

*Bills 2004 1082 Acts 2004*

**THE FINANCIAL REPORTING ACT 2004**

**Act No. 45 of 2004**

*I assent*

K. A. SIR ANEROOD JUGNAUTH

10th December 2004 *President of the Republic*

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# **An Act**

**To regulate the reporting of financial matters and to establish the Financial Reporting Council, the Mauritius Institute of Professional Accountants and the National Committee on Corporate Governance**

ENACTED by the Parliament of Mauritius, as follows –

## **PART I – PRELIMINARY**

### **1. Short title**

This Act may be cited as the Financial Reporting Act 2004.

### **2. Interpretation**

In this Act, unless the context otherwise indicates –

“annual report” means the document that an entity issues on an annual basis on its affairs, including its financial statements together with the audit report thereon, and the report from the Board of Directors;

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“annual revenue” means revenue accruing over the preceding 12 months;

“approved auditor” has the same meaning as in the Companies Act 2001;

“audit” has the same meaning as in the International Federation of Accountants (IFAC) Code of Ethics for Professional Accountants;

“audit firm” means a firm which provides audit services;

“auditing standards” means the auditing standards issued by the Council under section 73;

“Code of Corporate Governance” means the Code of Corporate Governance issued by the National Committee on Corporate Governance under Part V;

“Code of Professional Conduct and Ethics” means the Code established under section 46;

“Council” means the Financial Reporting Council established under section 3;

“director” has the same meaning as in section 128 of the Companies Act 2001, and includes a member of the Board of a state-owned enterprise;

“effective date” means the date as may be prescribed;

“entity” means any person or body of persons, whether incorporated or unincorporated;

“financial reporting and accounting standards” means the financial reporting and accounting standards issued by the Council under section 72;

“financial statement” means the balance sheet, income statement or profit and loss account, statement of changes in equity, cash flow statement, notes and other statements and explanatory material thereon, whether interim or final;

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“financial year” means the period starting from 1 July to 30 June in the following year;

“IASB” means the International Accounting Standards Board or

its successor body;

“IFAC” means the International Federation of Accountants or its successor body;

“IFRS” means the International Financial Reporting Standards issued by the International Accounting Standards Board or the International Accounting Standards issued by the International Accounting Standards Committee, and any standards issued by the bodies or their successor bodies;

“independence” means independence of mind and independence in appearance;

“independence in appearance” means the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, will reasonably conclude that the integrity, objectivity or professional scepticism of a firm or a member of the audit team had been compromised;

“independence of mind” means the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgement, allowing an individual to act with integrity, and exercise objectivity and professional scepticism;

“licensed auditor” means a person who has been issued a licence under section 33;

“Mauritius Institute of Directors” means the Mauritius Institute of Directors set up by the National Committee on Corporate Governance under section 65;

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“member of the Mauritius Institute of Professional Accountants” means a person registered as a professional accountant under section 51;

“Mauritius Institute of Professional Accountants” means the Mauritius Institute of Professional Accountants established under section 44;

“Minister” means the Minister to whom responsibility for the subject of corporate affairs is assigned;

“National Committee on Corporate Governance” means the National Committee on Corporate Governance established under section 63;

“non-compliance” means any act of omission or commission by an entity or by a licensed auditor, either intentional or unintentional, which is contrary to any law, regulation, rule, code or standard;

“officer” in relation to a public interest entity, means a person who is responsible for the preparation of financial statements, and includes the Director, the Chief Executive Officer, and the Chief Financial Officer;

“Official Bulletin” means the official journal of the Council;  
“practice”, in relation to an auditor, means the practice of the auditor or the audit firm;

“professional accountancy body” means –

(a) the Institute or Association specified in section 51(2);

and

(b) such other accountancy body as may be recognised by the Mauritius Institute of Professional Accountants;

“professional accountant” means a person registered under section 51(5);

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“professional services” means services provided by a professional accountant -

(a) requiring accountancy or related skills;

(b) relating to auditing, taxation, management consulting and financial management;

“public accountant” means a professional accountant registered under section 52;

“public interest entity” has the meaning assigned to it in the First Schedule;

“relevant enactment” means –

(a) the Banking Act;

(b) the Companies Act 2001;

(c) the Financial Services Development Act 2001;

(d) the Statutory Bodies (Accounts and Audit) Act;

“revenue” has the same meaning as in the International Accounting Standards;

“state-owned enterprise” means an entity which operates in the public sector to meet a political, social or economic objective, and includes every entity specified in the Second Schedule.

## **PART II – ESTABLISHMENT OF THE FINANCIAL REPORTING COUNCIL**

### **3. Financial Reporting Council**

(1) There is established for the purposes of this Act the Financial Reporting Council.

(2) The Council shall be a body corporate.

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### **4. Objects of Council**

The objects of the Council shall be to –

(a) promote the provision of high quality reporting of financial and non-financial information by public interest entities;

(b) promote the highest standards among licensed auditors;

(c) enhance the credibility of financial reporting; and

(d) improve the quality of accountancy and audit services.

## **5. Functions of Council**

The functions of the Council shall be to –

- (a) lay down financial reporting, accounting and auditing standards;
  - (b) monitor the truth and fairness of financial reporting;
  - (c) monitor the practice of auditors with a view to maintaining high standards of professional conduct;
  - (d) monitor and enforce compliance with financial reporting, accounting and auditing standards;
  - (e) provide advisory, consultancy and informational services on any matter related to its functions;
  - (f) license auditors and establish and maintain a register of licensed auditors;
  - (g) monitor compliance with the reporting requirements specified in the Code of Corporate Governance and in any other guidelines issued by the National Committee on Corporate Governance;
  - (h) ensure co-ordination and cooperation with international institutions in the development and enforcement of financial reporting, accounting and auditing standards;
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- (i) ensure compliance with the standards issued by the IASB and the IFAC;
  - (j) participate in, and initiate the organisation of, activities which promote education and training in the fields of accounting and auditing;
  - (k) conduct practice reviews of licensed auditors;
  - (l) review the financial statements and reports of a public interest entity;
  - (m) encourage, and where appropriate, finance research into any matter affecting financial reporting, accounting, auditing, and corporate governance;
  - (n) enforce compliance with this Act and the rules of the Council by conducting investigations and where appropriate, impose sanctions on licensed auditors, public interest entities and officers of such entities;
  - (o) establish and administer such systems or schemes as the Council may consider necessary or expedient for the discharge of its functions;
  - (p) engage in any activity, either alone or in conjunction with any other organisation or agency, whether local or international, that is connected with or that is conducive to the discharge of its functions;
  - (q) advise the Minister generally on any matter relating to financial and non-financial reporting, accounting and

auditing; and

(r) perform such other duties or functions as the Council deems necessary for the purpose of this Act.

*Bills 2004 1092 Acts 2004*

## **6. Powers of Council**

(1) The Council shall have powers to do all things necessary or convenient to be done, for or in connection with the performance of its functions.

(2) Without prejudice to the generality of subsection (1) but subject to this Act, the powers of the Council shall include the power to –

(a) enter into such contracts as may be necessary or expedient for the purpose of discharging its functions;

(b) borrow such sums of money or raise such loans as it may require for the purpose of discharging its functions;

(c) cooperate with, or become a member or an affiliate of, any international body, the objects or functions of which are similar to or connected with those of the Council;

(d) impose such charges or fees as may be required under this Act;

(e) levy such charges or fees as may be reasonable for services and facilities provided by the Council; and

(f) issue rules, codes, guidelines and standards relating to financial reporting, accounting, and auditing.

## **7. Constitution of Council**

(1) The Council shall consist of –

(a) a Chairperson suitably qualified and experienced in the field of business, finance, accountancy or law who shall be appointed by the Prime Minister;

(b) a Deputy Governor of the Bank of Mauritius;

(c) the Chief Executive of the Financial Services Commission;

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(d) the Registrar of Companies;

(e) an elected member of the Mauritius Institute of Professional Accountants;

(f) an academic from a tertiary education institution, knowledgeable in accounting and financial reporting matters who shall be appointed by the Minister;

(g) a professional from the financial services sector suitably qualified and experienced in the field of business, finance or law who shall be appointed by the Minister;

(h) the Chairperson of the Mauritius Institute of Professional Accountants;

(i) the Chairperson of the Mauritius Institute of Directors.

(2) The Council shall not, at any one time, consist of more than 2 members who are licensed auditors.

(3) The Chairperson of the Mauritius Institute of Professional Accountants and the Chairperson of the Mauritius Institute of Directors shall have no voting rights.

