Conyers Dill & Pearman

Mauritius Bulletin

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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.

Conyers Advises on First Mauritius Nasdaq Listing

Landmark transaction paves the way for future US listings through Mauritius

Conyers advised MakeMyTrip Limited on its US$ 70 million IPO on the Nasdaq Global Market on August 17, 2010.

MakeMyTrip Limited is the first ever Mauritius incorporated company to list on a major New York stock exchange. The listing clearly demonstrates Mauritius' acceptance as a jurisdiction for major US listings and is a clear indicator of its robust systems of corporate governance.

Conyers' Mauritius practice brought about this precedent-making structure, drawing on the firm's deep experience in complex IPO work in Singapore, as well as Conyers' multi-jurisdictional capabilities in such transactions. Conyers has an international reputation for IPO expertise, and advises on listings on many Asian stock exchanges through its Hong Kong and Singapore offices.

India is an important capital market with huge growth potential. The listing indicates a renewed appetite for capital raising on stock exchanges, and we expect more transactions of this type to follow. With offices in both Singapore and Mauritius, Conyers is ideally positioned to advise on work coming out of Mauritius and India, as the market revitalises.

According to its primary website, www.makemytrip.com, MakeMyTrip Limited is the parent company of MakeMyTrip (India) Private Limited and MakeMyTrip.com Inc., India's largest online travel company, based on 2009 gross bookings.

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The company is backed by several major private equity funds and provides access through its subsidiaries to all major domestic full-service and low-cost airlines operating in India, all major airlines operating to and from India, over 4,000 hotels in India and a wide selection of hotels outside India, Indian Railways and several major Indian bus operators. The company's shares trade on Nasdaq under the symbol MMYT.

Pledge of Shares Under Mauritius Law

As the formation of investment holding companies in Mauritius with the specific purpose of holding investments continues to rise, we are seeing increasing instructions on the pledging of shares of such companies in relation to the financing arrangements of their parent companies. Pursuant to section 86 of the Companies Act 2001 (the "Companies Act"), any share or debenture may be given in pledge in all civil and commercial transactions in accordance with the Civil Code and any other applicable law.

Pledge under the Civil Code

A pledge under the Civil Code is validly created by a transfer in guarantee ("transfert de garantie") inscribed in the register of the company whose shares are being pledged. The inscription is required to note that the title is subject to a pledge, the name of the pledgor ("constituant") and pledgee ("creancier") and the amount of the debt which is being guaranteed. The company is bound to enter the transfer in guarantee, at the request of the pledgor with respect to the shares held by the latter. The company can only refuse to register the transfer if, at the time of the request, the company itself holds rights and privileges on the shares or if the shares are the object of a dispute.

Pledge under the Commercial Code

The Commercial Code on the other hand provides for a specific pledge in favour of financial institutions (including global business companies) only with respect to transferable securities such as shares and debentures. The pledge is created by providing to the pledgee:

(a) The transferable securities that guarantee the obligation or debt; and
(b) An undated, signed blank share transfer form allowing the sale, on behalf of the pledgor or his guarantor, of the securities that have been charged.

The blank share transfer form takes effect and is binding on third parties as from the date of execution of the instrument witnessing the debt or the obligation.

Formalities to be accomplished in relation to a pledge

Every company has to keep a register in which the transfer of shares or debentures given in pledge, whether under the Civil or Commercial Code, may be inscribed. In addition, the inscription has to state that the pledgee holds the share or debenture not as owner but in pledge of a debt. In the case of a pledge under the Civil Code, the amount of the debt has to be noted on the register. The instrument of transfer creating the pledge has to be signed by the pledgor, the pledgee and the secretary of the company. Such an inscription constitutes sufficient proof of the existence of the pledge.

Enforcement of the pledge

In case of default of payment, the pledgee of a pledge under the Civil Code can dispose of the pledge only after obtaining a court order and for an amount not exceeding the secured sum. As a result of this, in practice, pledges under the Civil Code are not widely used as they are not conducive to a quick recovery of funds.

