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Corporate finance legislation in Mauritius

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Having been a colony of both France and England, Mauritius has inherited a hybrid legal system, with our civil law being based on France's Napoleon Code and our rules of procedures, evidence and some substantive law being based on English law. This legal fusion is apparent in the field of corporate finance, where contractual obligations are primarily governed by the civil code while our corporate and financial laws are inspired by English law.

Companies Act 2001

In line with the government's international commitments to eliminate ring-fencing provisions, a new Companies Act came into operation in 2001, aligning the legal provisions governing domestic companies with those applicable to offshore companies and international companies. The Companies Act is inspired by the New Zealand Companies Act 1993, and in the words of the minister who presented the Bill in the National Assembly, it "incorporates international best practice and promotes accountability, openness and fair dealing".

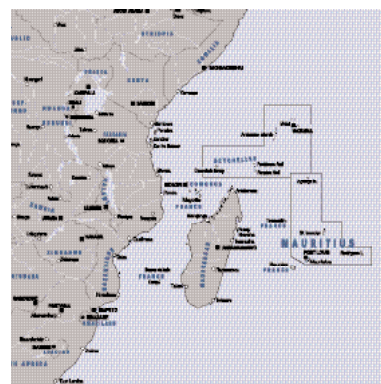
The Companies Act does away with the requirement for a company to have an authorized capital. Shares are to be issued as no par value shares, although companies that existed the Companies Act came into force, and companies holding a global business licence, can opt to have par value shares.

Subject to the constitution of the company, the board can issue shares having such rights as the board shall determine including redeemable shares, non-voting shares and shares having disproportionate rights. A company is permitted to buy back its shares and hold treasury shares as long as it satisfies the solvency test.

Public companies wishing to issue shares or debentures to the public must first prepare and file a prospectus complying with the requirement of the law with the Registrar of Companies. A company issuing debentures of the same class to more than 25 persons must sign an agency deed and procure the appointment of a debenture holders' representative.

As a protection for creditors, the Companies Act provides that a director may be personally liable for any loss suffered by creditors as a result of the company continuing to trade when the director believed that the company was unable to pay its debts as they fall due.

It is worth noting that a company may not enter into any transaction that has, or is likely to have, the effect of the company incurring obligations or liabilities the value of which is more than half of the value of the company's assets before the transaction, unless the transaction is approved by the shareholders or is contingent upon such approval.





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Firm Profile:

ERRIAH & UTEEM CHAMBERS is the only Chambers, which specialises in International tax law, International trusts law and all aspect of offshore business activities. The Chambers was set up in response to the demand for Mauritius-based lawyers with international exposure and specialized expertise in the fields of international trusts, international finance, corporate and cross border insolvency. Both Dev Erriah and Muhammad Uteem graduated in the UK and hold LLM in international tax law, Company law, law of international finance and international trusts from the University of London. Dev Erriah worked for a number of years in England and did his pupillage with Philip Baker QC at Gray's Inn Tax Chambers. Muhammad Uteem was an associate of US firm Pillsbury Winthrop for three years and worked principally in its Hong Kong and Singapore offices. Dev and Muhammad are the Chairman and Secretary of STEP Mauritius (Society of Trust and Estate Practitioners) respectively.

More than 80% of the Chamber's practice involves advising international clients, multinational enterprises, international law firms, the top ten international accountant firms, management companies, domestic and international banks. The Chambers provides litigation services, advice and legal opinions on any aspect of the laws of Mauritius, international tax planning, domestic taxation, international investments, international trusts law, company law and international bankruptcy, international criminal law and economic crimes, international law of finance inclusive of capital structured finance and derivatives, securitisation by making use of special purpose vehicle, aircraft leasing, international banking and privatization. The Chambers is also involved in the setting up of funds in India, various jurisdictions in Africa, China etc, international tax and trust structuring, implementation of international transactions, negotiation, drafting of transaction documents and review of all legal documentation inclusive of trusts deeds, corporate constitutive documents, credit facility documents etc. The Chambers undertakes international litigation such as international bankruptcy, enforcement of international creditor's claim and money laundering.

