**DRAFT 5.12.23**

**SECURITIES (AMENDMENT) ACT 2023**

**ARRANGEMENT OF SECTIONS**

Section

[1 Short title 3](#_Toc151283268)

[2 Interpretation 3](#_Toc151283269)

[3 Section 2 of the principal Act amended 3](#_Toc151283270)

[4 Section 6 of the principal Act amended 3](#_Toc151283271)

[5 Section 8A of the principal Act inserted 4](#_Toc151283272)

[6 Section 12 of the principal Act amended 5](#_Toc151283273)

[7 Section 13 of the principal Act amended 5](#_Toc151283274)

[8 Section 17 of the principal Act amended 5](#_Toc151283275)

[9 Section 24 of the principal Act amended 5](#_Toc151283276)

[10 Section 31 of the principal Act amended 6](#_Toc151283277)

[11 Section 31A of the principal Act inserted 6](#_Toc151283278)

[12 Section 34A of the principal Act inserted 9](#_Toc151283279)

[13 Part III, Sup-part F amended 9](#_Toc151283280)

[14 Section 55 of the principal Act amended 9](#_Toc151283281)

[15 Section 55A of the principal Act inserted 9](#_Toc151283282)

[16 Section 70 of the principal Act amended 10](#_Toc151283283)

[17 Section 71 of the principal Act repeal and replaced 10](#_Toc151283284)

[18 Section 79A of the principal Act inserted 11](#_Toc151283285)

[19 Section 86 of the principal Act amended 11](#_Toc151283286)

[20 Section 87 of the principal Act amended 11](#_Toc151283287)

[21 Section 88 of the principal Act amended 12](#_Toc151283288)

[22 Section 89 of the principal Act amended 12](#_Toc151283289)

[23 Section 90 of the principal Act amended 12](#_Toc151283290)

[24 Section 91 of the principal Act amended 12](#_Toc151283291)

[25 Section 92 of the principal Act amended 12](#_Toc151283292)

[26 Section 95 of the principal Act amended 13](#_Toc151283293)

[27 Section 97A of the principal Act inserted 13](#_Toc151283294)

[28 Section 98 of the principal Act inserted 13](#_Toc151283295)

[29 Section 100 of the principal Act amended 13](#_Toc151283296)

[30 Section 105 of the principal Act amended 13](#_Toc151283297)

[31 Section 106A of the principal Act inserted 13](#_Toc151283298)

[32 Section 111 of the principal Act amended 14](#_Toc151283299)

[33 Section 113 of the principal Act amended 14](#_Toc151283300)

[34 Section 114 of the principal Act amended 14](#_Toc151283301)

[35 Section 115 of the principal Act amended 14](#_Toc151283302)

[36 Section 116 of the principal Act amended 14](#_Toc151283303)

[37 Section 124 of the principal Act repealed and replaced 14](#_Toc151283304)

[38 Section 153A and 153B of the principal Act inserted 16](#_Toc151283305)

[39 Section 154 of the principal Act amended 17](#_Toc151283306)

[40 Section 155 of the principal Act amended 17](#_Toc151283307)

[41 Commencement 17](#_Toc151283308)

**SECURITIES (AMENDMENT) ACT 2023**

An Act to amend the Securities Act 2005

1 Short title

This Act may be cited as the Securities (Amendment) Act 2023.

2 Interpretation

In this Act—

“principal Act” means the Securities Act.