(4) An alternate member may be appointed for every member of the Council, except for the Chairperson.

(5) Every member shall be paid such fees as the Council may, with the approval of the Minister, determine.

### **8. Disqualification from membership**

No person shall be appointed or shall continue to hold office as a member of the Council if he –

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(a) is convicted of an offence involving dishonesty or fraud;

(b) is incapacitated by physical or mental illness;

(c) is otherwise unable or unfit to discharge the functions of a member.

### **9. Term of office**

(1) Every member shall, subject to subsections (4) and (5), hold office for a period of 3 years.

(2) A member may be re-appointed but may not serve for more than 6 out of every 8 years.

(3) A member whose term has expired shall continue to hold office until his successor has been appointed.

(4) In the computation of the total period for which a member has held office, any period during which the member has held office after the expiry of the member's term until the appointment of a successor, shall not be taken into account.

(5) The Minister may, when appointing the first Council, appoint any member for a period of 2 years.

(6) A member may resign from the Council at any time by giving not less than one month's written notice to the Minister.

(7) For the purposes of this section, "member" means a member of the Council appointed under section 7(1)(f) and (g).

### **10. Vacation of office**

The seat of a member shall become vacant –

(a) where he resigns;

(b) where he becomes disqualified from membership under section 8;

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(c) where he no longer holds the office by virtue of which he became a member;

(d) where he has been absent without any leave from the

Council for 3 consecutive meetings or three quarters of the meetings of the Council during a financial year; and  
(e) in the case of alternate members, if he has been absent without any leave from the Council for 3 consecutive meetings or three quarters of the meetings of the Council for which he was delegated to attend during a financial year.

#### **11. Filling of vacancies**

(1) Any vacancy of the seat of a member referred to in section 7(1)(a), (f) and (g) shall be filled not later than 15 days from the date of the occurrence of the vacancy.

(2) Any person appointed under subsection (1) shall hold office for the remainder of the term for which the vacating member was appointed.

#### **12. Meetings of the Council**

(1) The Council shall meet as often as is necessary and at least once every 3 months at such time and place as the Chairperson shall determine.

(2) Where at least 3 members give notice to the Chairperson in writing, to convene a meeting of the Council for any purpose specified in the notice, the Chairperson shall, within 15 days of the receipt of that notice, convene a meeting for that purpose.

(3) In the absence of the Chairperson at a meeting of the Council, the members present shall elect a member to act as Chairperson of the meeting.

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(4) In case of prolonged absence of the Chairperson, the Council may authorise any member of the Council to exercise any power or perform any function conferred on the Chairperson under this Act.

(5) The Council may co-opt a person to assist the Council in dealing with a specific matter where it is satisfied that the person's experience or qualifications are likely to help the Council.

(6) A person co-opted under subsection (5) shall be entitled to take part in the Council's proceedings in relation to the specific matter for which he was co-opted and shall have no right to vote.

(7) Subject to this Act, the Council may determine its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes.

(8) At any meeting of the Council, 5 members shall constitute a quorum.

#### **13. Decisions of the Council**

(1) Subject to subsection (2), a decision at a meeting of the Council shall be adopted by a simple majority of the members present

and entitled to vote and, in case of an equality of votes, the Chairperson shall have a casting vote.

(2) Every decision of the Council in relation to the suspension or withdrawal of the licence of an auditor shall be approved by at least three quarters of members present and entitled to vote.

#### **14. The Chief Executive Officer**

(1) The Council shall appoint a Chief Executive Officer on such terms and conditions as the Council may determine, with the approval of the Minister.

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(2) The Chief Executive Officer shall be a professional accountant.

(3) The Chief Executive Officer shall be responsible to the Council for the proper administration and management of the functions and affairs of the Council, in accordance with the policies laid down by the Council.

(4) The Chief Executive Officer shall –

(a) recruit such employees and consultants on such terms and conditions as may be approved by the Council for the effective performance of the functions of the Council;

(b) prepare the budget and programme of activities of the Council for approval;

(c) conduct such investigations as the Council may direct; and

(d) appoint, on such terms and conditions as he deems fit, suitably qualified and experienced persons to form part of the panels of experts established under section 17.

(5) The Chief Executive Officer may, with the approval of the Council, delegate any of his functions, and any power delegated to him under section 15, to such employee as may be designated by the Council.

(6) The Chief Executive Officer shall, unless otherwise directed by the Council, attend every meeting of the Council.

#### **15. Delegation of powers**

(1) Subject to subsections (2) and (3), the Council may delegate to the Chief Executive Officer, or a technical committee of the Council consisting of employees, such of its functions and powers under this

*Bills 2004 1098 Acts 2004*

Act as may be necessary to assist in the effective management of the Council, except –

(a) the power to enter into any transaction in respect of capital expenditure of an amount exceeding 1,000,000 rupees; and

(b) the powers of the Council referred to in section 6(2)

(b), (d) and (f).

(2) Subject to subsection (3), no document relating to any transaction referred to in subsection (1)(a), shall be executed or signed by or on behalf of the Council unless it is signed by the Chairperson, or in his absence, by any other member appointed by the Council for that purpose, and the Chief Executive Officer.

(3) In the absence of the Chief Executive Officer, the functions and powers delegated to him under subsection (1) shall be exercised by such employee as may be designated by the Council for that purpose.

(4) The Council may withdraw or amend the delegation of its powers and functions made under subsection (1).

#### **16. Committees**

(1) The Council may establish one or more committees to assist it in the performance of its functions.

(2) Any committee established under subsection (1) may, at any time, be dissolved or reconstituted by the Council.

(3) The committee shall consist of such number of persons, whether members of the Council or not, as the Council considers necessary.

(4) Every member of a committee shall be appointed by the Council on such terms and conditions as it deems fit.

*Bills 2004*

*1099 Acts 2004*

#### **17. Panel of experts**

(1) The Council shall, for the purposes of this Act, establish the following panels of experts –

(a) a Standards Setting Panel;

(b) a Financial Reporting Monitoring Panel;

(c) an Audit Practice Review Panel; and

(d) an Enforcement Panel.

(2) The Council shall determine the number of persons who may be appointed in respect of each panel.

(3) The panels shall consist of such employees of the Council, and such other persons not being members of the Council, that the Chief Executive Officer determines are necessary.

#### **18. Standards Setting Panel**

The Standards Setting Panel shall be responsible for developing, renewing, improving, and adopting financial reporting and accounting standards and auditing standards, and for making appropriate recommendations to the Council on the standards.

#### **19. Financial Reporting Monitoring Panel**

The Financial Reporting Monitoring Panel shall be responsible for reviewing, analysing and identifying any failure on the part of any public interest entity to comply with any financial reporting and accounting standard, code or guideline issued under this Act, and with such other financial reporting and accounting standards as may be specified under the relevant enactments.

(2) The Financial Reporting Monitoring Panel shall, in the discharge of its functions under subsection (1), inform the public interest entity in writing that it may make representations to the panel.

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(3) Subject to this Act and the rules made by the Council, the Financial Reporting Monitoring Panel shall conduct its monitoring exercise in such manner as it thinks fit.

(4) The Financial Reporting Monitoring Panel shall, where it identifies a failure on the part of the public interest entity, pursuant to the discharge of its duties under subsection (1), submit its findings and recommendations to the Enforcement Panel for consideration.

## **20. Audit Practice Review Panel**

(1) The Audit Practice Review Panel shall –

(a) conduct practice reviews of licensed auditors and audit firms and any other entity, which assisted or is assisting the licensed auditors or the audit firms in discharging their duties;

(b) determine, when conducting practice reviews, whether a licensed auditor or an audit firm has complied with the Code of Professional Conduct and Ethics and any applicable auditing standards, as required under this Act.

(2) The Audit Practice Review Panel shall, when conducting a practice review, inform the licensed auditor, audit firm, and any other entity which assisted or is assisting the licensed auditor or the audit firm in the discharge of his or its duties, that representations may be made to the panel.

(3) The Audit Practice Review Panel shall, pursuant to the discharge of its duties under subsection (1), submit its findings and recommendations to the Enforcement Panel for consideration.

(4) Subject to this Act and the rules made by the Council, the Audit Practice Review Panel shall conduct its practice review in such manner as it thinks fit.

*Bills 2004*

*1101 Acts 2004*

## **21. Enforcement Panel**

(1) The Enforcement Panel shall consider any findings and recommendations referred to it by the Financial Reporting Monitoring Panel, the Audit Practice Review Panel, or the Council and shall, on the basis of the findings and recommendations determine the appropriate action to be taken.

