

## **DRAFT SECURITISATION BILL (09.03.2023)**

The aim of the **Bill** is to provide a framework for the regulation of securitisation of receivables of financial institutions.

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# SECURITISATION BILL

## PART I – PRELIMINARY

### 1. Short title

This Act may be cited as the Securitisation Act.

### 2. Interpretation

In this Act -

‘administrative penalty’ means administrative penalty referred to under section 7 of the Financial Services Act;

‘Commission’ means the Financial Services Commission, established under the Financial Services Act;

‘company’ means a public or private limited company incorporated under the Companies Act;

‘corporation’

(a) means a body corporate; and

(b) includes, where approved by the Commission any trust, société, partnership or any other body of persons;

‘credit enhancement’ means any legally enforceable scheme intended to improve the marketability of the securities;

‘financial institutions’ means a bank licensed by the Bank of Mauritius, insurance company, leasing company, factoring service provider or a credit finance provider licensed by the Commission;

‘investor’ means a person holding a securitisation position;

‘Minister’ means the minister responsible for financial services;

‘officer’ has the same meaning as defined under the Financial Services Act;

‘originator’ means the person which was the original obligee of the receivables and who transfers to a securitisation vehicle any assets in the form of present or future receivables as a consequence of securitisation;

‘receivable’ means a right to receive payment of a monetary sum whatsoever, including loans, debts, leasing, credit and a right to receive payment of future undetermined sums from debtors who are not yet determined;

‘relevant Act’ has the same meaning as the Financial Services Act;

‘resecuritisation’ means securitisation where at least one of the underlying exposures is in a securitisation position;

‘retail investor’ has the same meaning as the Securities Act;

‘risk’ means any risks whatsoever, including those arising from any rights relating to assets, whether movable or immovable, tangible or intangible, future or existing, risks resulting from any obligations or activities of third parties and risks arising from any event or circumstance;

‘securities’ has the same meaning as under the Securities Act;

‘securitisation’ means a process whereby any registered securitisation vehicle raises funds by issue of securities, for such purpose and uses such funds by making payment to the Originator and through such process acquires the title, property or right in the receivables in the form of actionable claims;

‘securitisation assets’ means any asset, whether existing or future, whether movable or immovable, and whether tangible or intangible which forms part of or which is incidental to the receivable, and where the context so allows;

‘securitisation plan’ means securitisation plan referred to in section 8;

‘securitisation position’ means the situation of an exposure to a securitisation;

‘securitisation undertaking’ means undertakings which carry out the securitisation in full, and undertakings which participate in such a transaction by assuming all or part of the securitised risks;

‘securitisation vehicles’ means a vehicle registered by the Commission for the purpose of securitisation.

### **3. Scope of the Act**

This Act shall apply to the securitisation of receivables that have originated from a financial institution.

### **4. Conflicting laws**

Where there is an inconsistency between this Act and any provision of the ‘Code Civil Mauricien’ and the ‘Code de Commerce’ in relation to securitisation, the provisions of this Act shall prevail to the extent of the inconsistency.

## **PART II – REGISTRATION AND OBJECTS OF THE SECURITISATION VEHICLES**

### **5. Registration of Securitisation Vehicle**

- (1) The securitisation of receivables shall be done through a corporation duly registered as a securitisation vehicle by the Commission under this Act.
- (2) An application for registration as a securitisation vehicle shall be made in such a manner as the Commission may determine and shall be accompanied with –
  - (i) a business plan;
  - (ii) CDD documents on the promoter and the directors;
  - (iii) information on staff and infrastructure of the applicant;
  - (iv) such other information and documents as the Commission may determine; and
  - (v) such fees as may be specified in FSC Rules.
- (3) A securitisation vehicle shall at all times have a minimum unimpaired stated capital of one million rupees or such higher amount of unimpaired stated capital as the Commission may determine.
- (4) The Commission may register an applicant as a securitisation vehicle on such terms and conditions as may be specified in FSC Rules or as it deems appropriate in the circumstances.
- (5) The promoters, shareholders, directors or officers of the securitisation vehicle shall be fit and proper with regard to –
  - (a) the financial standing;
  - (b) the ability to perform the relevant functions properly, efficiently, honestly and fairly;
  - (c) the reputation, character, financial integrity and reliability;
  - (d) knowledge and experience of matters to be dealt with by a securitisation vehicle;  
and
  - (e) any other matter as the Commission may determine.