3 Section 2 of the principal Act amended

Section 2 of the principal Act is amended—

1. by renumbering section 2 as section 2(1),
2. in the definition of “inside information”, by inserting after the words “reporting issuer” wherever they occur the words “or listed company”;
3. in the definition of “insider of a reporting issuer”, by inserting after the words “reporting issuer” wherever they occur the words “or listed company”;

(d) after the definition of “licensee” by inserting the following definition—

“ “listed company” means a company listed on an Official Exchange;”;

(e) after the definition “listed securities” by inserting the following definition—

“ “minimum unimpaired capital” means—

* + 1. fully-paid-up ordinary share capital;
    2. fully-paid-up irredeemable and non-cumulative preference share capital;
    3. reserves; and
    4. any unappropriated profit or loss in the latest audited accounts of the firm,

less any interim loss in the latest management accounts of the firm;”;

(f) in the definition of “officer” by inserting after the words “a reporting issuer” the words “, a listed company”;

(g) inserting after subsection (1), the following subsection—

“(2) For the purposes of this Act “information would be likely to have a material effect on the price or the value of securities of a reporting issuer or listed company or of securities issued by a related corporation of the reporting issuer or listed company” if an investor would be likely it to use as part of the basis of their investment decisions in respect of that reporting issuer or listed company.”.

4 Section 6 of the principal Act amended

Section 6 of the principal Act is amended in subsection (2)—

1. by inserting after the words “In administering this Act, the Commission shall” the words “, in addition to having the objects under section 4(1) of the Financial Services Act”;
2. in paragraph (h), by deleting the word “and”.
3. in paragraph (i), by deleting the full stop and replacing it by the words “; and”;
4. by inserting after paragraph (i) the following paragraph—

“(j) carry out assessments of risks arising from new products, markets and participants on a regular basis and at least annually.”.

5 Section 8A of the principal Act inserted

In Part III after before the Sub-Part A heading there is inserted the following new section—

“**8A Principles**

A clearing and settlement facility and an applicant for a clearing and settlement facility shall—

1. have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions;
2. have governance arrangements that are clear and transparent, promote the safety and efficiency of the clearing and settlement facility, and support the stability of the broader financial system;
3. have a sound risk-management framework;
4. effectively measure, monitor, and manage its credit exposures to participants and cover its credit exposures to its participants for all products through an effective margin system that is risk based and regularly reviewed , accepting collateral with low risk, and market risks;
5. effectively measure, monitor, and manage its liquidity risk;
6. provide clear and certain final settlement, at a minimum by the end of the value date;
7. conduct its money settlements in central bank money where practical and available;
8. clearly state its obligations with respect to the delivery of physical instruments or commodities;
9. have appropriate rules and procedures to help the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities;
10. where it settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), eliminate principal risk;
11. have effective and clearly defined rules and procedures to manage a participant default;
12. have rules and procedures that enable the segregation and portability of positions of a participant’s customers and the collateral;
13. identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses;
14. safeguard its own and its participants’ assets and minimise the risk of loss on and delay in access to these assets;
15. identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls;
16. have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access;
17. identify, monitor, and manage link-related risks with other clearing and settlement facilities;
18. be efficient and effective in meeting the requirements of its participants and the markets it serves;
19. use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards;
20. have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur;
21. where acts as a trade repository, provide timely and accurate data to relevant authorities and the public in line with their respective needs.”.

6 Section 12 of the principal Act amended

Section 12 of the principal Act is amended in subsection (2)—

(a) by repealing paragraph (a) and replacing it by the following paragraph—

“(a) the applicant has operating rules and procedures adequate to reduce systemic risk and to ensure, as far as is reasonably practicable, that the market will operate fairly, transparently, effectively, efficiently and in an orderly way;”;

(b) by inserting after paragraph (b)(iii) the following subparagraph—

“(iv) order execution and trade matching algorithms.”.

7 Section 13 of the principal Act amended

Section 13 of the principal Act is amended—

(a) in subsection (1), by deleting the word “may” and replacing it by the word “shall”;

(b) in subsection (2), by—

(i) deleting the word “may” and replacing it by the word “shall”;

(ii) inserting after paragraph (b) the following paragraphs —

“(ba) the terms and conditions for participation of members of the securities exchange;

(bb) shareholding and voting rights in the securities exchange in the interests of the members of the securities exchange, the consumers, investors and the users of their services;

(bc) promoting investors protection and market integrity. “.

