

SECURITIES (CENTRAL DEPOSITORY, CLEARING AND SETTLEMENT) ACT

Act 30 of 1996 – 25 January 1997

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SECURITIES (CENTRAL DEPOSITORY, CLEARING AND SETTLEMENT) ACT

EDITORIAL NOTE: The words “Stock Exchange Company” have been deleted and replaced by the words “Stock Exchange of Mauritius Ltd” wherever they appear, by section 156 (4) (a) of Act 22 of 2005 w.e.f. 28 September 2007.

1. Short title

This Act may be cited as the Securities (Central Depository, Clearing and Settlement) Act.

2. Interpretation

In this Act—

“certificated securities” means securities in bearer, order or registered form, the title to which is evidenced by a certificate;

“clearing” means the preparation of a securities transaction for settlement in the book-entry system of the CDS;

“Commission” means the Financial Services Commission established under the Financial Services Act;

“Companies Act” means the Companies Act;

“company” has the same meaning as in the Companies Act;

“Court” has the same meaning as in the Companies Act;

“CDS” means the Central Depository & Settlement Co Ltd referred to in section 3;

“deposited securities”, in relation to the CDS, means securities—

- (a) in relation to which the documents evidencing title to the securities are deposited by a depositor with the CDS and are registered in the name of the depository or its nominee; and
- (b) which are transferable by way of direct entry in the Depository Register and not by way of an instrument of transfer;

“Depository Register” means the register maintained by the CDS in respect of deposited securities;

“depositor” means a person who is named as such in the Depository Register;

“derivative instrument”, in relation to debentures, stocks and shares, includes warrants, transferable subscription rights, options to subscribe for stocks or shares, convertibles and any other instrument that is a derivative or a security for the purposes of the Securities Act;

“eligible security” means a security made eligible for the operation of the settlement service or the depository service in accordance with the rules of the CDS;

“entity” includes a company, partnership, association, Government and agency thereof;

“Guarantee Fund” means the Fund established under section 3 (8) (a);

“instrument” means a deed or any other instrument in writing;

“investment dealer” means a licensed investment dealer under the Securities Act;

“issuer” means a person who issues any security;

“listed issuer” means an issuer where the securities are listed securities;

“listed securities” means securities which have been admitted for quotation on a securities exchange;

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

“Official List” means the Official List established under the Stock Exchange Act;

“participant” means an entity which has contracted with the CDS to use the depository service or the settlement service and which is continued, reinstated or remains as a participant;

“Registrar” means the Registrar of Companies;

“rules of the CDS” means rules made by the CDS and in force under the Securities Act;

“securities” has the same meaning as in the Securities Act;

“securities account” means an account established, in accordance with its rules, by the CDS for a depositor or a participant, for the recording of a deposit or withdrawal of securities and for dealing in such securities by the depositor or the participant;

“securities exchange” has the same meaning as in the Securities Act;

“SEM” means the securities exchange operated by the Stock Exchange of Mauritius Ltd;

“settlement” means the settlement of transactions in accordance with the settlement service;

“settlement service” means the service offered by the CDS whereby, in accordance with its rules, it provides facilities for the reporting and comparison of data respecting the terms of settlement of transactions, the reduction of the number of settlements of transactions, the allocation of settlements responsible, and acts as an intermediary in facilitating payments and deliveries of, or in connection with, transactions;

“Stock Exchange of Mauritius Ltd” has the same meaning as in the Stock Exchange Act;

“transaction” means a transaction in eligible securities on a securities exchange or otherwise permitted by the rules of the CDS involving eligible securities, and which effects a deposit, sale, purchase, loan, pledge, gift, transfer, delivery or withdrawal of eligible securities, a registration thereof, a change in the information pertaining to a securities account and any other operation provided for in the rules of the CDS;

“uncertificated securities” means listed securities not evidenced by a certificate, the issue or transfer of which is registered or recorded in registers maintained for that purpose by or on behalf of the issuer.

[S. 2 amended by s. 46 (10) of Act 13 of 2001 w.e.f. 1 August 2001; s. 156 (4) (b) of Act 22 of 2005 w.e.f. 28 September 2007; s. 97 (1) of Act 14 of 2007 w.e.f. 28 September 2007.]