## **6. Activities of the securitisation vehicle**

- (1) The activities of securitisation vehicle shall be limited to such matters which are necessary to implement or participate in securitisation and ancillary transactions, including –
  - (a) the acquisition, management and collection of securitisation assets;
  - (b) the assumption of associated risks;
  - (c) the issue of financial instruments;
  - (d) the sale and transfer of assets; and
  - (e) the issue and offer of financial instruments for sale.
  
- (2) For the avoidance of doubt, the securitisation vehicle shall not –
  - (a) merge with or acquire any other company or entity as may be applicable;
  - (b) pledge any asset held or beneficially owned by such securitisation vehicle except for the benefit of the investors;
  - (c) issue any securities to investors which will result in the latter having control in the securitisation vehicle; and
  - (d) make a loan or advance money to any person.
  
- (3) Notwithstanding any provision of the Securities Act, Regulations or FSC Rules made under it, a securitisation vehicle shall not be considered to be a collective investment scheme or a closed-end fund as defined in the Securities Act.

## **7. General obligations of securitisation vehicle**

A securitisation vehicle shall –

- (a) maintain a separate account for the collections from each securitisation;
- (b) manage its assets in the interest of the investors in good faith and to the best of its ability and without gaining any undue advantage for itself or any of its related parties, connected persons or its officers;
- (c) keep at its registered office, proper books of accounts and records to enable a complete and accurate view to be formed of its assets, liabilities, income and expenditure;

- (d) prior to each securitisation, prepare and keep record of a securitisation plan referred to in section 8;
- (e) ensure that the transfer of any receivables is complete and effective and not subject to clawback's provision in the event of the originator's insolvency;
- (f) appoint a separate auditor from the auditor of the originator;
- (g) within 6 months after the close of its financial year, file with the Commission every year, audited financial statements prepared in accordance with International Financial Reporting Standards; and
- (h) at all times keep a register of investors at its registered office.

## **8. Securitisation Plan**

- (1) The securitisation vehicle shall prepare a securitisation plan for each securitisation which shall include the following information –
  - (a) nature and mechanism of the transfer of the assets from the originator to the securitisation vehicle;
  - (b) identities and qualifications of the originator;
  - (c) aggregated principal amount of the value of the securitised exposures to be issued and the principle amount of each class/denomination of the exposure;
  - (d) method the securities will be issued;
  - (e) types of investors targeted;
  - (f) structure of the securitised exposures (including any tranches as applicable), including the structure and payment priorities of each exposures and tranches;
  - (g) rating assigned to the securitised exposures;
  - (h) a certificate from a Law Practitioner that the transfer of receivables and any incidental rights complies with requirements under section 11; and
  - (i) a plan for the management and administration of the assets/securitised exposures.
- (2) The securitisation vehicle shall notify the Commission in writing of any change to the securitisation plan not later than 10 working days.

## **9. Record keeping of securitisation**

- (1) The securitisation vehicle shall at all times keep records of –
  - (a) the securitisation plans prepared in accordance with section 8;
  - (b) minutes of shareholders' meeting or resolution of shareholders in respect of the securitisation process.

## **PART III – RECEIVABLES**

### **10. Transfer of receivables**

- (1) Any transfer of receivables shall comply with the requirements of this Act, any regulations made under it, FSC Rules or guidelines that the Commission may issue.
- (2) Any transfer of receivables from an originator to a securitisation vehicle shall be invalid unless it is in compliance with subsection (1).