(2) The Enforcement Panel shall, within 15 days of the receipt of the findings and recommendations referred to in subsection (1) notify the public interest entity, the licensed auditor or audit firm, as the case may be, of its decision.

## **22. Objections to decisions of Enforcement Panel**

Any public interest entity, licensed auditor or audit firm who wishes to object to the decision of the Enforcement Panel shall, within 14 days of being notified of the decision, lodge its or his objection in writing with the Council, specifying the grounds of objection.

### **23. Hearing Committee**

(1) The Council shall, within 14 days of the receipt of the objection from the public interest entity, licensed auditor or audit firm, establish an ad-hoc Hearing Committee to consider the grounds of objection raised by the public interest entity, the licensed auditor or the audit firm, as the case may be.

(2) The Hearing Committee shall consist of a Chairperson and 2 other members, who shall have not less than 10 years' proven experience and knowledge in the field of business, finance, accountancy or law.

(3) The Chairperson and other members of the Hearing Committee shall not, in the discharge of their functions and duties under this Act, be subject to the direction or control of the Council.

*Bills 2004 1102 Acts 2004*

(4) The members of the Hearing Committee shall be appointed by the Council on such terms and conditions as it thinks fit.

(5) In considering any ground of objection, the Hearing Committee may require –

(a) the public interest entity, the licensed auditor or the audit firm, as the case may be, to make written representations within a period of 14 days of being notified; and

(b) any of the panels of experts to provide such clarification as it thinks fit.

(6) Where the public interest entity, the licensed auditor or the audit firm fails to make written representations to the Hearing Committee within the period of 14 days, the Hearing Committee may, on good cause shown by the entity, auditor or the firm, as the case may be, extend the delay for making representations under subsection (5)(a).

(7) The Hearing Committee shall make a determination within 60 days of the date on which the members of the Hearing Committee are appointed.

(8) (a) The Hearing Committee may confirm, amend, vary or quash the decision of the Enforcement Panel.

(b) Any determination of the Hearing Committee shall be by simple majority of the members of the Committee.

(c) The Hearing Committee shall make a report of its findings and recommendations to the Council.

(9) The Council shall endorse the recommendation of the

Hearing Committee, unless it considers that the recommendation is manifestly unreasonable.

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(10) The Council shall inform the party having lodged an objection of its final decision as soon as is reasonably practicable.

#### **24. Rules and codes of practice**

(1) The Council shall make and issue such rules or codes of practice to establish its procedures and policies for the purpose of regulating licensed auditors and financial reporting by public interest entities.

(2) The Council may revise such rules or codes by revoking, varying or adding to the provisions of the rules or codes of practice, as the case may be.

#### **25. Code of Ethics**

The Council shall adopt a Code of Ethics to establish the rules and standards of conduct to be observed by every member of the Council, Panel, Committee, or an employee or consultant of the Council, in the discharge of their respective functions and duties.

#### **26. Cooperation mechanism**

(1) The Council may enter into a Memorandum of Understanding with such regulatory body as it considers appropriate in order to exchange or share information for the purpose of discharging its functions under this Act.

(2) The Council may enter into a Memorandum of Understanding with the Bank of Mauritius, the Financial Services Commission and the Registrar of Companies for the purposes of assisting them in the discharge of their functions.

*Bills 2004 1104 Acts 2004*

#### **27. Disclosure of information**

(1) Every member of the Council, Committee or a member of a panel of experts, or an employee of, or a consultant employed by the Council, shall, before he begins to perform any duties under this Act, take an oath of confidentiality in the form set out in the Third Schedule.

(2) No person who is or has been –

(a) an employee of, or a consultant employed by, the Council;

(b) a member of a panel of experts established under section 17; or

(c) a member of the Council or any committee established under this Act,

shall disclose any information relating to the affairs of the Council or of any other person, which he has obtained in the performance of his duties or the exercise of his functions under this Act, unless such

disclosure is made –

- (i) with the written authorisation of the person from whom the information was obtained or, where the information is the confidential information of a third person, with the written authorisation of such person;
- (ii) for the purpose of the administration or enforcement of this Act; or
- (iii) in compliance with the requirement of any Court or the provisions of any enactment.

(3) No person who is or has been –

- (a) an employee of, or a consultant employed by, the Council;
- (b) a member of a panel of experts established under section 17; or

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- (c) a member of the Council or any Committee established under this Act,

shall, for his own personal benefit or for the personal benefit of any other person, make use of any information, whether directly or indirectly, which has been obtained by him in the performance of his duties or the exercise of his functions.

(4) For the purposes of this section, “disclosing or making use of any information” includes permitting any other person to have access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been a member of the Council or Committee, or a member of a panel of experts, or an employee of or a consultant employed by the Council.

(5) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 12 months.

## **28. Protection from liability**

No liability, civil or criminal, shall attach to the Council, any member of the Council or of a Committee or a panel of experts or any employee of the Council in respect of any loss arising from the exercise in good faith by the member of the Council or Committee or panel, or the employee of the Council in the performance of his or its duties or the exercise of his or its functions.

## **29. Accountability of Council**

(1) The Council shall, subject to subsection (5), submit to the Minister an annual report on its affairs and functions during that financial year, within 4 months of the close of its financial year, and such report shall include –

- (a) a copy of its audited annual financial statements, together with the report of the Director of Audit thereon;

*Bills 2004 1106 Acts 2004*

(b) an overview of the activities of the Council;

(c) an account of the extent to which the objects of the Council have been achieved in that financial year;

(d) a profile of the members of the Council, their attendance of meetings of the Council, and their remuneration; and

(e) a profile of the Chief Executive Officer, the senior employees and members of the Committees and Panels, and their respective remuneration.

(2) The Council shall ensure that its annual financial statements are prepared in accordance with the standards set out under this Act or any regulation made under the Act.

(3) The annual financial statements of the Council shall be audited by the Director of Audit.

(4) The Minister shall, at the earliest available opportunity, lay a copy of the annual report before the National Assembly.

(5) The period starting from the commencement of this Act to 30 June in the next year shall be deemed to be the first financial year.

### **30. Funding**

(1) The Council shall establish a General Fund into which all monies received by the Council shall be paid, and out of which all payments and charges on the Council shall be effected.

(2) The Council shall derive its funds from –

(a) funds allocated to it by the Government,

(b) fees or other charges levied under this Act; and

(c) such other source as may be approved by the Minister.

*Bills 2004*

*1107 Acts 2004*

(3) The Council shall, not later than 3 months before the commencement of each financial year, submit to the Minister an estimate of its income and expenditure for that financial year.

### **31. Exemptions**

Notwithstanding any other enactment, the Council shall be exempt from the payment of any duty, levy, charge, fee, rate or tax.

### **32. Powers of Minister**

The Minister may give such directions to the Council, not inconsistent with the provisions of this Act, as he considers necessary in the public interest and the Council shall comply with those directions.

## **PART III – LICENSING OF AUDITORS**

### **33. Licensing of auditors**

(1) No person shall hold any appointment, or offer any services for remuneration, as an auditor, unless he holds a licence under this Act.

(2) Every person who wishes to obtain a licence shall make a written application to the Council.

(3) An application made under subsection (2) shall be accompanied by such fees and such information as the Council may require.

(4) Where, after consideration of an application, the Council is satisfied that the applicant –

(a) holds a practising certificate issued by the Mauritius Institute of Professional Accountants under section 55(2);

(b) is a fit and proper person; and

*Bills 2004 1108 Acts 2004*

(c) meets such requirements as may be specified in the rules of the Council,

the Council shall issue a licence to the applicant authorising him to practise as an auditor.

(5) The Council shall enter the name of the licensed auditor and such particulars as it considers relevant, in the Register of Licensed Auditors.

(6) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 2 years.

#### **34. Duration of licence**

(1) Every licence issued under section 33 shall be valid for such period as the Council may determine.

(2) Every licensed auditor who wishes to renew his licence shall, not later than 3 months before the expiry of the licence, make a written application to the Council in such form and manner as the Council may determine.

(3) Where the Council is satisfied that the applicant continues to meet the requirements for the issue of a licence, the Council shall renew the licence.

(4) Where the Council has not dealt with an application for the renewal of a licence under subsection (2) before the expiry of the licence, the licence shall continue to be in force until the application for renewal is dealt with and any renewal in such case shall be taken to have commenced from the day when the licence would have expired but for the renewal.