(iii) inserting after paragraph (fa) the following paragraph —

“(fb) procedures, rules and conditions for order execution and trade matching algorithms of the securities exchange;”.

8 Section 17 of the principal Act amended

Section 17 of the principal Act is amended by inserting after subsection (2) the following subsection—

“(2A) A securities exchange shall keep a log of its trading activities (“trading logs”) which shall enable prompt reconstruction of the trading activities of the securities exchange by the Commission where necessary.”.

9 Section 24 of the principal Act amended

Section 24(1) of the principal Act is amended by inserting after paragraph (e) the following paragraph—

“(ea) report to the Commission any unusual transactions by market participants and issuers on the Official Exchange;”.

10 Section 31 of the principal Act amended

Section 31 of the principal Act is amended by inserting after subsection (3)—

“(4) Where a holder of a licence referred to in section 29 or 30 uses a brand name to solicit clients or advertise its services, the holder of the licence shall ensure that the solicitation also displays the name of the licence holder.

(5) Where an investment dealer or investment advisor opens a branch or subsidiary in another jurisdiction, the investment dealer or adviser must comply with the other jurisdiction's laws concerning solicitation of clients unless exempt pursuant to an agreement between the Commission and the regulatory authority in that other jurisdiction and complies with this subsection (4).

(6) For the purposes of this section an investment dealer or investment advisor uses a brand name to solicit clients or advertise it services if in advertising it focuses on the brand, to raise awareness including where it refers to and promotes particular products and services.

11 Section 31A of the principal Act inserted

The principal Act is amended by inserting after section 31 the following new section —

“**31A Product due diligence**

**(**1) Before selling or marketing any new product in Mauritius to any targeted client, an investment adviser shall carry out a due diligence exercise to ascertain whether the new product is suitable for the targeted client.

(2) A due diligence exercise required to be carried out under subsection (1) shall include an assessment of all the following areas:

(a) the type of targeted client the new product is suitable for and whether the new product matches the client base of the investment adviser;

(b) the investment objective of the new product;

(c) the key risks that a targeted client who invests in the new product potentially faces;

(d) the costs and fees to be incurred by a targeted client investing in the new product as compared to other products with similar features sold by the investment adviser;

(e) the processes in place for a representative of the investment adviser to determine whether the new product is suitable for the targeted client, taking into consideration the nature, key risks and features of the new product;

(f) how the new product is intended to be marketed or sold;

(g) whether any additional measures are necessary to mitigate any conflict of interest between a representative of the investment adviser and the targeted client, arising from the remuneration of such representative as a result of the sale of the new product to that targeted client;

(h) the minimum qualifications or training required for a representative of the investment adviser before such representative commences investment advisory services in respect of the new product; and

(i) whether the current systems of the investment adviser, including all relevant client sales documents, adequately support the sale of the new product to the targeted client.

(3) An investment adviser shall not sell or market any new product to any targeted client unless every member of the senior management of the investment adviser has, on the basis of the result of the due diligence exercise carried out on the new product under subsection (1) —

(a) personally satisfied himself that the new product is suitable for the targeted client; and

(b) personally approved the sale or marketing of the new product to the targeted client.

(4) Notwithstanding paragraph (3), the senior management of the investment adviser may, with the unanimous consent of all its members, designate —

(a) a person who may or may not be a member of the senior management (referred to in this regulation as the designated person) to personally satisfy himself and approve in accordance with the requirements referred to in subsection (3)(a) and (b); or

(b) a committee (referred to in this section as the designated committee) comprising at least 2 persons, each of whom may or may not be a member of the senior management, and every member of the designated committee shall personally satisfy himself and approve in accordance with the requirements referred to in subsection (3)(a) and (b),

and every member of the senior management shall ensure that the designated person or every member of the designated committee fulfills those requirements.

(5) A failure by any member of the senior management to fulfill any of the requirements set out in subsection (3) or (4) shall be deemed to be a failure of that member to discharge the duties or functions of his office under section 64(1)(c) of the Act.

