



*This bulletin provides an overview of the financial services industry and recent developments in Mauritius, including legal and regulatory amendments, important judgments and significant transactions. Please contact **Craig Fulton** or your usual Conyers Dill & Pearman contact with any questions you may have about these updates.*

### **Conyers Dill & Pearman (Mauritius) Limited**

Conyers Dill and Pearman (Mauritius) Limited was licenced in Mauritius as a joint law venture under the Law Practitioners Act 1984 in July 2009. We advise on Mauritius corporate and commercial law, with particular emphasis on the formation of investment funds, joint ventures, listings, banking and finance, project finance and Islamic finance, as well as shipping and aircraft registration and financing. Our Mauritius practice encompasses an integrated global team spanning our Mauritius, London and Dubai offices. Our management company, Codan (Mauritius) Limited, provides incorporation, formation, administration, corporate secretarial and management services to global business entities.

### **Stock Exchange of Mauritius revises Listing Rules for Investment Funds**

The Stock Exchange of Mauritius ("SEM") has recently updated and streamlined its Listing Rules in order to attract the listing of various investment entities, with particular

emphasis on global funds. A global fund is an investment fund which is formed in Mauritius and regulated by the Mauritius Financial Services Commission, but which invests its assets outside of Mauritius.

In order to list a fund, applicants must appoint an authorised representative in Mauritius, such as a law firm, who will be responsible for ensuring that applicants meet all of the listing eligibility requirements prior to any application being made to the SEM. Unlike certain other jurisdictions, there is no requirement for the applicant to have a registered sponsor.

Generally, the applicant must also submit listing particulars in a specified form to the SEM, however, the SEM may accept an offering document registered with the Mauritius Financial Services Commission during the previous 12 months in lieu of this. Applications in the appropriate form are processed within two weeks of submission.

Once listed, the global fund will be required to adhere to the listing rules, including (but not limited to) the filing of quarterly and annual financial statements and submitting net asset valuation calculations on a regular basis.

The SEM is internationally recognised as a well regulated and established stock exchange, reflected in its membership of the World Federation of Exchanges, the South Asian Federation of Exchanges, the African Securities Exchanges Association and the Committee of SADC (Southern

African Development Community) Stock Exchanges. The SEM is also included on the Dow Jones SAFE Index.

With Mauritius located at the gateway of business centres in Europe, the Middle East, Africa and Asia, listing on the SEM enables global funds to broaden their investment base and bring value to their operations.

## Financial Assistance under Mauritius Companies Law

Mauritius law does not prohibit the provision of financial assistance by a company for the purpose of, or in connection with, the acquisition of its own shares (this includes giving a loan, guarantee or the provision of security). However, like most jurisdictions, certain conditions must be met, as set out in the Companies Act 2001 (the “Companies Act”). These include:

- **Approval of the Board of Directors**

The Board’s prior approval is required and can only be given if the Board is satisfied that: (i) giving the assistance is in the interests of the company; (ii) the terms and conditions on which the assistance is given are fair and reasonable to the company and to any shareholders not receiving that assistance; and (iii) immediately after giving the assistance, the company will satisfy the solvency test.

To satisfy the solvency test, the company must be able to pay its debts as they become due in the normal course of business, and the value of the company’s assets must be greater than the sum of the value of its liabilities and the company’s stated capital.

- **Auditors’ certificate**

The auditors of the company are also required to provide a certificate in circumstances where the amount of the financial assistance which has been approved by the Board together with the amount of any financial assistance which is still outstanding at the time of such approval exceeds 10% of the company’s stated capital. The auditors’ certificate confirms that there is nothing to indicate that the Board’s approval is unreasonable in all the circumstances.

- **The whitewash procedure for private companies**

In private companies, financial assistance may be approved by a “whitewashed” procedure in the form of a unanimous shareholders’ agreement pursuant to the provisions of section 272 of the Companies Act. This removes the obligation to consider the interests and solvency of the Company and the fairness of such assistance to all parties, and also effectively reduces the risk of subsequent challenge from the shareholders.

There is nothing under the Companies Act which indicates that failure to comply with the procedure for granting financial assistance will invalidate the transaction to which such assistance pertains. However, directors who fail to comply with the requirements of the Companies Act and other persons who knowingly participate in the breach may, *inter alia*, be held personally liable for breach of their duties under the Companies Act, and may have to compensate the company for any losses suffered as a result.

## Aircraft Registration in Mauritius

The Government of Mauritius recently reviewed the policy for the registration of aircraft in Mauritius, bringing into effect the Civil Aviation (Amendment) Regulations 2010 (the “2010 Regulations”) on 1 February 2010.

Applications for aircraft registration on the Mauritius register are now being actively accepted by the Department of Civil Aviation (the “DCA”), the authority which oversees all matters related to licensing, certification and regulation of aircraft, flight crew, aviation security and safety in Mauritius.

