



Dear Readers

In this edition we focus on developments in and relating to Africa. Mauritius, being a member of both SADC & COMESA, has always played an active role in regional cooperation and has hosted a number of summits of these organisations.

We see ourselves as both a facilitator and a gateway for investments into the African continent as the latter continues to generate tremendous interests from emerging giants such as China and India, whilst the traditional partners in the EU seek to maintain an active role in Africa.

The global business sector has seen a surge in entities investing in Africa in the recent past and no doubt this trend will continue giving the many advantages that Mauritius can offer.

**Jimmy Wong**  
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**Discussions on Improving Trade Relations between Mauritius and Turkey**

Mauritius welcomes the Turkish policy of opening up to Africa, the Secretary for Foreign Affairs, Ambassador A.P. Neewoor, said recently.

In his speech at the opening of a two-day high-level meeting on Trade Relations between Mauritius and Turkey, Mr. Neewoor recalled that the launching of the free trade agreement (FTA) talks between Mauritius and Turkey opens a new chapter in the bilateral relations between the two countries. These discussions, he said demonstrate the political will of the two Governments to enter in a structured dialogue and set out trade relations on a firm legal framework.

The kick off of the FTA discussions must be viewed as a positive sign for a more comprehensive and deep-seated economic and trade ties between Mauritius and Turkey, said Ambassador Neewoor. Mauritius and Turkey share the common view that the process of globalisation should become an inclusive and positive force for all countries. He underlined the need for an equitable, balanced and rule-based multilateral trading system.

**The Secretary for Foreign Affairs mentioned the possibility of exploring a triangular type of cooperation involving Turkey-Mauritius-EU on the one hand and Turkey-Mauritius-Africa on the other hand.**

For his part, the Head of the Turkish delegation, Mr. Engin Ertekin, Deputy Director-General, Directorate General of EU Affairs, Under-Secretariat for Foreign Trade, said that both Mauritius and Turkey have much to gain with the improvement of bilateral and trade relations. The FTA will be an indispensable tool for achieving a common goal of economic prosperity, he added.

## **THE COMPANIES ACT 71 OF 2008 – NEW CATEGORIES OF COMPANIES FOR SOUTH AFRICA**

### **1 INTRODUCTION**

Set out below is a brief overview of the types of companies which may be formed and incorporated in terms of the Companies Act 71 of 2008 ("the Act"), once the Act comes into operation, and also an indication of the most important differences between such companies. Included in this overview is a discussion of the names of companies, the doctrine of constructive notice as it is incorporated into the Act and reference to some of the transitional arrangements.

The Act envisages two types of companies to be formed and incorporated once the Act becomes effective, namely profit companies and non-profit companies.

### **2 PROFIT COMPANIES**

A profit company is defined as a company incorporated for the purpose of financial gain for its shareholders. A profit company can be a state-owned company; a private company, a personal liability company or a public company, all of which may be incorporated by one or more persons.

A "state-owned company" is an enterprise that is registered as a company, and either (a) falls within the meaning of "state-owned enterprise" in terms of the Public Finance Management Act 1 of 1999; or (b) is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act 32 of 2000, and is otherwise similar to an enterprise referred to in (a).

A public company is defined as a profit company that is not a state-owned enterprise, a private company or a personal liability company. Any provision of the Act that applies to a public company will also apply to a state-owned company, except to the extent that the Minister has granted an exemption on the grounds that those provisions overlap or duplicate an applicable regulatory scheme established in terms of any other national legislation.

State-owned companies and public companies are required to comply with extended accountability requirements set out in Chapter 3, which requires companies to appoint a company secretary, an auditor and to establish an audit committee. Private companies and personal liability companies are not required to comply with such extended accountability requirements, except to the extent that the companies' Memoranda of Incorporation provide otherwise.

In terms of the Act, a private company must not be a state-owned company and its Memorandum of Incorporation ("MOI") must prohibit it from offering any of its "securities" to the public and must restrict the transferability of its "securities". "Securities" has the meaning set out in section 1 of the Securities Services Act 36 of 2004, and includes shares held in a private company.

A personal liability company must meet the criteria for a private company, and its MOI should state that it is a personal liability company. If a company is a personal liability company the directors and past directors are jointly and severally liable, together with the company, for any debts and liabilities of the company as are or were contracted during their respective periods of office.

The board of a private company and of a personal liability company must comprise at least one director, whilst a public company's must comprise at least three directors.

### **3 NON-PROFIT COMPANIES**

A "non-profit company" is defined as a company incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1. Every provision of the Act applies to a non-profit company, subject to the provisions, limitations, alterations or extensions set out in section 10, and in Schedule 1.

