at the time of entering into a securities transaction, that:
 - its ordinary business or professional activity includes the entering into securities transactions, whether as principal or agent;
 - in case he is a natural person, his individual net worth or joint net worth with his spouse exceeds US\$1 million, or its equivalent in another currency; or
 - it is an institution with a minimum amount of assets under discretionary management of US\$5 million, or its equivalent in another currency.

Retail investor

The introduction of the novel concept of "retail investor" will be defined to mean such category of investors, other than sophisticated investors, as specified in FSC Rules (which are yet to be issued by the FSC). Henceforth, no person, other than the holder (or his agent) of an investment dealer licence or investment adviser licence, shall solicit a retail investor in Mauritius to enter into a securities transaction.

The Amendment Act will broaden the operation of approved exchanges in Mauritius. These amendments will pave the way to promoting participation of international intermediaries in Mauritius and, at the same time, attracting and catering for various types of investors. It is envisaged therefore that the Amendment Act and consequently the Act shall enhance the competitiveness of Mauritius in capital markets once the Amendment Act is in force.

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