### **11. Validity of receivables**

- (1) When a receivable is transferred to a securitisation vehicle in compliance with this Act, such transfer shall be treated as final and binding on the originator and the securitisation vehicle and shall not be –
  - (a) subject to annulment, revocation or termination or variation by any person and for any reason whatsoever;
  - (b) subject to any rights of the creditors of the originator for any reason whatsoever; and
  - (c) subject to any rights of a liquidator, administrator, controller of the originator or other similar officer of the originator for any reason whatsoever.
- (2) Unless the terms of any transfer to a securitisation vehicle provides otherwise, or the securitisation vehicle expressly assumes any obligation, the underlying debtor shall have no right or claim against the securitisation vehicle in connection with any obligation relating to the receivables.
- (3) The transfer of receivables to a securitisation vehicle shall be valid and effective if the assignment identifies at least two of the following features of the class of receivables being subject to the transfer –
  - (a) the type of debt or asset or contract giving rise to the debt;



(b) the class or type of debtors; and

(c) the repayment period when the debts fall due;

so as to enable any interested party to reasonably determine which receivables are included in the transfer and it shall not be necessary to specify the name of the debtor or debtors, the date or the amount of any particular debt.

- (4) An underlying debtor shall continue to enjoy all rights under the assigned contract against the originator who shall remain solely responsible for the performance of all obligations thereunder.
- (5) A transfer in favour of a securitisation vehicle shall be invalid unless it is being done in writing.
- (6) The receivables of an originator, including future claims against future debtors shall be the subject matter of a transfer in favour of a securitisation vehicles.
- (7) The directors of a securitisation vehicle shall ensure that all transfer of receivables are done in accordance to this Act and any applicable enactment and shall be valid and effective.

## **12. Risk Retention**

- (1) The originator of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 per cent, measured at the time of origination.
- (2) Originators shall not select assets to be transferred to the securitisation vehicle with the aim of rendering losses on the assets transferred to the securitisation vehicle, measured over the life of the transaction, or over a maximum of 4 years where the life of the transaction is longer than four years, higher than the losses over the same period on comparable assets held on the balance sheet of the originator.

## **13. Credit Rating**

- (1) For the purpose of the Act, all asset backed securities must be rated by credit rating agency licensed by the Commission.
- (2) The credit rating agency must monitor on an ongoing basis and update the rating of the asset backed securities by –

- (a) regularly reviewing the originator's creditworthiness;
- (b) initiating a review of the status of the rating upon becoming aware of any information that might reasonably be expected to result in a rating action; and
- (c) updating on a timely basis the rating, as appropriate, based on the results of such review.

#### **14. Transfer of securitisations to retail investor**

- (1) No transfer of a securitisation position shall be made to a retail investor, unless –
  - (a) a securitisation vehicle has performed a suitability test referred to in subsection (2); and
  - (b) a securitisation vehicle is satisfied, on the basis of the test referred to in paragraph (a), that the securitisation position is suitable for that retail client.
- (2) When performing the suitability test, a securitisation vehicle shall ensure –
  - (a) that the retail investor's or potential retail investor's has sufficient knowledge and experience in the investment field; and
  - (b) that the retail investor's risk tolerance and ability to bear losses is commensurate with the retail investor risk profile.
- (3) A securitisation vehicle shall ensure that no retail investor invest more than an amount exceeding two million rupees in a specific securitisation positions.
- (4) A securitisation vehicle shall disclose all risk associated with the securitisation to potential retail investors.

#### **15. Restriction on re-securitisation**

The underlying assets used in a securitisation shall not include other securitisation positions.

#### **16. Rights of investors and creditors**

- (1) The rights of the investors and creditors of securitisation position are limited to the assets of the securitisation undertaking.