A non-profit company is not required to have members, but its MOI may provide for it to do

so, and may provide for no more than two classes of members, that is voting and non-voting members. Three or more persons are required to incorporate a non-profit company. The board of a non-profit company must also comprise at least three directors. If a non-profit company has no members, the MOI must set out the basis on which directors are to be appointed by its board, or other persons.

A non-profit company is also not required to comply with the extended accountability requirements set out in Chapter 3, except to the extent that the company's MOI provides otherwise.

#### 4 EXTERNAL COMPANIES

An external company is defined as a foreign company that is **carrying on business**, or non-profit activities, as the case may be, within the Republic, subject to the provisions in clause 23(2). Note that clause 23(2) describes the activities which is to be regarded as "**conducting business**, or non-profit activities, as the case may be, within the Republic", and does not refer to "carrying on business" as in clause 1. We are of the opinion that this is a minor oversight and the intention is to describe "conducting business" as being the same as "carrying on business".

External companies are required to register with the Companies and Intellectual Property Commission within 20 business days after it first begins to conduct business, or non-profit activities, as the case may be, and must continuously maintain at least one office in the Republic and register the address the office.

#### 5 COMPANY NAMES

The name of a profit company may be the company's registration number, in which case that number must be immediately followed by the expression "(South Africa)".

Otherwise, the company name must end, irrespective of its form or language, with one of the following expressions, as appropriate for the category of the particular company –

- the word "Incorporated" or its abbreviation "Inc.", in the case of a personal liability company;
- the expression "Proprietary Limited" or its abbreviation, "(Pty) Ltd.", in the case of a private company;
- the word "Limited" or its abbreviation, "Ltd.", in the case of a public company;
- the expression "SOC Ltd." in the case of a state-owned company; and
- the expression "NPC", in the case of a non-profit company.

If the company's MOI contain any special conditions applicable to the company or prohibit the amendment of any particular provision of the MOI then the name of the company must be immediately followed by the expression "(RF)". Note that a person will be regarded as having received notice and knowledge of such provisions if the company's Notice of Incorporation or a Notice of Amendment has drawn attention to the provisions as required.

#### 6 TRANSITIONAL ARRANGEMENTS

Schedule 5 to the Act contains certain transitional arrangements and provides for the continuation of existing companies. At any time within two years immediately following the general effective date, a pre-existing company may file, without charge an amendment to its MOI to bring it in harmony with the Act, and if necessary, a notice of name change and copy of a special resolution, to alter its name to meet the requirements of the Act. We would urge all existing companies to amend their MOI's sooner rather than later and to effect name changes, if required, as soon as possible after the general effective date so as to avoid any confusion.

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## European Union (EU)- SADC: Trade promotion policy to simplify business & investment procedures

In the past, several steps have been taken to promote trade and investments into the emerging African continent. For instance, there have been MOU's signed by various Governments to facilitate trade. In a recent meet, EU Trade Commissioner Catherine Ashton called for a continued push on trade facilitation to help developing countries in Africa, reap the benefits of global trade. In remarks delivered to a conference in Rome entitled '**The role of Trade Facilitation: promoting market integration with a focus on Africa**', Commissioner Ashton argued that "cumbersome, outdated bureaucracies and infrastructure stifle trade and entrepreneurship, discourage investment and encourage corruption." Small and medium-sized enterprises are particularly vulnerable, she added.

The solution, according to Ashton, is for developed and developing countries to work together to simplify trade procedures, which will reduce delays, cut costs, improve the services offered to consumers, and help many companies get into overseas markets in the first place. On the multilateral front, the EU supports the development of a more binding rules-based approach in the World Trade Organization (WTO), with trade facilitation also a prominent element in the Doha Round of world trade talks. African business has joined European business in calling for an ambitious Doha agreement. The European Commission estimates that a trade facilitation agreement in WTO could bring further trade gains. In parallel to the WTO work, the EU is also pursuing trade facilitation in regional and bilateral initiatives, including with the USA, South Africa, China, Asean, Mercosur and ACP (African, Caribbean and Pacific) countries.

The EU is complementing the efforts of developing countries to improve the situation through Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries. EPAs aim amongst other things to reinforce cooperation in the area of customs and trade facilitation. In Africa, a stated goal is to promote harmonisation of customs legislation and procedures to improve trade between the EU and Africa. Ashton travelled to Southern Africa in February to hold talks with key government leaders with a view to moving forward bilateral and region-to-region trade relationships. A key objective of these discussions is an EPA between the EU and Southern African countries.