3. Central Depository, Clearing and Settlement Service

(1) The Stock Exchange of Mauritius Ltd shall establish, in accordance with a scheme approved by the Commission, a central depository, clearing and settlement service to the Stock Exchange through a company registered under the Companies Act under the name of the Central Depository & Settlement Co. Ltd.

(2) The approval referred to in subsection (1) shall be subject to such terms and conditions as may be determined by the Commission.

(3) (a) All dealings on the Stock Exchange shall be cleared and settled between and among investment dealers through the scheme in accordance with the rules of the CDS.

(b) The CDS may provide a settlement service in relation to eligible securities on any securities exchange other than those which are the subject-matter of dealings referred to in paragraph (a).

(4) The clearing bank for the settlement of funds in respect of transactions cleared through the CDS shall be the Bank of Mauritius.

(5) The scheme shall—

- (a) provide for a central depository, clearing and settlement service whereby, in accordance with the rules of the CDS—
 - (i) documents evidencing title to securities, whether or not listed on the securities exchange (with, where applicable, in the case of shares or registered debentures, proper instruments of transfer duly executed) are deposited with the CDS and registered in the name of the CDS or its nominee;
 - (ii) securities accounts are maintained by the CDS in the names of the depositors so as to reflect the title of the depositors to the deposited securities; and
 - (iii) transfers of the deposited securities are effected by the CDS making an appropriate entry in the Depository Register of the deposited securities that have been transferred;
- (b) —
- (c) not be amended except to such extent and in such manner as may be approved or, after consultation with the CDS, directed by the Commission for the purposes of this Act; and
- (d) provide for the confidentiality and protection of information and documents relating to the affairs of persons holding securities accounts with the CDS and relating to their securities accounts.

(6) The CDS shall pay, to such body as may be directed by the Minister, such annual fee as may be prescribed.

(7) The officers and employees of the CDS shall take the oath specified in the Schedule.

(8) (a) The CDS shall establish and maintain a Guarantee Fund for the purpose of providing an indemnity against any default in respect of payments for, or delivery of, securities by any participant and of obligations of participants towards the CDS.

(b) The assets of the Guarantee Fund shall consist of all money accruing lawfully to that fund and of such contributions as may be specified in the rules of the CDS.

(c) The Guarantee Fund shall be administered in accordance with the rules of the CDS.

(d) Where the CDS has made a payment from the Guarantee Fund in relation to any default, it shall, notwithstanding the fact that the CDS is not a counter party to the transaction between selling and buying participants, be subrogated to all the rights and powers of the defaulting participant for the purpose of the seizure and sale of unpaid securities and of operating the Guarantee Fund.

[S. 3 amended by s. 156 (4) (c) of Act 22 of 2005 w.e.f. 28 September 2007.]

3A. Provision of services

The Central Depository and Settlement Co. Ltd may, notwithstanding section 91 (4) of the Companies Act 2001, provide services relating to the register of shareholders and transfer of shares for companies in accordance with the rules of the CDS.

[S. 3A inserted by s. 156 (4) (d) of Act 22 of 2005 w.e.f. 28 September 2007.]

4. Issue of uncertificated securities

Notwithstanding the Companies Act, a listed issuer may—

- (a) issue a security in uncertificated form where this is authorised by resolution of its board of directors or management; and
- (b) convert a certificated security into an uncertificated security, where this is authorised in its memorandum or articles of association, by resolution of its board of directors or management.

5. CDS deemed not to be a member

(1) Notwithstanding the Companies Act or any other enactment or the memorandum or articles of association of a company, where the CDS is named in the register of members of the company or a register of debenture holders or other security holders of an issuer—

- (a) the CDS shall be deemed not to be a member of the company; and
- (b) the persons named as the depositors in a Depository Register shall, for such period as the deposited securities are entered against their names in the Depository Register, be deemed to be—
 - (i) members of the company in respect of the amount of deposited securities (relating to the stocks or shares issued by the company) entered against their respective names in the Depository Register; or

- (ii) holders of the amount of the issuer's deposited securities (relating to the debentures or any derivative instruments or other deposited securities but excluding stocks or shares issued by a company) entered against their names in the Depository Register.