(6) Where the senior management of the investment adviser contravenes paragraph (4) by designating a designated person or designated committee without the unanimous consent of all of its members, every member of the senior management who consented to such designation will be deemed to have failed to discharge the duties or functions of his office under section 64(1)(c) of the Act.

(7) Where a investment adviser complies with subsection (3) with respect to a new product to be sold or marketed by the investment adviser, the investment adviser must maintain records of the following items for a period of at least 5 years after the date on which the last member of the senior management of the investment adviser gave his approval mentioned in subsection (3)(b) in respect of the new product:

(a) any due diligence exercise carried out under subsection (1) in respect of the new product;

(b) the approval mentioned in subsection (3)(b) of all the members of the senior management of the investment adviser.

(8) Where the senior management of the investment adviser appoints a designated person under subsection (4)(a) in respect of a new product to be sold or marketed by the investment adviser, and the designated person fulfils the requirements mentioned in subsection (3)(a) and (b), the investment adviser must maintain records of the following items for a period of at least 5 years after the date on which the designated person gave his approval mentioned in subsection (3)(b) in respect of the new product:

(a) any due diligence exercise carried out under paragraph (1) in respect of the new product;

(b) the unanimous consent of the members of the senior management to designate the designated person, as mentioned in paragraph (4);

(c) the approval mentioned in subsection (3)(b) of the designated person.

(9) Where the senior management of the investment adviser appoints a designated committee under subsection (4)(b) in respect of a new product to be sold or marketed by the investment adviser, and all the members of the designated committee fulfil the requirements mentioned in subsection (3)(a) and (b), the investment adviser must maintain records of the following items for a period of at least 5 years after the date on which the last member of the designated committee of the investment adviser gave his approval mentioned in subsection (3)(b) in respect of the new product:

(a) any due diligence exercise carried out under paragraph (1) in respect of the new product;

(b) the unanimous consent of the members of the senior management to designate the designated committee, as mentioned in subsection (4);

(c) the approval mentioned in subsection (3)(b) of all the members of the designated committee.

(10) For the avoidance of doubt, no investment adviser shall sell or market any new product to any targeted client if the due diligence exercise required to be and carried out under subsection (1) indicates that the new product is not suitable for the targeted client.

(11) In this regulation —

“key risk” means any risk to a client’s investment in a new product, and includes any market risk, liquidity risk and product-specific risk;

“member of the senior management”, in relation to a investment adviser, means a person for the time being holding the office of —

(a) chief executive officer or an equivalent person of the investment adviser; or

(b) executive director or an equivalent person of the investment adviser,

and includes a person carrying out the duties of any such officer if the office is vacant;

“new product”, in relation to a investment adviser —

(a) means any investment product that has not been previously sold or marketed by the investment adviser, or any representative of the investment adviser, other than —

(i) any spot foreign exchange contract other than for the purposes of leveraged foreign exchange trading;

(ii) any futures contract traded on an approved exchange, an overseas exchange or a recognised market operator; or

(iii) any specified product quoted on an approved exchange, an overseas exchange or a recognised market operator; and

(b) includes any investment product other than the products referred to in subsection (a)(i), (ii) and (iii), which varies in any manner (other than in respect of the maturity date of the investment product) from any investment product which has been previously sold or marketed by the investment adviser or any representative thereof;

“targeted client”, in relation to a investment adviser who intends to sell or market a new product, means any client to whom the investment adviser intends to sell or market the new product, other than a client that is any of the following:

(a) an accredited investor;

(b) an expert investor;

(c) an institutional investor;

(d) an ex-accredited investor who is an existing customer of the investment adviser, but only in respect of the investment adviser’s intention to sell or market the new product in the period from 8 October 2018 to 7 April 2019 (both dates inclusive).

(12) Any investment adviser which, without reasonable excuse, contravenes this regulation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding [ rupees].