EPA Negotiations with members of the Southern African Development Community (SADC) group of countries were launched in 2004. In the year 2007, South Africa joined the "SADC EPA" Group as an official member. An interim EPA was initiated at the end of 2007 with Botswana, Lesotho, Namibia, Swaziland and Mozambique. Angola would join the agreement, but as a Least Developed Country but it still maintains full market access to the EU.

The EU and South Africa signed the Trade, Development and Co-operation Agreement (TDCA) in 1999. The objective of the TDCA is to create a free-trade area between South Africa and the EU over a period of 12 years, with the EU opening its market at a faster pace. At the same time, the Southern African Customs Union, consisting of Botswana, Lesotho, Namibia, South Africa and Swaziland now provides for a deeper level of integration amongst some of the countries of the SADC grouping. One of the key challenges in implementing an EPA with SADC is to reconcile these various trade relationships.

### **Mauritius Signs a Joint Declaration on Cooperation in Geneva**

Mauritius recently signed in Geneva a Joint Declaration on Cooperation (JDC) with the European Free Trade Area (EFTA) comprising Norway, Switzerland, Iceland and Liechtenstein.

The Declaration was signed by Ambassador Servansing on behalf of Mauritius and by Ambassadors E. Johansen, L. Wasescha, K. Arnason and N. Frick on behalf of respectively Norway, Switzerland, Iceland and Liechtenstein. This declaration was signed in the presence of the Deputy Secretary-General of the EFTA, Mr. D. Chambovey.

**The Joint Declaration on Cooperation (JDC) provides for enhanced economic relations between Mauritius and the EFTA countries, in particular with regard to trade in goods, services and investment.** It also aims at facilitating a greater involvement of the private sector particularly smaller and medium-sized enterprises in trade and commercial cooperation.

The JDC is a first step towards the conclusion of a Comprehensive Agreement with the EFTA States. The proposal for such an Agreement which was made by Mauritius is intended to harmonize trade and economic relations with all the countries in Western Europe based on the Economic Partnership Agreement currently being negotiated with the European Union and thus create more business opportunities for Mauritius on European markets. Negotiations are expected to start next year.

A joint Mauritius - EFTA committee has also been established with a view to formulating appropriate recommendations on cooperation.

### **Minister Boolell leads Mauritius delegation to SADC Extraordinary Summit**

The progress report on the political situation in Madagascar and the venue for the next SADC Summit 2009 were on the agenda of the SADC Extraordinary Meeting who met on 20 June in Pretoria, South Africa. Mauritius was represented by the Minister of Foreign Affairs, Regional Integration and International Trade, Dr. Arvin Boolell.

The SADC Extraordinary Summit took cognizance of the Final Communiqué of the COMESA Heads of State and Government held on 7-8 June 2009 in Victoria Falls Town, Zimbabwe, where the COMESA expressed support of SADC to "restore constitutional order in Madagascar."

Mauritius is already engaged with Madagascar because of its proximity and strong ties with the

country. The country is working closely with the SADC Executive Secretary to get the international community to act together on the Malagasy crisis which has geopolitical concerns.

On 30 March 2009, at the previous Extraordinary Summit of the SADC held in Swaziland, SADC condemned the unconstitutional action that had led to the illegal ousting of the democratically elected Government of Madagascar and called for an immediate restoration of constitutional order in the country.

On the other hand, the COMESA Summit in Zimbabwe on 7-8 June 2009 condemned in the strongest terms the unconstitutional change of Government that occurred in Madagascar. It welcomed and agreed as pronounced by the African Union to support SADC as they take a lead in the efforts to restore constitutional order in Madagascar by examining all options.

### **Transformation and Innovation: Mauritius Hosts 2nd iNet International Workshop**

The Transformation and Innovation 2nd iNet International was recently hosted in Mauritius. The three-day Workshop, intended for some 60 participants, was an opportunity towards developing an agenda for educational transformation by examining issues such as leadership, curriculum & extra curricular activities.

Dr. Vasant Bunwaree, Minister of Education, Culture and Human Resources, who officially launched the Workshop, said that the Government is deeply concerned with the urgency of adjusting our education to the real needs of our society and the world.

International Networking for Educational Transformation (iNet) is an international network of schools, organisations and individuals which is committed to transforming learning through innovation.

iNet organised a unique conference in October 2006 bringing together school leaders from 14 school systems around the world to develop an agenda for future schooling. One of the recommendations was to hold a second international workshop to redefine what skills are valuable for living and learning in a global and digital world. In 2007, Mauritius became the first country to affiliate all its schools to iNet and contribute to the global network of schools committed to transformation.

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