(2) (a) Subject to paragraph (c), nothing in this Act shall be construed as affecting the obligation of a company to keep—

- (i) a register of its members, and allow inspection of the register, under the Companies Act; and
- (ii) a register of holders of debentures issued by the company, and allow inspection of the register, under the Companies Act.

(b) Nothing in this Act shall be construed as affecting—

- (i) the obligation of an issuer other than a company to keep a register of the holders of any securities issued by the issuer, except that the issuer shall be under no obligation to enter into such register the names and particulars of securities under subsection (1) (b);
- (ii) the right of a depositor to withdraw his documents evidencing title in respect of listed securities from the CDS at any time in accordance with the rules of the CDS, and to register them in his or any other name; or
- (iii) the enjoyment of any right, power or privilege conferred by, or the imposition of any liability, duty or obligation under, the Companies Act or any other enactment or under any instrument or under the memorandum or articles of association of a company upon a depositor, as a member of a company or as a holder of debentures or any derivative instrument, except to the extent provided for in this Act or prescribed under this Act.

(c) A company shall be under no obligation to enter in a register referred to in paragraph (a) the names and particulars of persons who are deemed members or holders of debentures under subsection (1) (b).

(3) Notwithstanding the Companies Act, a depositor shall not be regarded as a member of a company entitled to attend a general meeting of the company and to speak and vote at the meeting unless his name appears on the Depository Register 48 hours before the general meeting.

(4) Where securities which have been deposited with the CDS are forwarded by the CDS to the relevant registry of the issuer as provided by the rules of the CDS, the registry of the issuer, on receipt of the deposited securities from the CDS, shall confirm to the CDS, within the period specified in the rules of the CDS, the authenticity of the security certificates which have been deposited.

6. Withdrawal of security

(1) A depositor may, in accordance with the rules of, and on application to, the CDS, withdraw a security standing to the credit of his security account.

(2) Where an application for the withdrawal of a deposited security is made under subsection (1) and the appropriate notification and withdrawal documents are received by the issuer or its share registry in accordance with rules of the CDS, the issuer shall, by itself or its share registry, notwithstanding the provisions relating to the issue of certificates in the Companies Act, complete and deliver to the CDS, for forwarding to the participant, all appropriate certificates in connection with the transfer of the securities within 14 days after the date of the receipt by it of the withdrawal documents.

(3) Where the CDS has decided to discontinue the eligibility of a security for its services in accordance with the CDS rules, it shall—

- (a) debit the securities accounts of the holders of the security; and
- (b) instruct the issuer or its registry to—
 - (i) issue certificates in the name of the holders of the security; and
 - (ii) send the certificates directly to the holders of the security or to the respective pledgees where the holders have pledged their securities.

(4) Where instructions are given under subsection (3) (b), the issuer or its registry shall comply with those instructions.

[S. 6 amended by s. 26 of Act 15 of 2006 w.e.f. 7 August 2006.]

7. Register of substantial shareholders of a company

(1) (a) Subject to paragraph (b), nothing in this Act shall be construed as affecting the obligation of a company to keep a register of substantial shareholders under the Companies Act.

(b) A company shall be under no obligation to enter in the register the names and particulars of persons deemed members under section 5 (1) (b).

(2) The CDS shall, on becoming aware that a depositor is a substantial shareholder of an issuer, notify the issuer and the Commission of that fact forthwith.

8. Maintenance of accounts

(1) The CDS shall maintain accounts of deposited securities on behalf of depositors in accordance with the rules of the CDS.

(2) A record of an entry in a securities account in respect of a dealing in deposited securities shall be *prima facie* evidence of the matters so recorded.

9. Certification of names of depositors

(1) The CDS shall, in accordance with its rules, certify the names of persons on the Depository Register to an issuer in relation to security accounts held in relation to that issuer, on a written request being made to it by the issuer and on payment of a fee specified in the rules of the CDS.

(2) A member of an issuer or any other person may require the issuer to furnish him with a copy of the record of depositors so far as it relates to the names, addresses, and the number of securities held, on payment in advance of such fee prescribed.