12 Section 34A of the principal Act inserted

The principal Act is amended by inserting after section 34 the following new section —

**“34A. Monitoring by intermediaries**

The Commission shall not issue a licence under this Part unless it is satisfied that the applicant has rules, controls and systems for monitoring, detecting and surveillance of market abuse.”.

13 Part III, Sup-part F amended

In the heading in Part III, Subpart F after the word “annual” there is inserted the words “or quarterly”.

14 Section 55 of the principal Act amended

Section 55 of the principal Act is amended—

1. in subsection (1) after the words “annual report” by inserting the words “, in the form approved by the Commission,”;
2. by inserting after subsection (1)(b) the following paragraphs—

“(ba) information regarding related party transactions, investment selection and liquidity risks for the reporting period;

(bb) a certificate of capital adequacy based on risk;”.

15 Section 55A of the principal Act inserted

The principal Act is amended by inserting after section 55, the following new section—

**“55A Quarterly reports**

1. An investment dealer and a corporation licensed as an investment adviser shall file with the Commission, quarterly reports in the form approved by the Commission which shall include—
   1. financial statements prepared in accordance with IFRS and such other standards as may be issued under the Financial Reporting Act;

(b) information regarding related party transactions, investment selection and liquidity risks for the reporting period;

(c) certificate of capital adequacy based on risk;

(d) such other requirements as may be specified in FSC Rules; and

(e) consolidated financial statements where the investment dealer or investment adviser is a holding company or a subsidiary; and

(f) any other information required by the Commission.

1. Any person who contravenes any of the provision of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.”.

16 Section 70 of the principal Act amended

Section 70 of the principal Act is amended by inserting after subsection (5) following subsection—

“(6) Where a prospectus is not required under this section the offering document shall contain information set out in the FSC Rules.”.

17 Section 71 of the principal Act repeal and replaced

Section 71 of the principal Act is repealed and replaced by the following section—

**“71. General requirements**

A prospectus shall be in the form prescribed in the FSC Rules and shall—

1. provide full, true and plain disclosure of all material facts concerning the securities to be offered and the person offering the securities, without omitting anything that would be required to allow investors to make an informed assessment of—
   * + 1. the assets and liabilities, financial position, profits and losses and prospects of the issuer of the securities; and
       2. the rights and liabilities attaching to the securities;

(b) contain —

(i) the date of the prospectus, which shall be the date on which the prospectus is provisionally registered with the Commission;

(ii) a statement signed by all the directors of the issuer to the effect that they accept responsibility for the contents of the prospectus and that, to the best of their knowledge and belief, and after making reasonable inquiries, the prospectus complies with this Act, any regulations made under this Act or any FSC Rules;

(iii) such signatures as may be specified in FSC Rules; and

(iv) a statement to the effect that the Commission takes no responsibility for its contents;

(c) contain a full, true and plain statement on the pricing methodology used depending on the investment fund strategy;

(d) where so authorised by FSC Rules, contain all such facts, statements and information as may be specified by FSC Rules.”.

18 Section 79A of the principal Act inserted

The principal Act is amended by inserting after section 79 the following new section—

**“79A De-registration**

The Commission may deregister a prospectus in accordance with FSC Rules.”.

19 Section 86 of the principal Act amended

Section 86 of the principal Act is amended—

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

“(2) Every reporting issuer, (other than a reporting issuer not incorporated in Mauritius) or listed company shall comply with the disclosure requirements under this Part.”;

(b) in subsection (3)—

(i) by inserting after the words “reporting issuers” the words “and listed companies”;

(ii) in paragraph (b), by inserting after the words “reporting issuer” the words “or listed company”.