*Bills 2004*

*1109 Acts 2004*

#### **35. Audit practice by a firm**

(1) No licensed auditor shall practise as an auditor, on his own account, or in partnership with other persons, in the name of a firm unless the name of the firm has been approved by the Council.

(2) Any licensed auditor who wishes to practise in the name of

a firm shall apply in writing to the Council in such form and manner as the Council may require, for the approval of the name of the firm.

(3) An application made under subsection (2) shall be accompanied by such fees as the Council may determine and such information as the Council may require.

(4) The Council shall not approve the proposed name or any proposed change in the name of an audit firm where the proposed name or proposed change in the name –

(a) is the same as a firm name already approved by the Council;

(b) so closely resembles a firm name that it is likely to cause confusion;

(c) is, in the opinion of the Council, misleading, offensive or otherwise contrary to public interest; or

(d) is in breach of the Business Registration Act 2002.

(5) Where a licensed auditor provides auditing services in partnership with other persons in a firm, the firm shall submit to the Council, at the end of each calendar year, a list of the names of the partners who are licensed auditors and those partners who are not licensed auditors.

(6) Where a licensed auditor or any other partner resigns or joins a firm, the firm shall forthwith inform the Council in writing of that fact.

*Bills 2004 1110 Acts 2004*

### **36. Change of name**

(1) Every licensed auditor and audit firm shall, where there is a change in his name or the name of the firm as the case may be, or in any of his or its particulars recorded in the Register of Licensed Auditors, notify the Council of such change within 30 days of the change occurring, in such manner as the Council may require.

(2) Any person who fails, without reasonable excuse, to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

### **37. Unauthorised audit practice**

No licensed auditor shall –

(a) employ a person who has been suspended from practising as a licensed auditor or a public accountant to carry out work in connection with his audit practice, unless the Council has consented to such employment;

(b) practise under the name of a firm, unless prior notification has been made to the Council –

(i) in the case of a partnership, of the first names and initials of the partners of the firm;

(ii) where a letterhead is used, of a copy of the letterhead;

(iii) where the name of the firm is similar to, or includes the name of a regional or international network, or

where the name of the firm mentions that it is part of a network in its letterhead or any other document, the nature of such association or relationship with the regional or international network; and

(c) sign any account, statement, report or other document which purports to represent work performed by the licensed auditor, unless he is satisfied and is prepared to take full responsibility for the work done.

*Bills 2004*

*1111 Acts 2004*

### **38. Refusal to license auditors**

Where the Council refuses to issue a licence to an applicant under section 33 or 35, it shall, by notice in writing, inform the applicant of its refusal as soon as practicable.

### **39. Auditor's report and opinion**

(1) Where an auditor makes a report on the financial statements of an entity which he has audited, he shall express a clear written opinion in his report, giving details as to whether –

(a) the financial statements as a whole give a true and fair view of the matters to which they relate; and

(b) the financial statements comply with –

(i) this Act, or any other relevant enactment; and

(ii) the financial reporting and accounting standards.

(2) No licensed auditor shall, in his report, express an opinion unless he has complied with the auditing standards issued by the Council under section 73.

(3) Where, in the annual report of the entity, the directors disclose the extent of compliance with the Code of Corporate Governance, the auditor shall report whether the disclosure is consistent with the requirements of the Code.

### **40. Material irregularity**

(1) Where, during the course of the audit of a public interest entity, a licensed auditor is satisfied, or has reason to believe, that a material irregularity has taken or is taking place, he shall, without delay –

(a) notify in writing the officers and all the members of the Board of the public interest entity of the irregularity, by giving particulars of the irregularity; and

*Bills 2004 1112 Acts 2004*

(b) request every person referred to in paragraph (a), either individually or collectively, to take such action as he may deem necessary, and to acknowledge receipt in writing of the notice.

(2) The licensed auditor shall, within 30 days of the issue of notice referred to under subsection (1), notify the Council and the Mauritius Institute of Professional Accountants of the material

irregularity referred to in subsection (1), together with such other information as he deems fit, unless he is satisfied that the officers or the members of the Board of the public interest entity referred in subsection (1), have taken adequate steps to remedy the irregularity.

#### **41. Independence of auditor**

An auditor shall carry out his functions in full independence and shall not –

- (a) act in any manner contrary to the Code of Professional Conduct and Ethics; or
- (b) engage in any activity which is likely to impair his independence as an auditor.

#### **42. Conflict of interest**

Where an auditor considers that he may have a conflict of interest in relation to an entity for which he has been engaged as an auditor, he shall disclose to the entity the nature of the conflict of interest in order for the entity to determine the extent of the conflict and to decide whether to continue retaining the services of the auditor.

#### **43. Sanctions on licensed auditors**

(1) The Council may either cancel or suspend a licence granted to an auditor under section 33 where the auditor –

- (a) has obtained the licence by fraud or misrepresentation;
- (b) no longer satisfies the requirements of section 33;

*Bills 2004*

*1113 Acts 2004*

(c) has acted in breach of this Act or any rule made by the Council.

(2) Notwithstanding subsection (1), where a licensed auditor has committed a breach of this Act or any rule made by the Council, the Council may issue a warning to the licensed auditor.

### **PART IV – THE MAURITIUS INSTITUTE OF PROFESSIONAL ACCOUNTANTS**

#### **44. Establishment of Mauritius Institute of Professional Accountants**

(1) There is established for the purposes of this Act, the Mauritius Institute of Professional Accountants.

(2) The Mauritius Institute of Professional Accountants shall be a body corporate.

#### **45. Objects of Mauritius Institute of Professional Accountants**

The objects of the Mauritius Institute of Professional Accountants shall be to –

- (a) supervise and regulate the accountancy profession; and
- (b) promote the highest standards of professional and business conduct of, and enhance the quality of services offered by, professional accountants.

#### **46. Functions of Mauritius Institute of Professional Accountants**

(1) The Mauritius Institute of Professional Accountants

shall –

(a) establish, publish and review a Code of Professional Conduct and Ethics for professional accountants, which shall be consistent with and contain all the principles of IFAC's Code of Ethics for Professional Accountants;

*Bills 2004 1114 Acts 2004*

(b) keep and maintain –

(i) a Register of Professional Accountants;

(ii) a Register of Public Accountants;

(iii) a Register of Member Firms; and

(iv) such other registers as the Mauritius Institute of Professional Accountants may deem necessary for the purposes of this Act;

(c) lay down the requirements for its membership;

(d) consider any application for registration made under this Act;

(e) conduct, or arrange for the conduct of, such examinations as it thinks necessary for the purposes of registering professional accountants;

(f) require any person registered under this Act to follow such continuing professional educational programmes as it may determine;

(g) inquire into any written complaint made against any professional accountant, either on its own initiative or at the request of any person;

(h) institute disciplinary action for any breach of the Code of Professional Conduct and Ethics, the rules of the Mauritius Institute of Professional Accountants, and the provisions of this Act and regulations made under the Act;

(i) prepare the rules of the Mauritius Institute of Professional Accountants;

(j) issue all certificates and notices required to be issued under this Act; and

*Bills 2004*

*1115 Acts 2004*

(k) perform such other duties or functions as it deems necessary to promote the highest professional standards among, and improve the quality of professional services offered by, its members.

(2) Where the Mauritius Institute of Professional Accountants has been notified of a material irregularity pursuant to section 40(2), and is satisfied that an offence has been, is being, or is likely to be committed, it shall take appropriate disciplinary action against its members, as the case may be, and report the matter to the relevant authorities.

#### **47. Board of Mauritius Institute of Professional Accountants**

(1) The Mauritius Institute of Professional Accountants shall be administered and managed by a Board in accordance with this Act and its rules.

(2) Subject to subsection (5), the Board of the Mauritius Institute of Professional Accountants shall consist of not more than 7 members who shall be elected by the General Assembly.

(3) The Board of the Mauritius Institute of Professional Accountants shall elect from amongst its members a Chairperson and 2 Vice-Chairpersons.

(4) No person shall be eligible to be a member of the Board of the Mauritius Institute of Professional Accountants, unless he is a member of the Mauritius Institute of Professional Accountants.

(5) The Board of the Mauritius Institute of Professional Accountants shall consist of not more than 2 members of any one of the professional accountancy bodies.

(6) Every member of the Board of the Mauritius Institute of Professional Accountants shall hold office for a period of 3 years on such terms and conditions as may be provided in the rules of the Mauritius Institute of Professional Accountants and shall be reeligible for appointment for not more than 3 terms.

*Bills 2004 1116 Acts 2004*

(7) The Board shall appoint one-third of the number of members of the first Board for a period of one year, of 2 years, and of 3 years respectively to ensure continuity of the Board of the Mauritius Institute of Professional Accountants.