(3) The copy of the record of depositors required under subsection (2) shall be supplied to the person who required the copy within 14 days or such longer period as the Registrar considers reasonable in the circumstances, commencing from the day after the date of receipt of the request by the issuer.

(4) The Registrar may require the issuer, within the time specified in subsection (3), to furnish him with a copy of the record of depositors referred to in subsection (2), without payment of a fee.

10. Transfer by depository

(1) Subject to this Act, a transfer of deposited securities between depositors shall be effected, notwithstanding the Companies Act or any other enactment or any instrument or a company's memorandum or articles of association, by the CDS making an appropriate entry in its Depository Register and shall take effect on the settlement date specified in the rules of CDS.

(2) A transfer of securities by the CDS by way of direct entry to a depositor under this Act shall be valid notwithstanding that the transfer is not accompanied by a proper instrument of transfer or that otherwise the transfer is not made in writing.

(3) An entry under this Act in relation to the transfer of securities may be made in respect of the same class of securities or interests as part of a fungible bulk, and may refer merely to a quantity or par value of a particular security, without reference to a certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

[S. 10 amended by s. 362 (4) (a) of Act 15 of 2001 w.e.f. 1 December 2001.]

11. Depository to be discharged from liability if acting on instructions

(1) Subject to any regulations made under this Act, the CDS, if acting in good faith and without negligence, shall not be liable for conversion or for any breach of trust or duty where the CDS has, in respect of direct entries in accounts maintained by it, made entries regarding the deposited securities, or transferred or delivered the securities, according to the instructions of a depositor or participant notwithstanding that the depositor or participant had no right to dispose of, or take any other action in respect of, the securities.

(2) The CDS or a participant, if acting in good faith and without negligence, shall be fully discharged of its obligations to the depositor by the transfer or delivery of deposited securities on the instructions of the depositor.

12. Confirmation of transaction

The CDS shall, in accordance with the rules of the CDS, issue to each depositor through his participant, following upon any transaction affecting deposited securities maintained for such depositor by the CDS under this Act, a confirmation note which shall specify the amount and description of the deposited securities and any other relevant transaction information.

13. No rectification of Depository Register

(1) Notwithstanding the Companies Act or any other enactment, no order shall be made by the Court for any rectification of the Depository Register, but the Court may, where it is satisfied that a depositor—

- (a) did not consent to a transfer of the deposited securities; or
- (b) should not have been registered in the Depository Register as having title to the deposited securities,

award damages to the first mentioned depositor or to any person who would have been entitled to have been registered in the Depository Register as having title to the deposited securities, as the case may be, on such terms as the Court thinks equitable, or make such other order as the Court thinks fit, including an order for the transfer of deposited securities to such depositor or person.

(2) Where in the memorandum or articles of association of a company it is provided that the company is entitled to refuse registration of a transfer of deposited securities it may, in relation to any transfer to which it objects, notify the CDS in writing of its refusal before the transfer takes place and furnish the CDS with the facts upon which such refusal is considered to be justified.

(3) Where the CDS has had prior notice of a company's refusal under subsection (2), but not otherwise, it shall refuse to effect the transfer and to enter the name of the transferee in the Depository Register and convey to the transferee the facts upon which such refusal is considered to be justified.

(4) Section 88 of the Companies Act shall not apply to a refusal to register a transfer under subsections (2) and (3).

14. Non-application of provisions of bankruptcy and company liquidation

(1) Subject to subsection (2), where by virtue of the Companies Act, or the Bankruptcy Act, or any other enactment relating to bankruptcy or company liquidation, it is provided that—

- (a) a disposition of the property of a company after the commencement of a winding up shall be void, unless the Court orders otherwise; or

- (b) a disposition of the property of a person who is adjudged bankrupt after presentation of the petition for a bankruptcy order and before vesting of the bankrupt's estate in the Official Receiver shall be void unless done with the consent or ratification of the Court,

those provisions shall not apply to a disposition of deposited securities.

(2) Where the Court is satisfied that a party to a disposition, being a party other than the CDS, had notice that a petition had been presented for the winding up or bankruptcy of the other party to the disposition, it may award damages against that party on such terms as it thinks equitable, or make such other order as the Court thinks fit, including an order for the transfer of deposited securities by that party, but not an order for the rectification of the Depository Register.