The Chambers has a very divers portfolio of international clients which ranges from sophisticated institutional investors, merchant banks and government linked agencies to the individual who requires international tax planning and estate planning. The Chambers has also advised overseas governmental agencies and has been involved in legislative drafting in Mauritius.

Stock Exchange Act 1988

The stock exchange in Mauritius consists of two markets – the Official List and the Over The Counter Market – which are both operated and managed by the Stock Exchange of Mauritius (the Exchange), set up under the Stock Exchange Act 1988. Applications for listing are considered by an independent listing committee, which also oversees listed companies. Companies listed on the Exchange are governed by the new Listing Rules, which were issued in 2001. The Listing Rules, which embody international standards and practice, govern the admission to listing, the continuing obligations of listing, the enforcement of those obligations and suspension and withdrawal from the Official List of the Exchange.

Financial Services Development Act 2001

The Financial Services Commission (the Commission) was set up in 2001 pursuant to the Financial Services Development Act 2001 and regulates all non-banking financial activities in Mauritius. The banking section is regulated by the Bank of Mauritius. The Commission regulates the activities of the Exchange and licenses stock market intermediaries (that is, stockbroking companies, stockbrokers, dealers' representatives and clerks).

The Commission also licenses and regulates companies holding a category one global business licence (formerly known as off-shore companies) and companies holding a category two global business licence (formerly known as international companies). The Commission insists that only fit and proper persons should be admitted as shareholders of companies holding a global business licence, and consequently requires full disclosure of beneficial ownership of such companies.

Financial Intelligence and Anti Money Laundering Act 2002

The Financial Intelligence and Anti Money Laundering Act 2002 imposes a duty on banks, financial institutions, cash dealers or members of a relevant profession or occupation to take such measures as are reasonably necessary to ensure that neither they, nor any service offered by them, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence. Such entities must verify the true identity of all customers, and be satisfied that the source of funds is not derived from any criminal activities. They must also report any suspicious transaction to the Financial Intelligence Unit.

Upcoming development

As at the time of writing (March 2004), a new Securities Bill is under preparation. This Bill will regulate the issue of securities and the content of offering documents, as well as the licensing of financial intermediaries.

Corporate and commercial**Recommended firms**

Chambers of Sir Hamid Moollan QC

Collendavelloo Chambers

De Comarmond & Koenig

JuristConsult Chambers

Banymandhub Boolell Chambers

Erriah & Uteem Chambers

Étude André Robert

MC Law Offices

Chambers of Sir Hamid Moollan QC

The reputation of Sir Hamid Moollan's chambers in Mauritius is based to a large extent on its advice to the government on financial legislation – the firm was involved with the 1999 amendments to the Financial Service Development Act and the adjustments in 2001 to the new Company Act.

This does not mean, though, that the firm is not highly recommended for deal-specific advice. It has a firm record of advice on all areas of commercial law, with clients including insurance companies, construction companies, banks and other financial institutions. Yousuf Aboo Baker, who also recently became the equivalent of a QC in Mauritius, is highly recommended for his transaction advice.

The firm is also one of the largest firms in Mauritius, with around 20 lawyers working in Port Louis.

Key contact partners

Sir Hamid Moollan

Chetty Ravinda

Leading lawyer

Sir Hamid Moollan

Collendavelloo Chambers

The firm's prime practice is international corporate and commercial transactions. Collendavelloo Chambers has been placed in the first-tier, based both on the quality and breadth of its work. The firm comprises four partners and four associates in Mauritius' capital, Port Louis, of which partner Dev Erriah is the best known.

Past work includes advising Citibank on the \$750 million Rosetta transaction and working with Ernst & Young advising Compaq on a \$300 million internal restructuring – an area in which the firm has established a strong reputation.

Litigation is also a well-regarded practice at Collendavelloo, and while this isn't strictly speaking a part

of the *IFLR1000*'s remit, this expertise does help it with insolvency and restructuring advice in Mauritius. The firm is also recognized internationally for its excellent consultancy services on offshore business, international tax law and international trust law.