20 Section 87 of the principal Act amended

Section 87 of the principal Act—

(a) in subsection (1), by inserting after the words “reporting issuer” wherever they occur the words “or listed company”;

(b) in subsection (4)—

(i) by inserting after the words “reporting issuer” the words “or listed company”;

(ii) in paragraph (c), by deleting the words “the issuer” and replacing them by the words” “the reporting issuer or listed company”;

(c) in subsection (5)—

(i) in paragraph (b), by deleting the word “issuer’s” and replacing it by the words “the reporting issuer’s or listed company’s”;

(ii) in paragraph (c), by inserting after the words “reporting issuer” the words “or listed company”;

(iii) in paragraph (e), by deleting the words “issuer” and replacing them by the words “reporting issuer or listed company”;

(d) in subsection (7), by inserting after the words “reporting issuer” the words “or listed company”;

(e) in paragraph (8), by deleting the word “issuer” and replacing it by the words “reporting issuer or listed company”;

(f) in paragraph (9), by inserting after the words “reporting issuer” the words “or listed company”.

21 Section 88 of the principal Act amended

Section 88 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection—

“(1) Every reporting issuer or listed company shall file with the Commission and make public comparative semi-annual financial statements prepared in accordance with IFRS and such other standards as may be issued under the Financial Reporting Act, as soon as possible, but not later than 45 days after the end of each half-year.”.

22 Section 89 of the principal Act amended

Section 89 of the principal Act is amended in subsections (1) and (2) by inserting after the words “reporting issuer” wherever they occur the words “or listed company”.

23 Section 90 of the principal Act amended

Section 90 of the principal Act is amended in subsections (1) and (2) by inserting after the words “reporting issuer” wherever they occur the words “or listed company”.

24 Section 91 of the principal Act amended

Section 91 of the principal Act is amended —

(a) in subsection (1)—

(i) by inserting after the words “notify the” the word “reporting”;

(ii) by inserting after the words “reporting issuer” wherever they occur the words “or listed company”;

(b) in subsection (2) by inserting after the words “reporting issuer” wherever they occur the words “or listed company”.

25 Section 92 of the principal Act amended

Section 92 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection—

“(1) Where a reporting issuer or listed company is given a notice under section 90 or 91, the reporting issuer or listed company shall, before the end of the day following the day of notification, give a copy of the notice to —

* 1. the Commission;
  2. where the securities of the reporting issuer or listed company are listed on a securities exchange, the securities exchange.”.

26 Section 95 of the principal Act amended

Section 95(1) and (2) of the principal Act is amended in section 95(1) and (2) by inserting after the words “reporting issuer” wherever they occur the words “or listed company”.

27 Section 97A of the principal Act inserted

The principal Act is amended by inserting after section 97 the following new section—

“**97A Valuation**

The valuation, pricing and redemption of units shall be in accordance with FSC Rules.”.

28 Section 98 of the principal Act inserted

Section 98 of the principal Act is amended—

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

“(1) No person shall act as a CIS manager for a collective investment scheme or hold himself out to act as a CIS manager for a collective investment scheme unless the person holds and is complying with the conditions of a CIS manager licence or subject to subsection (3), is registered with the Commission in accordance with FSC Rules made under subsection (3).”;

by inserting after subsection (2), the following subsection—

“(3) The Commission may make FSC Rules to provide for exemptions from the requirement for a licence under subsection (1) and registration of CIS managers who are exempt from the requirement to obtain a licence.”.

29 Section 100 of the principal Act amended

Section 100 of the principal Act is amended in subsection (1)(a) by inserting after the words “subsidiary of a bank” the words “, or a Central Depository, Clearing and Settlement Service as defined by the Securities (Central Depository, Clearing and Settlement) Act 1996”.

30 Section 105 of the principal Act amended

Section 105 of the principal Act is amended by inserting after subsection (1) the following subsection—

“(1A) A CIS manager shall in delegating their duties and powers, ensure that they carryout due diligence on, and monitor their delegates to ensure performance of the delegation.”.