15. Set-off

(1) The CDS may terminate its agreement to clear or settle securities transactions, or to act as a depository for securities, with an insolvent participant or with a participant in respect of which insolvency or bankruptcy proceedings are taken, whether such proceedings are voluntary or involuntary.

(2) On terminating an agreement under subsection (1), the CDS may set off obligations between the insolvent participant and the CDS in accordance with the provisions of the agreement and, if on termination there is a net termination sum owed to the CDS by the insolvent participant, the CDS shall be deemed to be a creditor of the insolvent participant in respect of that net termination sum.

(3) The CDS may, notwithstanding any other enactment, realise assets of the insolvent or bankrupt participant pursuant to a pledge in favour of the CDS or pursuant to the rules of the CDS or guarantees established by the CDS in accordance with its rules.

16. Non-application of section 13 of the Companies Act

(1) Subject to subsection (2), section 13 of the Companies Act, in so far as it provides that a transfer or contract of sale of shares or debentures in contravention of the section shall be void, shall not apply to a disposition of deposited securities.

(2) The Court may, on being satisfied that a disposition of deposited securities would, in the absence of subsection (1), be void, on the application of the Registrar of Companies or any other person, order the transfer of the shares acquired in contravention of section 13 of the Companies Act.

17. Charging or pledging of securities

(1) Where a deposited security is charged or pledged by a depositor in favour of any person, the CDS or a participant, with or through whom the securities account of the depositor is maintained, shall on a request, in writing,

made by the depositor or the other person, transfer or cause to be transferred such security into the securities account of the other person maintained for such purpose.

(2) Where a request is made by the other person under subsection (1), the request shall be supported by documents evidencing the charge or pledge in his favour.

(3) The securities account maintained pursuant to subsection (1) shall be designated as the "Pledged Securities Account".

(4) Where a charge or pledge over a deposited security has been discharged or released, the CDS or the participant, as the case may be, shall on receipt of a notice in writing from the other person confirming the fact, transfer the deposited security into the securities account of the depositor.

(5) The provisions of this Act relating to the transfer or withdrawal of deposited securities shall apply, *mutatis mutandis*, to securities in the Pledged Securities Account.

(6) Where a pledge of a security is effected in terms of subsection (1), the entries in the records of the CDS shall constitute—

- (a) an endorsement of the security for the purpose of Article 2076 of the Civil Code; and
- (b) a registration of the pledge of the security in the records of the issuer for the purpose of Article 2077 of the Civil Code.

18. Reporting to Commission

(1) Subject to section 3 (5) (d), the CDS shall, in accordance with the rules of the CDS, furnish to the Commission periodic reports on its activities and operations.

(2) The CDS shall forthwith inform the Commission of any business that fails to settle on its settlement date, and provide the Commission with details of the business and the reasons, as known to the CDS for that failure.

(3) Notwithstanding section 3 (5) (d), where the Commission is conducting an inquiry in the exercise of its powers or into a contravention of this Act or any other Act or regulation or an irregularity in the operations of the CDS or a participant, it may request, in writing, any information or document from the CDS, and the CDS or participant shall forthwith comply with that request.

(4) This section shall be in addition to, and not in derogation from, any reporting obligation to the Commission which is required of the CDS under the rules of the CDS.

[S. 18 amended by s. 156 (4) (e) of Act 22 of 2005 w.e.f. 28 September 2007.]

19. Compliance orders

Where, from an inquiry conducted by the Commission, it appears to the Commission that there has been a contravention of this Act or of regulations

made under this Act or of the rules of the CDS, the Commission may apply to the Court for an order directing or securing compliance with the said Act, regulations or rules in such manner as the Court shall deem fit.

20. Duty to take reasonable security measures

The CDS and every participant shall take all reasonable security measures, in accordance with the rules of the CDS, to protect information and documents relating to the affairs of the depositors, and in particular, relating to their securities accounts, against any unauthorised access, alteration, disclosure or dissemination.

21. Duty to maintain secrecy

(1) Except as provided in this Act, no officer or employee of the CDS or a participant, whether during his tenure of office or during his employment or thereafter, and no other person who has, by any means, access to any information or document relating to the affairs of a depositor, and in particular, to his securities accounts, shall give, divulge, reveal or otherwise disclose such information or document to any other person.

