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**Editorial**

Dear Readers,

Having identified Collective Investment Schemes as an area that has good potential to contribute significantly in the value proposition of the Mauritius financial services industry, as the latter engages in the next phase of its development, the authorities are proposing a comprehensive set of legislation to make Mauritius a competitive jurisdiction in this particular field.

As we face the challenges of a dynamic international financial services industry, authorities and practitioners alike are seeking to not only consolidate favorable positions but also to seek out new value added services and markets.

Jimmy Wong

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**Financial Services Reforms**

The Government of Mauritius has undertaken fundamental reforms of the financial services sector. In December 2001, the Companies Act 2001, the Financial Services Development Act 2001 and the Trusts Act 2001 were enacted to develop the country into a leading regional financial services centre. In June 2002, the Financial Intelligence and Anti-Money Laundering Act came into force.

In the same framework, the Government announced a number of new pieces of legislation in the 2004/2005 Budget.

The Securities Bill aims to bring the regulation of the securities market in Mauritius in conformity with international standards and principles, in particular with the Objectives and Principles of the International Organisation of Securities Commissions.

The principal objective of the proposed Securities Bill is to facilitate trading of securities in an orderly, fair and transparent manner. The proposed Bill will apply to securities, futures contracts on securities or market indices on an organised market and options on these contracts. The Bill provides for the regulation of market infrastructure, market intermediaries, self-regulatory organisations, the offering and trading of securities and takeover bids.

The Securities Bill is designed to achieve an adequate level of protection of investors, to ensure fair, efficient and transparent markets, to put in place a system of proper disclosure and of control and supervision of the intermediaries and the self-regulatory organisations.

Part VII of the Securities Bill contains substantial provisions on Collective Investment Schemes in Mauritius. These provisions will be supple-

mented by the Securities (Collective Investment Schemes) Regulations. The proposed Regulations introduce a comprehensive legal regime for the establishment, management, administration and regulation of Collective Investment Schemes. The Regulations provide for a broad range of investment vehicles that could be used for structuring Collective Investment Schemes in Mauritius. In addition, the proposed Regulations clarify the responsibilities of the operators and functionaries of a Collective Investment Scheme and introduce a platform to improve corporate governance in relation to Collective Investment Schemes and their functionaries.

The Investment Limited Partnership Bill provides a statutory framework for a modern tax-transparent investment vehicle for specialised Collective Investment Schemes. The Investment Limited Partnership is a useful vehicle for investors who do not wish to take an active role in the management of their funds. They may use this structure to create an investment fund under the control of a general partner, who will have unlimited liability for the partnership's obligations. The limited partner is liable to the extent of his contributions, provided he does not take part in the management of the partnership business. The Investment Limited Partnership which offers privacy for the investor and the benefit of fiscal transparency is a unique product for tax planning purposes and for structuring private equity funds and venture capital funds.

These will no doubt provide the framework for the next phase of the development of the Collective Investment Schemes industry in Mauritius.

**Finance Act 2004**

The Finance Act 2004 makes the following changes:

**The Companies Act 2001**

1. Section 144 which gives the power to a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business will be amended to also include the setting up of an employee's share scheme.
2. Section 269 which provides for the provisions of the Act not applicable to a company

Limited by guarantee will be amended to allow a company limited by shares and guarantee to be converted into a company limited by shares.

3. Section 309 which provides for grounds for removal from register has been amended such that if the Registrar receives a request, in a form approved by him, from –
  - (i) a shareholder authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or
  - (ii) the Board or any other person, where the constitution of the company so requires or

that the company be removed from the register on any grounds specified in subsection (2); then

- (a) it no longer needs to be satisfied that notice has been given in accordance with section 310; and
- (b) it no longer needs to be
  - (i) satisfied that no person has objected to the removal under section 312; or
  - (ii) where an objection to the removal has been received, has complied with section 313.