- (2) The value, the yield and the conditions of repayment of the assets shall be linked to the assets and liabilities the securitisation vehicle has been transferred to.
- (3) The conditions of issuance of any financial instruments by the securitisation vehicle shall be binding upon the securitisation vehicle, the securitisation creditors or other persons who have given their consent thereto.
- (4) No person, other than a creditor of securitisation position, shall require the issuance or enforcement of any precautionary act or warrant against the securitisation vehicle, except when the Court is satisfied that the securitisation vehicle has committed a crime while involving dishonesty.

#### **PART IV – RESPONSIBILITY OF THE ORIGINATOR**

##### **17. Securitisation vehicle and the originator**

- (1) The originator shall not be a connected person to the securitisation vehicle or in the position of conflict of interest with the securitisation vehicle.
- (2) For the purpose of this section, the ‘originator’ includes any directors, members of the governing body or senior management of the originator or shareholder holding more than 20% in the originator.

##### **18. Disclosures**

- (1) A securitisation vehicle shall ensure disclosure to investors or potential investors prior to the acquisition of receivables of any information as may be specified in FSC Rules, so as to allow investors or potential investors to make an informed decision with respect to their investment or potential investment.
- (2) Notwithstanding subsection (1), the Commission may through FSC Rules, impose periodical disclosures that the securitisation vehicle shall make to its investors.

#### **PART V – SUPERVISORY MEASURES AND POWERS**

##### **19. Suspension of Registration**

- (1) Where the Chief Executive is satisfied on reasonable grounds that it is necessary to do so –

- (a) for the prevention or mitigation of damage to the integrity of the financial service industry;
- (b) for the protection of the interest of consumers of financial services, debtor, investors and the interest of the public in general; or
- (c) for the protection of the good repute of Mauritius as a centre for financial services

he may suspend the registration of the securitisation vehicle.

- (2) Where a registration is suspended, the securitisation vehicle shall cease to carry out securitisation activities, but he shall remain subject to the obligations under this Act and the relevant Acts and to the directions of the Commission until the suspension of the registration is cancelled.
- (3) A person whose registration is suspended may, notwithstanding subsection (2), continue to carry out such activities as the Chief Executive may authorise and on such conditions as the Chief Executive may impose.

## **20. Power to issue directions**

- (1) Without prejudice to the power of the Commission to impose directors, conditions or other requirements under any enactment, where the Chief Executive considers it necessary to do so in order to –
  - (a) ensure the integrity of financial markets;
  - (b) protect the interest of the investors, debtors or consumers of financial services; and
  - (c) prevent any person from contravening or continuing to contravene the Act or rules made under the Act,

the Chief Executive may, subject the section 20, issue a direction in writing as he may determine in the circumstances.

- (2) Without prejudice to the generality of the subsection (1), the Chief Executive may give a direction to do one or more of the following –
  - (a) take such actions relating to any securitisation as may be specified in the direction;
  - (b) not to accept, process or execute any further securitisations on behalf of a specified person;

- (c) not to carry on a business in a specified manner or otherwise than in a specified manner;
  - (d) not to engage in any practice that contravenes the Act or any Regulations or FSC Rules made under the Act.
- (3) A direction under sub-section (1) may specify the time by which, or period during which, it shall be complied with.
- (4) On the expiry of the period specified in a direction for which it is to have effect, the Chief Executive may give another direction under subsection (1), if it considers it necessary to do so on the grounds specified in paragraph (1), in like or different terms, to the person concerned.
- (5) The Chief Executive may revoke a direction under this section at any time, by written notice to the securitisation vehicle.

## **21. Representation for directions**

- (1) The Chief Executive shall not give a direction under this section before giving the person to whom it is to be addressed reasonable opportunity to make written representations on the matter.
- (2) Notwithstanding subsection (1), where the Chief Executive considers that any delay in giving the direction may cause severe prejudice to the clients of the licensee, the public or any part of the financial services industry, he may issue a direction which will take effect immediately and shall give the licensee the opportunity to make representations as soon as practicable, but not later than 7 days from the date the direction is given.