(2) No person who has any information or document which, to his knowledge, has been disclosed in contravention of subsection (1), shall disclose it to any other person, or make any use of such information for himself or any other person other than the CDS.

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

22. Restrictions on disclosure of information by participants

Nothing in this Act shall authorise a participant which is a bank under the Banking Act to disclose any information or document to any other person in contravention of that Act.

23. Permitted disclosures

Notwithstanding section 21, a person shall not be entitled to refuse to disclose any information or document—

- (a) which the depositor, or his personal representative, has given permission in writing to disclose;
- (b) in a case where the depositor is declared a bankrupt, or, if the depositor is a corporation, the corporation is being or has been wound up;
- (c) for the purpose of instituting or, in the course of, any civil proceedings—
 - (i) between the CDS or a participant and a depositor, relating to the securities account of the depositor; or

- (ii) between the CDS or a participant and 2 or more parties making adverse claims to securities or monies in the securities account of the depositor, where the CDS or participant seeks relief by way of interpleader;
- (d) to a person who makes a request in writing and who is duly authorised under any enactment to investigate an offence, such disclosure being, in any case, limited to the securities account and affairs of the depositor suspected of the offence;
- (e) to the CDS for purposes of the compilation of its record of depositors under section 9, or the register of substantial shareholders under section 7;
- (f) to an issuer in respect of a record of depositors issued under section 9;
- (g) for the purpose of enabling or assisting the Bank of Mauritius to discharge its functions under the Bank of Mauritius Act, the Banking Act or any other enactment;
- (h) for the purpose of enabling or assisting the Commission to exercise any function under this Act or the Securities Act or any other enactment or under the rules of the CDS;
- (i) for the purpose of enabling or assisting the Registrar to discharge his functions under this Act or the Companies Act;
- (j) for the purpose of enabling or assisting a stock exchange to discharge its functions in accordance with the rules of the CDS;
- (k) for the purpose of enabling or assisting an auditor of the CDS or a participant to discharge his functions;
- (l) for the purpose of enabling or assisting an investigator appointed under Part X of the Companies Act to discharge his functions;
- (m) in a summary or collection of information, framed in such a way so as not to enable the identity of a depositor, to whom the information relates, to be ascertained; or
- (n) where disclosure is otherwise required by, and is given in accordance with, the rules of the CDS.

[S. 23 amended by s. 362 (4) (b) of Act 15 of 2001 w.e.f. 1 December 2001; s. 156 (4) (f) of Act 22 of 2005 w.e.f. 28 September 2007.]

24. Central depository to provide assistance

(1) The CDS shall provide such assistance to the Registrar and the Commission as they reasonably require for the performance of their functions and duties under this Act or any other enactment.

(2) An investigator appointed under Part X of the Companies Act may, for the purpose of conducting any investigation under that Part, request the CDS, in writing, to provide him with such information or document as he may require for the purpose of the investigation, and the CDS shall, notwithstanding section 3 (5) (d), provide that information or document to the investigator.

25. Offences

(1) Any person who knowingly contravenes or fails to comply with this Act or any regulations made under it shall commit an offence and, unless otherwise expressly provided, shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

(2) The proceedings for an offence against this Act may be instituted by the Registrar or any person authorised by him.

26. Jurisdiction

Notwithstanding—

- (a) section 114 (2) of the Courts Act; and
- (b) section 72 (5) of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try an offence under this Act or any regulations made under it and may impose any penalty provided under this Act.

27. Regulations

The Minister may—

- (a) after consultation with the CDS and the Commission, make such regulations as he thinks fit for the purpose of this Act; and
- (b) by regulations, amend the Schedule.

28. – 29. —

SCHEDULE

[Section 3 (7)]

OATH

I, being an officer or employee of the Central Depository & Settlement Co. Ltd, (CDS) do hereby swear/solemnly affirm that I shall not, on any account and at any time, disclose, otherwise than in accordance with this Act, any information of a confidential nature obtained by me as an officer or employee of the CDS.

Taken before me, the Master and Registrar of the Supreme Court
on