31 Section 106A of the principal Act inserted

The principal Act is amended by inserting after section 105 the following new section—

“**106A Disclosure**

1. A CIS Manager shall in accordance with the FSC Rules provide investors with information relating to a collective investment scheme, including information relating to the risks arising from the specific form of the collective investment scheme.
2. A CIS manager shall provide to investors in the collective investment scheme notice of a material change to investor rights where prior approval of the change by the Commission is not required.

(3) The notice under subsection (2) shall not be given more than 10 days after the change.”.

32 Section 111 of the principal Act amended

Section 111of the principal Act is amended—

1. in subsection (1) and (2), by deleting the words “shall” and replacing it by the words “or listed company shall, or shall attempt to,”;
2. in subsection (2) by inserting after the words “reporting issuer” the words “or listed company”;
3. in subsection (4), by deleting the words “insider dealing” and replacing them by words “under this section”.

33 Section 113 of the principal Act amended

Section 113 of the principal Act is amended in subsection (1) by inserting after the word “shall” the words “, or shall attempt to,”.

34 Section 114 of the principal Act amended

Section 114 of the principal Act is amended in subsections (1) and (2) by inserting after the word “shall” the words “, or shall attempt to,”.

35 Section 115 of the principal Act amended

Section 115 of the principal Act is amended by inserting after the word “shall” the words “, or shall attempt to,”.

36 Section 116 of the principal Act amended

Section 116 of the principal Act is amended in subsections (1) and (2) by inserting after the word “engages” the words “, or attempts to engage,”.

37 Section 124 of the principal Act repealed and replaced

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

“**124 Investigations**

(1) Without prejudice to the powers of the Chief Executive under the Financial Services Act, where the Chief Executive has reason to believe that a person licensed under this Act—

(a) has failed, is failing or is likely to fail, to comply with any direction issued by the Commission under this Act;

(b) has committed in relation to the securities market, is committing or is likely to commit a fraud, any financial crime or a serious misconduct in Mauritius or in a foreign jurisdiction;

(c) has carried, is carrying or is likely to carry out any activity related to the securities market which may cause serious prejudice to its customers, or to the soundness, stability and integrity of the financial services sector;

(d) has failed to provide any information or document requested by the Commission,

he may make an investigation into the business or any part of the business of the licensee—

1. on behalf of the Commission; or
2. on behalf of a foreign supervisory institution pursuant to an agreement under section 87(4) of the Financial Services Act 2007.

(2) For the purpose of an investigation under subsection (1), the Chief Executive may, by notice in writing, require—

* 1. a licensee whose affairs are to be investigated to attend, at a specified time and place, and answer questions or otherwise furnish information or produce such documents as may be required with respect to any matter relevant to an investigation by the Chief Executive; and
  2. any officer of the licensee person to furnish information or to produce any document in his custody or under his control.

(3) The Chief Executive may take copies or extracts from any document produced under subsection (2) and may require the person producing the document to give any explanation relating to such document.

(4) Where material to which an investigation relates consists of information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the request from the Chief Executive shall be deemed to require the person named therein to produce or give access to it in a form and medium in which it can be taken away and in which it is visible and legible.

(5) Subject to subsection (6), any person required to attend and answer questions or otherwise furnish information or to produce any specified documents or any documents of a specified class shall not, without reasonable excuse, fail to attend or answer a question or furnish information or produce a document or class of documents.

(6) It shall be a reasonable excuse, for the purposes of subsection (5), for a person to refuse or fail to answer a question put to him or to refuse or fail to produce a document or class of documents that he was required to produce, where the answer to the question or the production of the document or class of documents might tend to incriminate him.

(7) An investigation may take place at any or at all the premises where business of the licensee person is conducted or records are kept or maintained by the licensee, registered person or associated party.

(8) The Chief Executive may appoint any member of the staff of the Commission or any other person to be an investigator who shall have all the powers of the Chief Executive under this section and may require the person under investigation to—

* 1. produce to him at a reasonable time and at a place specified by him any document that may afford such evidence and that is in the possession of the relevant person or under his control;

(b) give explanations or further information about such documents;

(c) attend before the investigator at a reasonable time and place and answer under oath or solemn affirmation question relating to the matter.

