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SECURITIES ACT 2005 (AS AMENDED 2007) & FSC (CONSOLIDATED LICENSING AND FEES) RULES 2008

Collective Investment Schemes (commonly known as funds) (the “CIS”) was, until the advent of the Securities Act 2005 (with amendments 2007) (the “Act”), governed & licensed in Mauritius by the Financial Services Commission under the Financial Services Development Act 2001 (as amended) (the “FSDA”) and in line with international best practice.

The proclamation of the Financial Services Act (FSA) (which repealed the FSDA) and the Act in September 2007 has changed the regulatory framework of the Mauritius CIS. The FSC applies/clarifies the regulatory framework by way of issue of Rules under the FSA and the Act.

The Financial Services (Consolidated Licensing and Fees) Rules 2008 (“the Rules”) were made by the FSC and apply to all financial services (other than banking) licensed and regulated by it. The Rules relating to licensing matters have come into operation on 22 March 2008 while the Fees Rules and related charges shall be applicable as from 1 July 2008.

The FSA and the Act now provides that a proposed GBL1 company which intends to carry out activities as a CIS or CIS Manager must apply to the FSC BOTH for the appropriate GBL1 licence under the FSA AND for a further approval under the Act.

Additional CIS fees will now also apply in addition to the standard GBL1 fees. GBL1 fees were previously due on incorporation /licencing and annually on anniversary of the licence. The Rules now introduces the concept of Due Date. This date is the 01 July annually. Renewable fees are now due on 01 July while FSC fees due on incorporation/licencing are now prorated in relation to the Due Date. No grace period is provided by the FSC for the payment of the fees. Fees paid subsequently to 01 July will now attract penalties/charges.

The salient features of the Act and the Rules are set out below.



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The Act

1.0 Status

The Securities Act 2005 has been proclaimed with amendments on 28th September 2007.

2.0 Authority

The Securities Act 2005 shall be administered by the FSC.

3.0 Repealed Legislations

The Stock Exchange Act 1988

The Unit Trust Act 1989

Certain provisions of the Companies Act 1984 & 2001

4.0 CIS under the Act

In line with international trend, the Act has adopted the term “collective investment scheme” to all arrangements or schemes that operate on the basis of pooling of funds from investors with the object of investment in portfolios of securities and non-financial assets. Such schemes were previously known as mutual funds, unit trusts or investment trusts.

5.0 Prior to the Securities Act 2005 (as amended)

Statutorily, a CIS was recognised as an “Investment Company” only under the Companies Act 2001. This is still the case.

CIS are commonly structured as companies incorporated under the Companies Act 2001 and licensed as a company holding a Category1 licence under the Financial Services Act 2007. Such a structure, referred to as an Investment Company, is defined as one where the company’s business consists of investing its funds mainly in securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.

No further authorization or licensing was required, prior to the coming into force of the Act, for the operation of a GBL1 CIS in Mauritius.

6.0 Under the Securities Act 2005

The Act now governs CIS schemes in such legal forms as may be approved by the FSC. The Act defines the term CIS and describes the duties and obligations of the functionaries involved in the operation of such a scheme.



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6.1 Definitions

6.1.1 “Collective Investment Scheme” –

6.1.1.1 means a scheme constituted as a company, a trust, or any other legal entity

6.1.1.1.1 whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets, real property or non-financial;

6.1.1.1.2 whose operation is based on the principle of diversification of risk;

6.1.1.1.3 that has the obligation, on request of the holder of the securities to redeem them at their net assets value, less commission or fees; and

6.1.1.1.4 where the participants do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management; and

6.1.1.2 includes closed-ended funds whose shares or units are listed on a securities exchange; but

6.1.1.3 does not include such schemes as are specified in Part II of the Schedule of the Act. (concerns non-GBL activities)

6.1.2 “Closed ended fund” –means an arrangement or a scheme, other than a CIS, constituted in such legal form as may be approved by the FSC and whose object is to invest fund collected from subscribers during an offering (through prospectus) or from sophisticated investors, in a portfolio of securities or in other financial or non financial assets, or real property as may be approved by the FSC.

7.0 Authorisation of CIS and closed end funds

Authorization of the FSC is required before operating a CIS or closed ended fund.

8.0 CIS Managers

The CIS Manager is required to be a body corporate and to hold and comply with the conditions of a CIS Manager licence issued by the FSC.

9.0 CIS administrators

Fund administration services cannot be provided to a CIS unless the CIS Manager or the CIS seeks the prior approval of the FSC. The CIS administrator must be a body corporate. GWMS is licensed by the FSC to provide such administration services.

9.1 Definition of administration services

Administration services means services with respect to the operations and administrative affairs of a CIS and includes:

9.1.1 accounting, valuation or reporting services;

9.1.2 the provision of the principal office of the CIS;



The following services are provided by the CIS administrator and contribute to enhancing the substance of the CIS operations in Mauritius for tax residency and treaty purposes. However, such services are not included in the statutory definition of CIS administration.