#### **48. Meetings of the Board**

(1) The Board of the Mauritius Institute of Professional Accountants shall meet as often as is necessary and at least once every month, and at such time and place as the Chairperson shall determine.

(2) In the absence of the Chairperson at a meeting of the Board of the Mauritius Institute of Professional Accountants, the members present shall elect a member to act as Chairperson for that meeting.

(3) The Board of the Mauritius Institute of Professional Accountants may co-opt such other person as may be of assistance in relation to any matter before the Board of the Mauritius Institute of Professional Accountants.

(4) A person co-opted under subsection (3) shall be entitled to take part in the Board's proceedings in relation to the specific matter for which he was co-opted, and shall have no right to vote.

(5) At any meeting of the Board of the Mauritius Institute of Professional Accountants, 4 members shall constitute a quorum.

#### **49. Powers of the Board**

(1) The Board of the Mauritius Institute of Professional

Accountants shall have power to do anything for the purpose of discharging the functions of the Mauritius Institute of Professional Accountants under this Act, or under the rules of the Mauritius Institute of Professional Accountants.

*Bills 2004*

*1117 Acts 2004*

(2) Without prejudice to the generality of subsection (1) but subject to this Act, the powers of the Board shall include the power to –

- (a) enter into such contracts as may be necessary or expedient for the purpose of discharging its functions;
- (b) become a member of, an affiliate of, an international body, the functions or objects of which are similar to or connected with those of the Mauritius Institute of Professional Accountants;
- (c) establish and administer such systems or schemes as the Mauritius Institute of Professional Accountants may consider necessary or expedient for the discharge of its functions;
- (d) engage in any activity, either alone or in conjunction with any other organisation or agency, whether local or international, that is connected with or that is conducive to the discharge of its functions;
- (e) impose such fees and charges as may be necessary in the discharge of its functions under this Act;
- (f) recognise any accountancy qualifications, as are in the opinion of the Board, equivalent to those of a member of the professional accountancy body; and
- (g) do such other acts as are incidental or necessary to any of its functions and powers.

#### **50. Registers**

(1) The Mauritius Institute of Professional Accountants shall -

(a) record in the Register of Professional Accountants the name and all relevant particulars of every registered professional accountant;

*Bills 2004 1118 Acts 2004*

(b) record in the Register of Public Accountants the name and all relevant particulars of every registered public accountant;

(c) record in the Register of Member Firms the name and all relevant particulars of every registered member firm;

(d) record such other information in the appropriate register, as it deems necessary; and

(e) publish, not later than 3 months after the end of its financial year, in the *Gazette* and in 2 daily newspapers in Mauritius, of which one at least shall be

approved by the Chief Executive Officer, an annual list of professional and public accountants, and names of member firms.

(2) The Register of Professional Accountants, the Register of Public Accountants and the Register of Member Firms shall at all reasonable times be available for inspection by any person, on payment of such fee as may be approved by the Mauritius Institute of Professional Accountants.

### **51. Registration of professional accountants**

(1) No person shall hold himself out as a professional accountant, or use any description or designation likely to create the impression that he is a professional accountant, unless he is registered as a professional accountant with the Mauritius Institute of Professional Accountants.

(2) Every member of –

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Institute of Chartered Accountants of Ireland;

*Bills 2004*

*1119 Acts 2004*

(d) the Association of Chartered Certified Accountants;

(e) the Institute of Chartered Accountants of India;

(f) the Chartered Institute of Management Accountants;

and

(g) the South African Institute of Chartered Accountants, shall apply to the Mauritius Institute of Professional Accountants to be registered as a professional accountant.

(3) A person who is a member of a professional accountancy body other than those referred to in subsection (2), and –

(a) satisfies the requirements relating to qualifications in the field of accountancy; and

(b) has a minimum of 3 years' practical experience in the field of accountancy,

may apply to the Mauritius Institute of Professional Accountants, to be registered as professional accountant in such form or manner as the Mauritius Institute of Professional Accountants may determine.

(4) An application made under this section shall be accompanied by such fees and such information as the Mauritius Institute of Professional Accountants may determine.

(5) The Mauritius Institute of Professional Accountants shall register the applicant as a professional accountant and enter his name and such particulars as the Mauritius Institute of Professional Accountants considers relevant, in the Register of Professional Accountants where the applicant –

(a) is a citizen of Mauritius, or where he is a noncitizen, he holds a work permit or is legally exempted

from holding a work permit;

(b) is a member of a professional accountancy body;

*Bills 2004 1120 Acts 2004*

(c) is of good character and has not been convicted of an offence involving fraud or dishonesty in any country;

(d) has successfully undergone such examination or assessment as the Mauritius Institute of Professional Accountants may deem fit for the purpose of determining whether he possesses adequate professional accountancy knowledge and skills; and

(e) has paid such fees as the Mauritius Institute of Professional Accountants may determine.

### **52. Registration of public accountants**

(1) Every professional accountant who intends to practise as a public accountant shall apply in writing to the Mauritius Institute of Professional Accountants in such form and manner as the Mauritius Institute of Professional Accountants may require.

(2) An application made under subsection (1) shall be accompanied by such fees and such information as the Mauritius Institute of Professional Accountants may require.

(3) The Mauritius Institute of Professional Accountants shall register an applicant under subsection (1) as a public accountant and enter his name and such particulars as the Mauritius Institute of Professional Accountants considers relevant in the Register of Public Accountants, where it is satisfied that the applicant –

(a) meets the requirements laid down in the rules of the Mauritius Institute of Professional Accountants;

(b) has made such arrangements as may be provided in the rules of the Mauritius Institute of Professional Accountants, for continuing professional education;

(c) is a fit and proper person;

*Bills 2004*

*1121 Acts 2004*

(d) has the necessary competence to practise as a public accountant and a period of more than 2 years has elapsed between the date he has undertaken any education and training as provided by the rules of the Mauritius Institute of Professional Accountants and the date of the application.

(4) The Mauritius Institute of Professional Accountants may require, as a condition for a public accountant to be allowed to remain in practice, that the public accountant comply with any continuing educational and professional requirements as may be specified in the rules of the Mauritius Institute of Professional Accountants.

### **53. Refusal to register professional or public accountants**

- (1) On receipt of an application under section 51 or 52, the Mauritius Institute of Professional Accountants may –
- (a) refuse to register an applicant as a professional accountant where the applicant –
    - (i) does not satisfy any of the requirements specified in section 51(5); or
    - (ii) is otherwise unfit to be registered as a professional accountant;
  - (b) refuse to register an applicant as a public accountant where the applicant –
    - (i) has had his licence or approval to practise as a public accountant withdrawn, suspended, cancelled or revoked in any country; or
    - (ii) is otherwise unfit to be registered as a public accountant.
- (2) Where the Mauritius Institute of Professional Accountants refuses to register an applicant under this section, it shall inform the applicant in writing of its refusal as soon as is reasonably practicable.

*Bills 2004 1122 Acts 2004*

#### **54. Registration of member firms**

- (1) Every firm which provides or intends to provide professional services shall apply for registration to the Mauritius Institute of Professional Accountants.
- (2) An application under subsection (1) shall be made in writing to the Mauritius Institute of Professional Accountants in such form and manner as the Mauritius Institute of Professional Accountants may determine.
- (3) The Mauritius Institute of Professional Accountants shall register the firm and enter its name and such particulars as it considers relevant in the Register of Member Firms, upon being satisfied that –
- (a) at least half of the partners of the firm are registered with the Mauritius Institute of Professional Accountants;
  - (b) there is a written undertaking by the applicant firm and the partners individually that they shall be bound by the disciplinary provisions of the rules of Mauritius Institute of Professional Accountants;
  - (c) the applicant firm holds a professional indemnity insurance, or provides such other financial guarantee as the Mauritius Institute of Professional Accountants may from time to time determine.

#### **55. Certificate of registration and practising certificate**

Where the Mauritius Institute of Professional Accountants registers –

- (a) a person as a professional accountant,
- (b) a firm as a member firm,

it shall issue to the person or the firm, as the case may be, a certificate of registration.

*Bills 2004*

*1123 Acts 2004*

(2) Where the Mauritius Institute of Professional Accountants registers a person as a public accountant, it shall issue to him a practising certificate.

(3) A certificate of registration and a practising certificate shall be issued in such form and upon payment of such fees as may be determined by the Mauritius Institute of Professional Accountants.