Key contact partner

Dev Erriah

De Comarmond & Koenig

Senior partner Vincent Koenig at De Comarmond & Koenig is recommended by his peers and well respected in the legal market, but the firm's leading lawyer, according to competitors, is Sir Henry Garrioch, commended for his incisive knowledge of the financial market. De Comarmond & Koenig is a member of the Lex Mundi and Lex Africa associations of independent law firms.

De Comarmond & Koenig is one of the largest practices in the country and traditionally acts for major local companies engaged in banking, insurance, project finance, aircraft leasing, environmental law, taxation and construction. Recently, however, the firm has advised on much Franco-Mauritian business involving international banks, insurance companies and sugar producers. All of the firm's international and offshore work is carried out under the name Maigrot Koenig, which was the first legal firm to obtain an offshore certificate.

The firm's history goes back to 1828, when Eugène Leclézio began practising as an attorney in Port Louis. In 1870 Leclézio took over the practice of Henry Koenig and the firm adopted its current shape in 1967 when Guy de Comarmond and Vincent Koenig took over the firm and renamed it De Comarmond & Koenig. So the firm can claim to be the oldest in Mauritius.

Key contact partners

Thierry Koenig
Vincent Koenig

Leading lawyer

Sir Henry Garrioch

JuristConsult Chambers

Marc Hein, who heads JuristConsult Chambers, is recommended by his peers as one of the island's best corporate lawyers, despite the fact that the firm itself specializes in litigation work. Hein is supported by six associates, all of whom speak English, French and Creole and four of whom are also fluent in Hindi.

Investment fund work has brought JuristConsult into contact with international firms Clifford Chance and Baker & McKenzie, as well as local specialists such as Singapore firm Drew & Napier. JuristConsult has advised companies using Mauritius to invest in south-east Asia, China and South Africa, and operates a separate offshore investment

arm, JuristConsult Limited, which recently merged with the Citco Group.

JuristConsult also has a highly recommended project finance practice. It has advised on the construction of a power plant in Mauritius and is involved in much of the island's move towards privatization, particularly in the electricity and water industries.

Key contact partner

Marc Hein

Leading lawyer

Marc Hein

Banymandhub Boolell Chambers

As a firm specializing in corporate finance law, Banymandhub Boolell stands out from the other law firms in Mauritius, which are all full-service and litigation-focused law firms. Urmila Boolell in particular is recommended and wrote one of the only books available on corporate law in Mauritius. The firm offers advice on commercial, corporate and intellectual property law matters.

Banymandhub Boolell Chambers was established in 1985 and comprises five partners and 10 associates based in Port Louis.

Key contact partner

Urmila Boolell

Leading lawyer

Urmila Boolell

Erriah & Uteem Chambers

Erriah & Uteem differs from its Mauritius rivals in its exclusive, international perspective. The firm is the only one on the island that specializes only in international tax law, trusts law and all other aspects of offshore business activities. The founding partners, Dev Urriah and Muhammad Uteem, are both UK-educated and have experience working at English and American law firms. Its specialization makes it a popular choice for offshore advice such as securitization, setting up funds and transfer pricing.

The firm's recent work has included advising on the reorganization of the securities belonging to a leading Indonesian paper company, acting on the takeover of several companies in India, advising on a domestic investment by a Japanese bank and working on the acquisition of power plants in Indonesia and China. More financial work includes acting on secured credit facilities to several Mauritius and Indonesian companies, acting on the refinancing of a power project in Bangladesh and advising on an asset-backed financing in Mauritius.

The firm also has a well-developed funds practice, that in recent times has acted for a group of donor countries (including the UK, Sweden and Switzerland) in connection

with setting up a \$350 million fund for investment into Africa, working on the reorganization of funds into a protected cell company for investment into India, and advising on setting up a \$100 million fund for investment into India.

Key contact partners

Dev Erriah
Muhammad Uteem

MC Law Offices

MC Law Offices has eight partners and two associates working in the Mauritius capital, Port Louis. The firm specializes in corporate law advice, both to domestic corporates and international companies and banks. Shakeel Muhammad is the lead partner for corporate advice, while Ng Sui Wah heads the banking and finance practice.

The firm, which was founded in 1961, is also a member of the International Lawyers Network, based in New York.

Key contact partners

Shakeel Muhammad
Ng Sui Wah