In the case of a pledge under the Commercial Code, the pledgee can directly enforce a pledge when the secured debt becomes due. Subject to any express provision to the contrary in the agreement between the parties, the pledgee can enforce the pledge without any notice to the pledgor or any other judicial or extra-judicial formality. The shares can be sold by the pledgee upon completion of the blank share transfer form. The pledge affords an absolute preferential right over any other debt with respect to the proceeds from the sale of the pledged shares or debentures which can be used for the payment of the sums due by the debtor or its surety.

New Securities Regulations Herald Change for Investors

Investors considering the takeover of Mauritius-incorporated companies, as well as shareholders of the target entity, should take note of the new Securities (Acquisition of Shares of Dissenting Shareholders during Takeovers) Regulations 2010 (the "Regulations").

The Regulations were introduced on 9 July 2010, and are deemed to have come into operation on 1 June 2009.

Importantly, a person acquiring shares in a Mauritius-incorporated company in connection with a takeover offer should note that, according to the Regulations, they may be permitted or required to compulsorily acquire the shares held by minority holders, as below:

- If the acquirer has, within four months after the making of a takeover offer for all the shares of a class not owned by, or by a nominee for, the acquirer, or any of its subsidiaries, obtained the approval for such takeover offer by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares (other than those shares already held at the date of the takeover offer by the acquirer or by a nominee or subsidiary of the acquirer), the acquirer may, at any time within two months after the takeover offer has been so approved, by notice (referred to as an "acquisition notice") compulsorily acquire the shares of any dissenting member on the same terms as the original takeover offer unless the Supreme Court of Mauritius (on an application made by a dissenting member within one month after the date of the acquirer's acquisition notice) orders otherwise.

- Where, in pursuance of a takeover offer, the acquirer becomes entitled by himself or through a related corporation or nominee to nine-tenths or more in nominal value of the shares included in the class of

shares concerned, the acquirer shall within one month after the date on which he becomes entitled by himself or through a nominee to those shares, give notice (referred to as an "ownership notice") of that fact to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the takeover offer or been given an acquisition notice by the acquirer. The holders of the remaining shares may, within three months after the giving of the ownership notice to them, require the acquirer to acquire their shares and, where alternative terms were offered to the approving members, elect which of those terms they will accept.

A person acquiring shares in a Mauritius-incorporated company in connection with a takeover offer should note that they may be permitted or required to compulsorily acquire the shares held by minority holders.

Overview: Redomiciliation of a Company from Mauritius

A company registered or incorporated in Mauritius may, by special resolution of its shareholders, apply to be removed from the Mauritius register of companies (the "Register") for the purposes of becoming registered or incorporated under the law in force in another country.

At least 28 days prior to the application being made to the Registrar of Companies (the "Registrar"), the company must publish a notice in the Government Gazette and in two daily newspapers stating that it intends, after the date specified in the notice, to apply for the company to be removed from the Register for the purposes of becoming incorporated under the law in force in another country, and specifying country under the law of which it is proposed that the company shall be incorporated.

The application to the Registrar is made on a prescribed form, accompanied by the relevant special resolution, the published notices, a declaration by its directors that the company is not prevented from being removed from the Register (see below), a written notice from the Mauritius Revenue Authority that there is no objection to the company being removed from the Register (not applicable for Category 2 Global Business companies), and documentary evidence that the company is to be incorporated under the law in force in the other country.

A company cannot apply to be removed from the Register where:

(a) it is in liquidation or an application has been made to the court to put the company into liquidation;
(b) a receiver or manager has been appointed, whether by a court or not, in relation to the property of the company;
(c) the company has entered into a compromise with creditors or a class of creditors or a compromise has been proposed in relation to the company;
(d) a compromise has been approved by the court in relation to the company or an application has been made to the court to approve a compromise, or
(e) immediately before its removal, the company does not satisfy the solvency test.

Where the above requirements have been satisfied, the Registrar proceeds to remove the company from the Register by signing a notice to that effect.

It is noteworthy that removal from the Register does not:

(a) prejudice or affect the identity of the body corporate that was constituted under the laws of Mauritius or its continuity as a legal person;
(b) affect the property, rights, or obligations of that body corporate; or
(c) affect proceedings by or against that body corporate.

Furthermore, proceedings that could have been commenced or continued by or against a company before the company was removed from the Register may be commenced or continued by or against the body corporate that continues in existence after the removal of the company from the Register.

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