#### **56. Cancellation or suspension of registration**

(1) The Mauritius Institute of Professional Accountants may either suspend or cancel the registration of a professional accountant, a public accountant or a member firm, and order the removal of his or its name from the relevant register where –

(a) the person or firm has obtained its registration by fraud or misrepresentation;

(b) the person or firm no longer satisfies or has acted in breach of any rule of the Mauritius Institute of Professional Accountants; and

(c) the registration of that person has been suspended or cancelled by a professional accountancy body of which he is a member;

(d) the person or firm has acted in breach of the provisions of this Act.

(2) Where the Mauritius Institute of Professional Accountants cancels a practising certificate, it may also cancel the membership of Mauritius Institute of Professional Accountants of the holder of the practicing certificate.

(3) Where the Mauritius Institute of Professional Accountants suspends a practising certificate, it may suspend the membership of the holder of the practising certificate of the Mauritius Institute of Professional Accountants for the period for which the certificate has been suspended.

*Bills 2004 1124 Acts 2004*

#### **57. Renewal of registration**

(1) Any person wishing to renew his practising certificate upon expiry thereof may, not less than one month before the date of expiry, make an application to the Mauritius Institute of Professional Accountants for the renewal of the certificate in such form as may be approved by the Mauritius Institute of Professional Accountants.

(2) Any member firm wishing to renew its certificate of registration upon expiry thereof may, not less than one month before the date of expiry, make an application to the Mauritius Institute of Professional Accountants for the renewal of the certificate in such form as may be approved by the Mauritius Institute of Professional

Accountants.

(3) An application under subsections (1) and (2) shall be accompanied by such fees and such information as the Mauritius Institute of Professional Accountants may require.

**58. Change in particulars of Register**

Every registered accountant and member firm shall, whenever there is a change in his or its name or in any of his or its particulars in the Register of Professional Accountants, the Register of Public Accountants and the Register of Member Firms, as the case may be, notify the Mauritius Institute of Professional Accountants of such change within 30 days of the change occurring in such manner as the Mauritius Institute of Professional Accountants may require.

**59. Rules of Mauritius Institute of Professional Accountants**

(1) The Mauritius Institute of Professional Accountants shall prepare and issue such rules as it considers appropriate.

(2) The rules shall be binding on every member of the Mauritius Institute of Professional Accountants.

*Bills 2004*

*1125 Acts 2004*

(3) The rules shall deal with matters relating to the –

(a) terms and conditions of the membership of Mauritius Institute of Professional Accountants;

(b) procedures to institute disciplinary proceedings;

(c) circumstances and conditions for an appeal against a decision of the Mauritius Institute of Professional Accountants;

(d) requirements for public practice;

(e) conduct of the meetings of the Mauritius Institute of Professional Accountants;

(f) need for continuous training and education for both professional and public accountants; and

(g) imposition of fees.

(4) The rules of the Mauritius Institute of Professional Accountants may, from time to time, be amended as the General Assembly may approve.

**60. Fund and property of Mauritius Institute of Professional Accountants**

(1) The Mauritius Institute of Professional Accountants shall establish a fund into which all money received by it shall be paid, and out of which all payments and charges on the Mauritius Institute of Professional Accountants shall be effected.

(2) The Board of the Mauritius Institute of Professional Accountants may, for the purposes of subsection (1) –

(a) levy such charges or fees as may be reasonable, to register its members and to provide services and facilities to its members;

*Bills 2004 1126 Acts 2004*

(b) receive donations, gifts, grants, subsidies and contributions from any source; and

(c) raise funds by all lawful means.

(3) The Mauritius Institute of Professional Accountants may, with the approval of the General Assembly –

(a) invest its funds in such manner as it thinks fit; and

(b) engage in any financial activity or participate in any financial arrangement for the purpose of managing or hedging against any financial risk that arises or is likely to arise from such investment.

(4) For the discharge of its functions under this Act or under any other enactment, the Mauritius Institute of Professional Accountants may, from time to time, with the approval of the General Assembly, raise loans from banks and other financial institutions by mortgage, overdraft or otherwise.

### **61. Accountability of Mauritius Institute of Professional Accountants**

(1) The Mauritius Institute of Professional Accountants shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Mauritius Institute of Professional Accountants and over the expenditure incurred by the Mauritius Institute of Professional Accountants.

(2) The Mauritius Institute of Professional Accountants shall –

(a) within 3 months of the close of its financial year, submit to its members an annual report on its affairs and functions during that financial year, which shall include –

(i) a copy of its audited annual financial statements;

*Bills 2004*

*1127 Acts 2004*

(ii) an overview of the activities of the Mauritius Institute of Professional Accountants;

(iii) an account of the extent to which the objects of the Mauritius Institute of Professional Accountants have been achieved in that financial year;

(iv) a profile of Board Members of the Mauritius Institute of Professional Accountants, and their attendance of meetings of the Mauritius Institute of Professional Accountants; and

(v) such other matters as the Board of the Mauritius Institute of Professional Accountants may determine to maintain public confidence in the accountancy profession;

(b) file a copy of the annual report referred to in paragraph (a) with the Council within 3 months of the close of its financial year.

(3) The period starting from the commencement of this Act to 30 June in the following year shall be the first financial year.

#### **62. Appointment of auditor**

(1) The Mauritius Institute of Professional Accountants shall, at each Annual General Assembly appoint an auditor who shall hold office until its next Annual General Assembly.

(2) Where the auditor appointed under subsection (1) is incapable, for any reason, to hold his office, the Board may appoint another person to audit the accounts of the Mauritius Institute of Professional Accountants.

(3) A person shall not be eligible for appointment under subsection (1) unless he is a licensed auditor.

*Bills 2004 1128 Acts 2004*

(4) No person shall be qualified to be appointed as an auditor where he is –

(a) a member of the Board of the Mauritius Institute of Professional Accountants; or

(b) a partner of a member of the Board of the Mauritius Institute of Professional Accountants.

(5) The remuneration of the auditor shall be determined by the Mauritius Institute of Professional Accountants at its General Assembly.

### **PART V – THE NATIONAL COMMITTEE ON CORPORATE GOVERNANCE**

#### **63. Establishment of National Committee on Corporate Governance**

There is established for the purposes of this Act the National Committee on Corporate Governance.

#### **64. Objects of the National Committee on Corporate Governance**

The objects of the National Committee on Corporate Governance shall be to –

(a) establish principles and practices of corporate governance;

(b) promote the highest standards of corporate governance;

(c) promote public awareness about corporate governance principles and practices;

(d) act as the national coordinating body responsible for all matters pertaining to corporate governance.

#### **65. Functions of the National Committee on Corporate Governance**

The National Committee on Corporate Governance shall –

(a) assess the needs for corporate governance in the public and private sectors;

*Bills 2004*

*1129 Acts 2004*

(b) organise and promote the organisation of workshops,

seminars and training in the field of corporate governance;  
(c) issue the Code of Corporate Governance and guidelines, and establish a mechanism for the periodic re-assessment of the Code and guidelines;  
(d) provide assistance and guidance in respect of the adoption of good corporate governance;  
(e) establish links with regional and international institutions engaged in promoting corporate governance;  
(f) co-operate with the Council and with any other person or institution in order to fulfil its objects;  
(g) set up the Mauritius Institute of Directors; and  
(h) advise the Minister on any matter relating to corporate governance.

#### **66. Composition of the National Committee on Corporate Governance**

(1) The National Committee on Corporate Governance shall consist of a Chairperson, and not more than 10 other members, who shall be appointed by the Minister, from amongst persons having wide experience or expertise in legal, financial, corporate and business matters.

(2) Every member of the National Committee on Corporate Governance shall hold office for a period of 3 years on such terms and conditions as the Minister may determine, and shall be eligible for reappointment.

(3) The National Committee on Corporate Governance may co-opt any person who may be of assistance in relation to any matter before it.

*Bills 2004 1130 Acts 2004*

(4) The appointment of any member of the National Committee on Corporate Governance may be terminated by the Minister on any of the grounds specified in section 37 (3)(b)(i), (iii), (iv) and (v) of the Interpretation and General Clauses Act.

(5) Every member shall be paid such fees as the Minister may determine.

#### **67. Meetings of National Committee on Corporate Governance**

(1) The National Committee on Corporate Governance shall meet as often as is necessary but not less than once every 3 months, and at such time and place as the Chairperson may determine.

(2) The National Committee on Corporate Governance shall, subject to this Act, regulate its meetings and its procedures at meetings in such manner as it thinks fit.