## Finance Act 2004 (Cont'd)

4. Section 355 which provides for fees payable to the Registrar has been amended such that where a company or a commercial partnership has ceased to carry on business and in respect of which winding-up resolution or striking off procedure or a dissolution procedure, as the case may be, has been initiated, no registration fee under subsection (1) shall be required to be paid as from the year immediately following the year in which the resolution has been filed with the Registrar instead of the year in which the procedure has been initiated.
5. The section 87 (1) which provides for instrument of transfer will now be applicable for companies holding a Category 1 Global Business Licence and Category 2 Global Business Licence and thus a company shall not enter a transfer of shares or debentures in the share register or the register of debenture holders unless a valid instrument of transfer has been delivered to the company in the form required by section 24 of the Registration Duty Act
6. The section 195 which provides for the appointment of auditor will no longer be applicable for companies holding a Category 2 Global Business Licence.

## The Income Tax Act 1995

### Introduction of an "Alternative Minimum Tax" (AMT)

The introduction of Section 44A – Alternative Minimum Tax (AMT) in the Income Tax Act 1995 will apply to companies whose normal tax payable is less than 5% on their book profit in an income year, book profit defined in the Act as being the profit computed in accordance with internationally accepted accounting practices after making adjustments for non allowable and exempt items.

In the context of the case mentioned above, the impact of the AMT will be that, the tax payable for the income year will be the lower of 5% of the book profit or 10% of any dividends declared during the income.

AMT will not be applicable in the following cases as specified in Sub section 2 of section 44 A:

- ⇒ Where a company has not declared any dividend during an income year in which it is being assessed.
- ⇒ Where a company is exempt from the payment of income tax
- ⇒ Where the amount of the 10% of dividends declared is less than the normal tax payable

The normal tax payable is arrived at by multiplying the chargeable income of a company by the tax rate which is applicable to that company as specified in Section 44 and after allowing for any credit to which the company may be entitled to with the exception of a credit for any foreign tax.

Based on the above, it is clear that AMT will not apply to companies holding a Category 1 Global Business Licence – GBL 1. GBL 1 companies, being tax incentive companies, are taxable at the rate of 15% in Mauritius. They are however entitled to a foreign tax credit equivalent to the highest of 80% on the Mauritian tax liability on their foreign source income, so called the Presumed Foreign Tax Credit (PFTC) or the actual foreign tax suffered by the companies. In the definition above of the normal tax payable, credit for any foreign tax is not taken into account, therefore it is implied that whether claiming the PFTC or the actual foreign tax suffered, these will not be considered for the concept of AMT.

## Indian News—Budget 2004/5

The Finance Minister of India presented the Union Budget 2004 in the Indian Parliament. Of note, the proposed changes are:

- Tax rate and surcharge remain the same on capital gains derived on sale of securities transacted other than on the recognised stock exchange. An additional cess of 2 % is however levied.
- Short-term capital gains derived on sale of securities on the recognised Indian stock exchange would be charged at 10 % plus surcharge and cess at 2 % thereon.
- Long-term capital gains derived on sale of securities entered into on a recognised Indian stock exchange are exempt.
- A Transaction tax at 0.15 % on the purchase value of the securities entered into on a recognised Indian stock exchange would be charged.
  - Securities include shares, derivatives (futures and options), government securities, treasury bills etc.;
  - Value of derivative options shall be aggregate of strike price and the option premium;
  - Every recognised stock exchange shall collect the tax;
  - Recognised stock exchange includes NSE, BSE, OTCEI etc.
- The changes come into effect from a date to be notified.

As a result of the proposed changes, tax planning opportunities via Mauritius remain attractive for the following investments in India:

- Short-term investments in listed securities.
- Short-term and long-term investments in unlisted securities.
- Short-term and long-term investments of listed securities through open offers and buy-back by Indian Companies.

## Update on the Indonesia/Mauritius Tax Treaty

The Directorate General of Taxation of the Ministry of Finance of the Republic of Indonesia has issued a Circular letter on 24th June 2004, informing tax officers that the tax treaty will cease to have effect in Indonesia on 1st January 2005.

Sources from the Mauritian authorities indicate that the Indonesian government "is prepared to discuss and negotiate a new agreement that shall safeguard the mutual interest and benefits of our two countries in the future". According to the same sources, the Commissioner of Income Tax of Mauritius, has been named as head of a delegation that will be going to Jakarta in the coming weeks to initiate negotiations.

The Mauritian government has this item high on its agenda with a view to protect the interests of the international investors who have Mauritian companies investing in Indonesia.

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