- (i) the provision of registered office where the usual corporate, secretarial and related services are provided;
- (ii) the maintenance of any register of shareholders or the participants or the registration or payment of fees; and
- (iii) the provision of investment advice or investment management or trading execution services.

10.0 Recognition of foreign CIS

Foreign schemes are not subject to any authorization requirement but are instead required to apply for recognition of the FSC before they may be distributed in Mauritius.

11.0 Company managing its own scheme

Any company e.g a CIS wishing to manage its own scheme (instead of setting up a separate CIS Manager company) is subject to the same requirements, namely prior approval of the FSC and subject to all the duties and obligations, conditions and requirements that apply to a CIS Manager.

12.0 Offences

It is an offence for any person to operate a CIS in contravention to the Act. The offence is punishable by a fine not exceeding one million Mauritius rupees AND imprisonment for a term not exceeding 5 years.

13.0 Duties of CIS Managers

13.1 In exercising their powers and duties, the CIS managers or their officers are required to:

- 13.1.1 act honestly;
- 13.1.2 exercise the degree of care and diligence of a reasonable person in the same position;
- 13.1.3 act in the best interest of participants;
- 13.1.4 treat participants equally;
- 13.1.5 not make use of information acquired through being CIS Manager or officer to -
 - 13.1.5.1 gain an improper advantage for themselves or another person;
 - 13.1.5.2 cause detriment to the participants in the scheme.

A convicted person is liable to a fine not exceeding Mauritius Rs 500,000 AND a term of imprisonment not exceeding 5 years.



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14.0 Terminating or winding up of CIS

The CIS Manager of a CIS cannot wind up the scheme except in accordance with a plan for the winding up approved by the FSC. The purported termination of the CIS shall be effective upon approval by the FSC.

The Court may make orders for terminating the operation of a CIS upon application by the FSC or a participant in the scheme.

15.0 Transitional provisions

	CIS & CIS Manager
An existing scheme is <i>de facto</i> afforded a deemed authorization under the Act to operate for a maximum period , with effect from 28 September 2007, of	3 years
Deadline for the submission of new application by existing scheme to comply with the Act	3 months before 3 year period

New FSC Fees

1. CIS & CIS Manager

- 1.1. The 1st fixed annual fee shall be due and payable in advance at the time the licence is issued and shall be due and payable on 1 July of every subsequent year.
- 1.2. For CIS incorporated prior to 1 July 2008, there is no processing fee as per above and the Fixed Annual Fee shall be due and payable on 1 July of this year.

Applicant	Processing Fee(US\$)	Fixed Annual Fee (US\$)
CIS(Single fund)	1,000	2,500
CIS (> 1 fund)	1,000 which includes the 1 st fund and 300 for each additional fund	2,500 which include the 1 st fund and 500 for each additional fund.
CIS Manager	1,000	2,000

- 1.3. Charges for late payment of Fixed Annual Fee:

Charges (CIS and CIS Manager) <i>Due date is 1 July</i>	
Within one month after due date	25% of corresponding annual fee
Within two months or more after the due date	Above 25% and 15 %of corresponding annual fee for each additional month



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2. GBL1 fees are also applicable

- 2.1. The corresponding processing fee and First Annual Fee for a GBC1 is due and payable at the time the application is made. The renewable annual fee is subsequently due and payable on 1 July of every year.

Applicant	Processing Fee(US\$)	Fixed Annual Fee (US\$)
GBC1	500	1,500

- 2.2. The First Annual Fee is payable as follows:

Months in which application is made	GBC1 (US\$)
July-September	1,500
October-December	1,125
January-March	750
April-June	375

3.1 Fees & Charges

If Annual Fee paid on	(US\$)
Due date	1,500
Within 1 month after due date	1,650
After 1 month, but within 3 months after due date	1,875
After 3 months, but within 6 months after due date	2,250
After 6 months, but within 12 months after due date	3,000

3.2 Transitional Provisions

- 3.2.1 Where the GBL1 licence expires before 1 July 2008, the fee which is due is the actual fee on a pro-rated basis for the period from expiry date to 30 June 2008 plus the Fixed Annual Fee for the year ending 30 June 2009. payment must be made on or before 1 July 2008 to avoid charges;
- 3.2.2 Where the GBL1 licence expires after 1 July 2008, the fee which is due for the year ending 30 June 2009 is the difference between the fee paid and the corresponding annual fee for the year ending 30 June 2009 as at 2.2 above.



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Other

GWMS is associated with SAB&T Incorporated, Chartered Accountants (SA) ("SAB&T"), www.sab-t.co.za, a 28 directors strong financial services provider with six offices located in the major centres of South Africa and a full fledged member of SC International, an international and widely known group of independent accountants, represented in over 60 countries and with 203 member offices globally.

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