(3) In the absence of the Chairperson at a meeting of the National Committee on Corporate Governance, the members present shall elect a member to act as Chairperson for that meeting.

#### **68. Funding of National Committee on Corporate Governance**

(1) The National Committee on Corporate Governance may

receive any money appropriated from the Consolidated Fund and any other money lawfully accruing to the National Committee on Corporate Governance from any other source.

(2) The National Committee on Corporate Governance shall establish a General Fund into which all money received by it, and out of which all payments required to be made by it, shall be paid.

(3) The National Committee on Corporate Governance shall, not later than 3 months before the commencement of each financial year, submit to the Minister its plan of action and an estimate of its expenditure for that financial year.

*Bills 2004*

*1131 Acts 2004*

### **69. Accountability of National Committee on Corporate Governance**

(1) The National Committee on Corporate Governance shall, within 3 months of the close of its financial year, submit to the Minister a report on its affairs and functions during that financial year.

(2) The report referred to in subsection (1) shall include –

(a) an overview of the activities of the National Committee on Corporate Governance; and

(b) an account of the extent to which the objectives set by this Act had been achieved in that financial year by the National Committee on Corporate Governance.

(3) A copy of the report shall be filed with the Council within 3 months of the close of its financial year.

### **70. Objects of Mauritius Institute of Directors**

The Mauritius Institute of Directors shall –

(a) promote the highest standards of corporate governance, and of business and ethical conduct of directors serving on the boards of companies and state-owned enterprises;

(b) assess the needs of directors and organise conferences, seminars, workshops and training; and

(c) co-operate with the Council and the National Committee on Corporate Governance and with other institutions and organisations having objects similar to those of the Mauritius Institute of Directors in order to fulfil its objects.

### **71. Annual report of Mauritius Institute of Directors**

(1) The Mauritius Institute of Directors shall file a copy of its annual report with the Council and the National Committee on Corporate Governance within 3 months of the close of its financial year.

*Bills 2004 1132 Acts 2004*

(2) The annual report shall include –

(a) the audited annual financial statements; and

(b) an overview of the activities of the Mauritius Institute of Directors during that financial year.

(3) The period starting from the commencement of this Act to

30 June in the following year shall be the first financial year.

## **PART VI – SETTING OF STANDARDS AND MONITORING**

### **72. Financial reporting and accounting standards**

(1) The Council shall develop, issue and keep up-to-date financial reporting and accounting standards, and ensure consistency between the standards issued and the International Financial Reporting Standards.

(2) The Council shall specify, in the financial reporting and accounting standards, the minimum requirements for recognition, measurement, presentation and disclosure in annual financial statements, group annual financial statements or other financial reports which every public interest entity shall comply with, in the preparation of financial statements and reports.

(3) The Council shall specify in the financial reporting and accounting standards, the minimum requirements for recognition, measurement, presentation and disclosure in annual financial statements, group annual financial statements or other financial reports, with which every entity, other than a public interest entity, shall comply in the preparation of its financial statements and reports.

### **73. Auditing standards**

(1) The Council shall develop, issue and keep up-to-date auditing standards, and ensure consistency between the standards issued and the auditing standards and pronouncements of the International Auditing and Assurance Standards Board.

*Bills 2004*

*1133 Acts 2004*

(2) The Council may issue rules and guidelines for the purpose of implementing the auditing standards.

(3) Every licensed auditor shall, in the exercise of his profession, comply with –

(a) such minimum requirements as shall be specified by the Council in the auditing standards;

(b) any rule and guideline issued under this Act.

### **74. Publication of standards**

(1) Where the Council intends to publish or amend any financial reporting and accounting standards or any auditing standards, it shall cause a notice to be published in –

(a) the *Gazette*; and

(b) not less than 2 daily newspapers for 3 consecutive days,

inviting comments from all interested persons.

(2) Any person who wishes to submit any comment shall, within 21 days of the last date of the publication specified in subsection (1), submit his comments in writing to the Council.

(3) The Council may, in deciding whether to approve the standards or their amendments, have regard to any comment submitted

under subsection (2).

#### **75. Compliance by public interest entities**

Where any public interest entity is required to prepare any financial statement or report under any enactment, it shall ensure that the financial statement or report is in compliance with the financial reporting requirements of any other relevant enactment, the financial reporting and accounting standards issued by the Council under section 72, regulations made under this Act, and the rules of the Council.

*Bills 2004 1134 Acts 2004*

#### **76. Monitoring of financial statements and reports**

(1) Where a public interest entity is required under any enactment to file its financial statements and reports with a government department or authority, the Council or any officer authorised by it in writing, may review the financial statements and reports of a public interest entity filed with the government department or authority to determine whether the financial statements and reports are in compliance with this Act.

(2) The Council, or any officer authorised by it in writing, may seek further information or clarification from –

(a) any director of a public interest entity;

(b) any employee of a public interest entity responsible for preparing the financial statements and reports;

and

(c) any auditor responsible for the audit of the financial statements of that public interest entity.

(3) Where a public interest entity files any financial statement and report with any government department or authority, the public interest entity shall also file a copy of the financial statement and report with the Council, in such manner as may be set out in the rules of the Council.

(4) Nothing in this section shall be taken to compel the production by any public interest entity, its employee and the auditor responsible for the audit of the financial statements, of any book, document, record or material containing –

(a) any information which is confidential under the Banking Act or any other enactment; and

(b) a privileged communication by or to a legal practitioner in that capacity,

except in so far as the disclosure of the information is made according to law.

*Bills 2004*

*1135 Acts 2004*

#### **77. Practice review of auditors**

(1) The Council, or any officer authorised by it in writing, may review the practice of an auditor and may, for that purpose –

(a) inspect any relevant book, document and record in

the possession, or under the control of the auditor, his partner or employee and make copies of or take any abstract of or extract from any such book, document and record; and

(b) seek information or clarification from any partner or employee of the auditor.

(2) Subject to subsection (3), every auditor shall, at the request of the Council, or any officer authorised by it in writing, produce any relevant book, document or record in his possession or under his control for the purposes of subsection (1).

(3) Nothing in this section shall be taken to compel the production by an auditor of a book, document, record or material containing –

(a) any information which is confidential under the Banking Act or any other enactment; and

(b) a privileged communication by or to a legal practitioner in that capacity,

except in so far as the disclosure of the information is made according to law.

#### **78. Power of investigation**

(1) The Council may investigate or cause to be investigated –

(a) any complaint of dishonest practice, negligence, professional misconduct, or malpractice made against a licensed auditor; or

*Bills 2004 1136 Acts 2004*

(b) any breach of the Code of Professional Conduct and Ethics by a licensed auditor; or

(c) any material irregularity notified to it pursuant to section 40(2).

(2) Where the Council investigates a complaint –

(a) it shall notify the auditor whose conduct, act or omission is under investigation, of the nature of the complaint;

(b) it may summon and hear the auditor;

(c) it may summon and hear witnesses;

(d) it may call for relevant documents and make such copies thereof as it thinks fit; and

(e) it may review any financial statement and report filed with any government department or authority.

(3) Every public interest entity or auditor shall, subject to subsections (4) and (5), produce any relevant book, record or document in his possession or under his control to the Council where the Council is conducting an investigation for the purposes of subsection (1)

(4) A person may refuse to answer a question put to him or refuse to furnish any information, document, record or book, where the

answer to the question or the production of the document, record or book might tend to incriminate him.

(5) Nothing in this section shall be taken to compel the production by the auditor, the public interest entity or its officer of any book, document, record or any other material containing –

(a) any information which is confidential under the Banking Act or any other enactment; and

*Bills 2004*

*1137 Acts 2004*

(b) privileged communication by or to a legal practitioner in that capacity,

except in so far as the disclosure of the information is made according to law.

(6) The Council shall refer the findings of any investigation under subsection (1) to the Enforcement Panel for the determination of the appropriate sanction to be imposed.

### **79. Sanctions on public interest entities**

(1) Where the Council reaches a final decision under section 23, to the effect that a public interest entity has failed to comply with any financial reporting and accounting standard, code or guideline issued under this Act, and with such other financial reporting and accounting standards as may be specified under the relevant enactments, the Council may issue a warning to the public interest entity or serve a notice on the public interest entity for an immediate restatement of its financial statement.

(2) Where a notice is served on a public interest entity under subsection (1), it shall, within 30 days of the service of the notice, restate its financial statements and resubmit them to the Council and to the government department or authority.

(3) Any public interest entity which fails to comply with the notice referred to in subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees, and the Council may refer the matter to the Registrar of Companies or the relevant government department or authority for appropriate action.