## **22. Compliance with direction**

- (1) Any person to whom a direction or interim direction is given under this Act shall comply with the direction or interim direction.
- (2) No person shall knowingly hinder or prevent compliance with a direction or interim direction given under this Act.
- (3) Any person who contravenes subsection (1) or (2) shall commit an offence.
- (4) Notwithstanding subsection (3), where any person fails to comply with a direction or interim direction under this Act and a time period is specified for compliance, the person shall commit a separate offence for each day for which the direction or interim direction is not complied with after the time period for compliance has elapsed, and

shall, on conviction, in respect of each offence, be liable to a fine of 5,000 rupees per day.

### **23. Power of inquiry**

- (1) A securitisation vehicle shall, when so required by the Chief Executive in exercising its general powers of supervision or in discharging its obligations under an agreement or arrangement for the exchange of information, furnish all such information and produce such documents as may be required of him by the Chief Executive.
- (2) Where the Chief Executive has reasonable cause to believe that a securitisation vehicle –
  - (a) has committed, is committing or is likely to commit a breach of –
    - (i) any of the relevant Acts or guidelines;
    - (ii) any condition of its registration letter; or
    - (iii) any direction issued by the Chief Executive or the Commission;
  - (b) has carried out, is carrying or is likely to carry out any activity which may cause serious prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system, the Chief Executive may make an inquiry into the business or any part of the business of the corporation.
- (3) For the purpose of this section –
  - (a) any reference to Chief Executive shall include any person designated by the Chief Executive or the Commission;
  - (b) the Chief Executive may –
    - (i) by notice, request the production of any document to be inspected at such reasonable time and place, including the registered office or the business premises of the securitisation vehicle, as may be specified in the notice;
    - (ii) take copies of or extracts from, any document so produced; and
    - (iii) issue directions.
- (4) For the purpose of this section, any reference to a securitisation vehicle shall include –
  - (a) any person who was registered as a securitisation vehicle; or

- (b) any person who is a present or past officer, or controller, of a securitisation vehicle.
- (5) The Chief Executive shall, in respect of every inquiry carried out, make a written report to the Board together with his observations, comments and recommendations.
- (6) Any person who in relation to a question put to him in the course of an inquiry under this section—
  - (a) says anything that the person—
    - (i) knows to be false or misleading in a material particular; or
    - (ii) is reckless as to whether it is false or misleading in a material particular; or
  - (b) refuses, without reasonable excuse, to answer, shall commit an offence.
- (7) Any person who intentionally obstructs an inquiry under this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

## **24. Administration**

- (1) Subject to subsection (2), the Commission may appoint a person as an administrator in relation to the whole or part of the business activities of a securitisation vehicle whose registration has been suspended, revoked, otherwise terminated or where the Commission considers that the conditions of a registration are no longer met.
- (2) The Commission shall not appoint as an administrator—
  - (a) a body corporate;
  - (b) an undischarged bankrupt;
  - (c) any officer, actuary or auditor of the person whose licence has been suspended, revoked or otherwise terminated;
  - (d) a person restrained or disqualified from managing a company under the Companies Act;
  - (e) a mortgagee of any property of the person whose licence has been suspended, revoked or otherwise terminated; or
  - (f) an officer of anybody corporate which is a mortgagee of the property of the person whose licence has been suspended, revoked or otherwise terminated.
- (3) The remuneration payable to an administrator shall be determined by the Commission and be recovered from the person under administration.
- (4) Where the Commission appoints an administrator under subsection (1), it shall give notice in writing of the appointment to the securitisation vehicle.