The 2010 Regulations make various technical amendments to the Civil Aviation Regulations 2007. The key change is the introduction of fees relating to services provided by the DCA. Moving forward, the issuance of Certificates of Registration, Certificates of Airworthiness and Noise Certificates will be subject to the payment of the appropriate fee. However, in order to promote the registration of aircraft on the Mauritius Register, these fees have been set at a level that is very competitive in comparison to other jurisdictions.

**Fees of note:**

- A Certificate of Registration for an aircraft having a maximum weight exceeding 15 tons or above would be MUR 30,000 (approximately US\$ 1,000). The same fee would be applicable for a Noise Certificate irrespective of the weight.
- The issue fee, annual fee and renewable fee for a Certificate of Airworthiness would be MUR 200,000 (approximately US\$ 6,666) plus MUR 6.25 per kilogram or part thereof exceeding 30 tons up to a maximum of MUR 635,000 (approximately US\$ 21,166) payable for an aircraft other than a glider, a balloon, a helicopter or a powered lift (tilt rotor) aircraft, having a maximum weight exceeding 30 tons but not exceeding 100 tons, such as a Gulfstream V. For an aircraft having a maximum weight exceeding 200 tons but not exceeding 300 tons (e.g., an airbus A340-300 or a Boeing 767-400ER), the fees would be MUR 1,250,000 (approximately US\$ 41,666) plus MUR 6.25 per kilogram or part thereof, exceeding 200 tons up to a maximum of MUR 1,875,000 (approximately US\$ 62,500).

Aircraft registered in Mauritius enjoy global acceptance and respect for their high standard of safety and their safe operation. The DCA accepts all aircraft with Type Certificates from major Airworthiness Authorities (EASA, FAA, French DGAC), and will also validate foreign flight crew licenses subject to such licenses being issued according to ICAO standards.

The DCA's reputation of responsiveness and timeliness in resolving issues is enhanced by Mauritius' time zone, which conveniently facilitates business with Asian, European, Middle-Eastern and African customers, as well as Mauritius' political stability and the neutrality of the Mauritius registration mark (3B followed by 3 letters).

## **Mauritius Insolvency Act 2009 brought into force**

The recently enacted Mauritius Insolvency Act 2009 (the 'Insolvency Act') follows policy recommendations made by the World Bank in consultation with the Mauritius Steering

Committee on the Mauritius insolvency and creditor rights system. It consolidates and modernises the legal framework for insolvency in Mauritius, completely reworking and updating the previous Mauritius insolvency regime and integrating it into one piece of legislation.

**The Insolvency Act aims to:**

- (a) put in place straightforward and fair procedures for realising and distributing the assets of insolvent individuals and companies;
- (b) promote honest trading with a prudent approach to the incurring of liabilities, impose penalties on the fraudulent and reckless asset trading and asset management practices that lead to insolvency, and place appropriate sanctions on profligate individual and commercial behaviour;
- (c) provide alternatives to bankruptcy for individuals facing insolvency, and procedures for the rehabilitation oriented workout and administration of companies as alternatives to their outright winding up;
- (d) make provision for netting arrangements in financial contracts; and
- (e) address the issue of cross-border corporate insolvencies on the United Nations Commission on International Trade Law (UNCITRAL) model.

**Key features of the Insolvency Act:**

- Four insolvency procedure options:
  - (i) restructuring and workouts, (ii) administration, (iii) receivership and (iv) liquidation.
- A new procedure for voidable transactions which makes it easier for liquidators to trace back payments from insolvent companies.
- Clarification of netting procedures set out in financial contracts (such as ISDAs) which make it clear that netting arrangements will now be enforceable upon the insolvency of a company.

## For more information please contact:

### Mauritius



#### Craig Fulton

Head of Mauritius Office

craig.fulton@conyersdill.com  
+(230) 464 9090



#### Nicolas Richard

nicolas.richard@conyersdill.com  
+(230) 464 9090



#### Sameer Tegally

sameer.tegally@conyersdill.com  
+(230) 464 9090

### Bermuda



#### Anthony Whaley

anthony.whaley@conyersdill.com  
+1 (441) 299 4927

### Dubai



#### Kerri Lefebvre

kerri.lefebvre@conyersdill.com  
+9714 428 2900



#### Sonia Xavier

sonia.xavier@conyersdill.com  
+9714 428 2900

Conyers advises on the laws of Mauritius, Cayman Islands, British Virgin Islands, Cyprus and Bermuda. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters. Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

### Hong Kong



#### Vivien Fung

vivien.fung@conyersdill.com  
+(852) 2842 9500

### London



#### Christopher Johnson-Gilbert

christopher.johnson-gilbert@conyersdill.com  
+44 (0)20 7562 0342



#### Devalingum Gopalla

devalingum.gopalla@conyersdill.com  
+44 (0)20 7562 0358

### Singapore



#### Tan Woon Tiang

tan.woontiang@conyersdill.com  
+65 6603 0712



#### Yanni Long

yanni.long@conyersdill.com  
+65 6603 0714



#### Stacie Seetho

stacie.seetho@conyersdill.com  
+65 6603 0711

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To subscribe to this bulletin please contact [craig.fulton@conyersdill.com](mailto:craig.fulton@conyersdill.com)