### **80. Publication**

The Council shall –

(a) periodically publish an Official Bulletin which shall contain –

(i) the rules made by the Council; and

*Bills 2004 1138 Acts 2004*

(ii) such other information as the Council may deem necessary;

(b) cause to be published in the *Gazette* and in a daily newspaper a notice relating to the rules of the Council which have been made, altered or revoked.

(2) The Council may cause to be published in the *Gazette* or in its Official Bulletin or in a daily newspaper, its findings or decisions under sections 21(2), 23(7), 43 and 79.

### **81. Referral to police**

Without prejudice to the powers of the Council under this Act, where an investigation carried out by, or on behalf of the Council, reveals that an offence may have been committed, the matter under investigation shall be referred to the Police.

### **82. Appeals**

Any person aggrieved by a final decision of the Council or the Mauritius Institute of Professional Accountants may appeal to the Supreme Court by way of judicial review.

## **PART VII – MISCELLANEOUS MATTERS**

### **83. Consequential amendments**

(1) The Statutory Bodies (Accounts and Audit) Act is amended in section 2, by deleting the definition of “qualified auditor” and replacing it by the following new definition –

“qualified auditor” means –

(a) an auditor licensed under the Financial Reporting Act 2004; and

(b) the Director of Audit;

*Bills 2004*

*1139 Acts 2004*

(2) The Companies Act 2001 is amended in sections 211(3) and 214(3) by deleting the words “Mauritius Accounting and Auditing Standards Committee Act 1989” and replacing them by the words “Financial Reporting Act 2004”.

(3) Section 212 of the Companies Act 2001 is deleted and replaced by the following section –

### **212. Presentation of Consolidated Financial Statements**

The Board of a company that has, on the balance sheet date of the company, one or more subsidiaries, shall, in addition to complying with section 210, ensure that, within 6 months after the balance sheet date, it complies with IFRS in relation to the presentation of group financial statements.

### **84. Transitional provisions**

(1) The Minister shall, pending the holding of the General Assembly, appoint 5 members to the interim Board of the Mauritius Institute of Professional Accountants, of which one shall be appointed as interim Chairperson.

(2) All 5 members of the interim Board shall be members of the professional accountancy bodies, provided that no single professional accountancy body shall be represented by more than 2 members.

(3) The interim Board shall –

(a) set up the registers of its members and shall hand over such registers to the elected Board following the

holding of the first General Assembly;  
(b) draft the rules governing the Mauritius Institute of Professional Accountants for submission to the General Assembly of the Mauritius Institute of Professional Accountants for approval; and

*Bills 2004 1140 Acts 2004*

(c) within 3 months of its constitution under subsection (1), organise and convene the first General Assembly of the Mauritius Institute of Professional Accountants which shall elect the Board of the Mauritius Institute of Professional Accountants and approve the rules of the Mauritius Institute of Professional Accountants.

(4) The interim Board shall be dissolved when the new Board of the Mauritius Institute of Professional Accountants is constituted pursuant to section 47.

(5) Notwithstanding section 51, every person who, immediately before the coming into operation of this Act, is a member of a professional accountancy body, shall, upon providing evidence of his membership of the professional accountancy body to the Mauritius Institute of Professional Accountants within 3 months of the effective date, be deemed to be registered as a professional accountant under this Act.

(6) Notwithstanding section 52, every person who, immediately before the coming into operation of this Act, is a member of a professional accountancy body and is offering professional services to the public, may continue to offer his professional services to the public without being registered as a public accountant under this Act –

(a) during the period of 6 months beginning with the effective date; and

(b) where, an application for registration as a public accountant is made within that period, until that application is finally disposed of or withdrawn.

(7) Notwithstanding section 34, every person who, immediately before the coming into operation of this Act –

*Bills 2004*

*1141 Acts 2004*

(a) is or has been practising as an auditor, may continue to practise as an auditor without being licensed under this Act –

(i) during the period of one year beginning with the effective date; and

(ii) where, within that period an application is made for a licence, until that application is finally disposed of or withdrawn;

(b) is or has been practising as an auditor, whether or not

on his own account, or in partnership with other persons under a firm name, shall continue to practise under the firm name without the approval of such firm name by the Council under this Act –

(i) during the period of one year beginning with the effective date; and

(ii) where, within that period an application is made for approval, until that application is finally disposed of or withdrawn.

(8) Notwithstanding section 34, every person who, immediately before the coming into operation of this Act, is or has been working as an approved auditor pursuant to the Companies Act 2001, may continue to work as an approved auditor under that Act without a licence under this Act –

(i) during the period of one year beginning with the effective date; and

(ii) where, within that period an application is made for a licence, until that application is finally disposed of or withdrawn.

*Bills 2004 1142 Acts 2004*

(9) Notwithstanding the provisions of Part VI of this Act, no state-owned enterprise shall be required to comply with the financial reporting requirements imposed under this Act before 30 June 2006.

### **85. Repeal and savings**

(1) The Mauritius Accounting and Auditing Standards Committee Act is repealed.

(2) Notwithstanding the repeal of the Mauritius Accounting and Auditing Standards Committee Act, the accounting and auditing standards published pursuant to that Act shall remain in force and shall continue to apply to existing companies until the publication of new accounting and auditing standards under this Act, subject to such modifications, adaptations, qualifications and exceptions as may be necessary to bring them in conformity with the provisions of this Act.

### **86. Regulations**

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) The Minister may, by regulations, amend the Schedules.

### **87. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the twenty third day of November two thousand and four.

Ram Ranjit Dowlutta

*Clerk of the National Assembly*

*Bills 2004*

*1143 Acts 2004*

**FIRST SCHEDULE**

*(section 2)*

**Public Interest Entity**

“public interest entity” means any entity which has an annual revenue exceeding 250 million rupees at the end of its preceding accounting year, or meets any 2 of the following conditions –

(a) it has an annual revenue over 150 million rupees;

(b) it employs over 100 persons;

(c) it has total assets greater than 100 million rupees or total liabilities greater than 30 million rupees, at the end of its preceding accounting year.

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**SECOND SCHEDULE**

*(section 2)*

**State-Owned Enterprises**

1. Agricultural Marketing Board
2. Board of Investment
3. Central Electricity Board
4. Central Water Authority
5. Development Works Corporation
6. Export Processing Zones Development Authority
7. Farmers’ Service Corporation
8. Financial Services Promotion Agency
9. Food and Agricultural Research Council
10. Industrial and Vocational Training Board
11. Irrigation Authority

*Bills 2004 1144 Acts 2004*

12. Mahatma Gandhi Institute
13. Mauritius Broadcasting Corporation
14. Mauritius College of the Air
15. Mauritius Examinations Syndicate
16. Mauritius Industrial Development Authority
17. Mauritius Film Development Corporation
18. Mauritius Freeport Authority
19. Mauritius Institute of Education
20. Mauritius Meat Authority
21. Mauritius Ports Authority
22. Mauritius Standards Bureau
23. Mauritius Sugar Authority
24. Mauritius Sugar Industry Research Institute
25. Mauritius Sugar Terminal Corporation
26. National Computer Board
27. National Productivity and Competitiveness Council
28. National Transport Corporation

- 29. Outer Islands Development Corporation
- 30. Private Secondary Schools Authority
- 31. Rose Belle Sugar Estate Board
- 32. Small and Medium Industries Development Organization
- 33. State Insurance Corporation of Mauritius
- 34. State Trading Corporation
- 35. Sugar Industry Labour Welfare Fund
- 36. Sugar Insurance Fund
- 37. Sugar Planters Mechanical Pool Corporation
- 38. Tea Board
- 39. Tertiary Education Commission
- 40. Tobacco Board
- 41. Waste Water Management Authority

*Bills 2004*

*1145 Acts 2004*

**THIRD SCHEDULE**

*(section 27)*

Oath of Confidentiality

**IN THE SUPREME COURT OF MAURITIUS**

I ..... being appointed  
 (Chairperson / Member of Council / Member of Committee / Member  
 of a Panel of Experts / Chief Executive Officer / Secretary / employee  
 / consultant) do hereby swear / solemnly affirm that I will, to the best  
 of my judgment, act for the furtherance of the objects of the Council  
 and shall not, on any account and at any time, disclose, otherwise than  
 with the authorisation of the Council or where it is strictly necessary  
 for the performance of my duties, any information of a confidential  
 nature obtained by me in virtue of my official capacity.

.....

*Signature*

Taken before me, .....

Master and Registrar,

Supreme Court on.....