- (5) The administrator shall manage the whole of the business entrusted to his administration and for the purpose of doing so, shall –
- (a) comply with such directions given to him by the Commission under subsection (6); and
  - (b) manage the business honestly and in good faith and shall exercise care, diligence and skill that a reasonable person would exercise in comparable circumstances.
- (6) The Commission may give such directions to the administrator as to his powers and duties as it deems desirable in the circumstances of the case.
- (7) The administrator may apply to the Commission for instructions as to the manner in which he shall conduct the management of the business of the person under administration or any matter arising in the course of that management.
- (8) Where a registration of a securitisation vehicle is suspended and the suspension is cancelled, the powers and duties of the administrator shall cease upon the cancellation of the suspension and he shall use his best endeavours to facilitate the return of the management of the business to the securitisation vehicle.
- (9) Where a registration is withdrawn or otherwise terminated, the powers and duties of the administrator shall cease –
- (a) on the appointment of a liquidator; or
  - (b) where no liquidator is appointed –
    - (i) on the winding up of the business of the securitisation vehicle; or
    - (ii) on such time as may be determined by the Commission.

## **25. Sanctions**

- (1) In the case where the Commission, in exercising its powers and responsibilities, as set out in this Act or under the Financial Services Act, establishes that any securitisation vehicle, irrespective of whether their registration was suspended in accordance with this Act, breaches or fails to comply with any provision of this Act or with the directions issued in accordance therewith or any rule made under this Act, after providing the securitisation vehicle an opportunity to make representations, the Commission has the power to impose for each violation an administrative penalty, depending on the gravity of the offence.
- (2) Notwithstanding the sanction set out in subsection (1), the Commission may also impose the following sanction –



- (a) a withdrawal of the authorisation granted under section 5 and direct the securitisation vehicle to orderly wind up its affairs;
  - (b) a temporary ban preventing any member of the originator's, sponsor's or securitisation vehicle's management body, or any natural person who is held responsible for such a contravention, from exercising management functions;
  - (c) an order requiring the person responsible for the contravention to cease the conduct and to desist from a repetition of that conduct.
- (3) Any person aggrieved by a sanction imposed under this section, may apply for review of the decision by the Financial Services Review Panel set up under section 54 of the Financial Services Act.

## **PART VI – TERMINATION**

### **26. Termination**

- (1) The registration of a securitisation vehicle shall terminate on the date –
- (a) specified in the notice served where it surrenders its registration letter;
  - (b) specified in the notice to the securitisation vehicle, where the registration letter is terminated under section 22 (4);
  - (c) on which the winding up order is made, or a provisional liquidator is appointed, whichever is earlier, where a securitisation vehicle goes into compulsory liquidation;
  - (d) on which the receiver is appointed, where a securitisation vehicle goes into receivership, unless the Commission decides otherwise, subject to such terms and conditions as it may determine;
  - (e) on which the receiving order is made, or an interim receiving order is made or a special manager is appointed, whichever is earlier, where a securitisation vehicle is adjudged bankrupt;
  - (f) specified in the final decision notice issued by the Enforcement Committee, where a registration is revoked.
- (2) A securitisation vehicle shall forthwith inform the Commission of any winding up petition or bankruptcy petition served upon it, and of any scheme of arrangement of its affairs or composition in satisfaction of debts proposed to be entered into by the securitisation vehicle.
- (3) No securitisation vehicle shall adopt a resolution for voluntary winding up or take any step towards the dissolution of its business or transfer of its business undertaking without surrendering its registration letter to the Commission.

- (4) A securitisation vehicle may, at any time, surrender its registration letter by giving prior notice in writing to the Commission.
- (5) A securitisation vehicle who intends to surrender his registration letter to the Commission –
  - (a) shall give notice of the proposed surrender and of its date to the Commission not less than 30 days before the date of the proposed surrender;
  - (b) shall, after the date of surrender, certify to the Commission that all his client
  - (c) shall specify the measures taken by the securitisation vehicle for the discharge of his liabilities;
  - (d) shall specify the date on which the termination is to be effective;
  - (e) shall comply with such other matters as may be specified in the guidelines.
- (6) Where a registration terminates, it shall no longer authorise the holder thereof to carry out the activity for which the registration was issued, but the holder of the registration shall remain subject to the obligations of a securitisation vehicle and to the directions of the Commission for the orderly dissolution of its business and the discharge of its liabilities.
- (7) The termination of a registration shall operate as the termination of the registration or similar permission granted to any agent or representative of the securitisation vehicle as may be applicable.
- (8) The Chief Executive shall give public notice of the termination of a registration in such manner as he deems fit in the circumstances.