(9) Any person who—

* 1. fails to comply with any requirement of this section;
  2. obstructs an investigator in the performance of any of his duties under this section;
  3. fails, without reasonable cause, to comply with any direction of an investigator in the performance of his duties under this section;
  4. in relation to any question put to him by an investigator in the performance of that person’s duties under this section—

(i) says anything, or provides any information or document, that the person—

* + - 1. knows to be false or misleading in a material particular; or
      2. is reckless as to whether it is false or misleading in a material particular;

(ii) refuses, without reasonable excuse, to answer,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 3 years.”.

38 Section 153A and 153B of the principal Act inserted

The principal Act is amended by inserting after section 153the following new sections —

**“153A Guidance**

The Commission may issue guidance in connection with its functions under this Act in particular relating to—

1. the matters to be considered and the procedures (including the timelines) to be followed by the Commission for the purpose of determining applications for authorisation of licensees;
2. keeping of books and records by licensees;
3. transaction monitoring by licensees;
4. the periodic information, indices and averages on activities in order to ensure transparency and equity to investors to be published by a securities exchange under section 17;
5. criteria to identify systemic risks;
6. the licensing of securities exchanges and securities trading systems;
7. the rules to be made by a securities exchange under section 13 and a clearing settlement facility under section 14;
8. operational resilience in the market infrastructure;
9. monitoring, detection and surveillance of market abuse by licensees;
10. insiders lists and market soundings;
11. conduct that may constitute an offence under Part 1X – Market Abuses;
12. credit rating agencies;

(m) the specification of risk management arrangements for CIS managers;

(n) licensees operating Global Business Licences;

(o) the safekeeping of clients funds and assets;

(p) segregation of duties of licensees;

(q) procedures for managing conflict of interest;

(r) reporting requirements and the frequency of such reporting;

(s) the review and evaluation of internal controls;

(t) risk management;

(u) direct electronic access;

(v) handling of customers’ feedback complaints by licensees.”.

**153B Liability of officers**

Where an offence under this Act is committed by a licensee, collective investment scheme, reporting issuer, listed company any other person, and it is proved that the offence was committed with the consent or connivance of, or is attributable to the neglect on the part of an officer of the licensee, collective investment scheme, reporting issuer, listed company or other person, the officer as well as the licensee, collective investment scheme, reporting issuer, listed company or other person commits the offence and is liable to be proceeded against and punished accordingly.”.

39 Section 154 of the principal Act amended

Section 154 of the principal Act is amended in subsection (2)—

(a) by inserting after paragraph (ha) the following paragraph—

(hb) providing for over the counter derivatives and establishing an over the counter derivatives venue;”;

(b) in paragraph (f) —

(i) by repealing paragraph (f)(x) and replacing it by the following paragraph—

“(x) capital requirements, including the minimum unpaired capital and ongoing capital requirements, for CIS managers, CIS administrators and custodians;

(ii) by inserting after (x) the following paragraph—

“(x) capital adequacy rules;”.

40 Section 155 of the principal Act amended

Section 155 of the principal Act is amended in subsection (2)—

(a) by inserting after paragraph (k) the following paragraph—

(ka) administrative process for the determination of an application for a licence including the grant, renewal or refusal of a licence;

(b) by inserting after paragraph (n) the following paragraphs—

“(na) the valuation and pricing and redemptions of units in a collective investment scheme;

(nb) the declaration of, and requirements for, green funds;

(nc) the operational and conduct requirements for CIS managers; including requirements relating to the marketing of collective investment schemes to professional investors or retail investors, or both;

(nd) the legal form and structure of collective investment schemes;

(ne) the segregation and protection of client assets in a collective investment scheme;

(nf) consumer duty”;

(c) by inserting after paragraph (s) the following paragraph—

“(sa) deregistration of a prospectus.”.

41 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 provisions of this Act.

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