## **27. Voluntary winding up**

- (1) No securitisation vehicle shall be wound up voluntarily, except in accordance with a plan approved by the Commission.
- (2) The Commission shall not approve a plan for the securitisation vehicle unless it is satisfied that the interests of the investors and debtors are properly protected.
- (3) Where the Commission approves the voluntary winding up a securitisation vehicle, the provisions of the Insolvency Act relating to voluntary winding-up shall apply with such adaptations and modifications as may be necessary.

## **PART VII– MISCELLANEOUS**

### **28. Extensions**

Where, under this Act, a person is required to do or may do a particular thing by a particular time or within a particular period, the Commission may, on application, extend the period for doing the thing, and may do so either before or after the period has ended.

## **29. Application of the Financial Services Act**

Parts VIII and IX of Financial Services Act shall not apply to a securitisation vehicle.

## **30. Regulations**

(1) The Minister may –

(a) make such regulations as he thinks fit for the purposes of this Act;

(b) by regulations, amend the Schedule.

(2) Any regulations made under this Act may –

(a) provide for the taking of fees and levying of charges;

(b) make such provision, not inconsistent with this Act, as may appear to him necessary or expedient to remove any difficulty or inconsistency which arises in giving effect to the provisions of this Act; or

(c) provide that any person who contravenes any regulations made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 350,000 rupees and to imprisonment for a term not exceeding 2 years.

## **31. FSC Rules**

(1) The Commission may make such FSC Rules as it thinks fit for the purposes of the Act.

(2) Any FSC Rules made by the Commission under the Act shall not require the prior approval of the Minister and –

(a) may provide for the taking of fees, levying of charges or securitisation process and procedures; and

(b) may provide for the imposition of an administrative penalty in relation to such matters as may be prescribed;

(c) may provide for restriction in the receivables that may be transferred to a securitisation vehicle;

(d) may provide for any restriction with respect to the participation of retail investors in a securitisation vehicle;

(e) may provide for the custody of securities issued by the securitisation vehicle; and

(f) shall be published in the Gazette.

### **32. Offence**

Any person who contravenes this Act or any regulations made under this Act shall commit an offence and shall, on conviction, be liable, where no specific penalty is provided, to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

### **33. Transitory provision**

The Act shall not apply to securitisation transactions or undertakings set up prior to its enactment.

### **34. Consequential amendments and savings**

(1) The Code de Commerce is amended by repealing Articles 87, 88 and 89.

(2) Notwithstanding subsection (1), a securitisation commenced before the commencement of the Act shall continue to be governed by Articles 87, 88 and 89 of the Code de Commerce were never repealed.

(3) The Financial Services Act is amended in-

(a) section 15 by –

(j) adding the following new item in subsection (3):

(f) the registration of a securitisation vehicle;

(ii) by adding the following new subsection

(5) Except as otherwise expressly provided under this Act, this Part shall not apply to a company registered as a securitisation vehicle under the Securitisation Act.

(b) In the First Schedule by adding the following new item in the appropriate alphabetical order-

Securitisation Act

### **35. Commencement**

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the xx day of xxx.

## **SCHEDULE**

### **REGISTRATION OF SECURITISATION VEHICLE**

The securitisation vehicle must submit the following documents/information to the Commission as part of its registration process:

- (a) Memorandum of association or other constituting documents of the securitisation vehicle
- (b) Details of the management body of the securitisation vehicle
- (c) Details of the proposed securitisation plan, including among others, description of the assets to be securitised, policy on redemption and policy of redemption.
- (d) Registration fee
- (e) Such other documents/information that the Commission may deem necessary.