



Dale International Trust Company Limited

An Overview of Major Amendments made by the Finance (Miscellaneous Provisions) Act 2022 and Latest Regulatory Updates.

The Finance (Miscellaneous Provisions) Act 2022 (the “Act” or the “Finance Act 2022”) came into force on the 2nd of August 2022 and has brought major changes in various statutory legislations with the aim of implementing the proposed measures of the 2022/2023 Budget.

This newsletter highlights the key amendments and newly added provisions made to several legislations with a particular focus on the corporate and financial sectors in Mauritius and also provides the latest regulatory update with regards to the outcome of the Eastern and Southern Africa Anti-Money Laundering Group’s 22nd Meeting of the Council of Ministers.

Main Relevant Changes brought by The Finance (Miscellaneous Provisions) Act 2022:

Companies Act 2001

Small Private Companies

Private companies with a turnover of less than MUR 100 million in respect of their last preceding accounting period shall now qualify as a ‘small private company’. It should be noted here that the previous threshold to qualify as a small private company was less than MUR 50 million.

Moreover, the threshold allowing small private companies to file a financial summary with the ROC has been increased from an annual turnover of less than MUR 20 million to an annual turnover of less than MUR 100 million. These companies can then be exempted from filing their annual returns unless there is a change in shareholding or in the composition of the board or other such related matters.

It should be highlighted that the provisions with regards to small private companies do not apply to Global Business Companies and Authorised Companies.

The Re-domiciliation and the Removal of a Company from the Register of the Registrar of Companies

In order to avoid a company from being registered in two jurisdictions at the same time, companies wishing to re-domicile their place of incorporation in or from Mauritius shall now be required to provide the ROC with a certificate of deregistration or a certificate of registration by continuation from the foreign jurisdiction.

Moreover, added to the existing grounds allowing the ROC to remove a company from the register of companies, it can now also do so if it believes that there is no other reason for the company to continue to exist.

Lastly, notice of restoration must be given in the Government Gazette by the ROC where it restores a company on its register.



Financial Services Act 2007

Global Activities

The Financial Services Act 2007 ("The FSA 2007") has been amended mainly with regards to the Global Activities as follows:

- A new section, namely section 77C on Global Activities has been inserted which requires entities whose main activities are to conduct global activities to first obtain a license from the Financial Services Commission.
- Moreover, it is now an offence under section 24 of The FSA 2007 for any officer of a licensee to operate without first having obtained FSC's approval. In the event of an officer of a licensee operating without a license from the FSC, the Chief Executive of the FSC may refer the matter to the Enforcement Committee of the FSC for disciplinary proceedings.
- "Global headquarters administration", "Global shared services" and "Global treasury services" have been moved from the Second Schedule to the Sixth Schedule, which is an entirely new Schedule and are now hence considered as separate activities.



Income Tax Act 1995

Global Minimum Tax

The Finance Act 2022 has confirmed the introduction of a Qualified Domestic Minimum Top-up Tax to companies resident in Mauritius, which form part of large multinational enterprises, having a global annual revenue of more than EUR 750 Million, to ensure that they are taxed at a minimum rate of 15%.

Taxable Income

Any gross income attributable to an employee performing work remotely from Mauritius whose employer is a person carrying business outside of Mauritius, will be considered as income derived from Mauritius and will hence be taxable. However, this shall not be the case where the employee is a holder of a premium visa and the core business activities of the person are outside Mauritius.



Securities Act 2005

Investigation of Fraudulent Behavior by The Official Exchange

The Securities Act has been amended to allow The Official Exchange to investigate market abuses, including insider dealing and fraudulent behavior by market participants and issuers on The Official Exchange.

Obligation for Auditors to be approved by the Financial Services Commission

Furthermore, the amendment brought by the Finance Act 2022 to the Securities Act has confirmed that audit firms now have to obtain the approval of the FSC prior to auditing the financial statements of a CIS Manager or a CIS. In order to give approval, the FSC must be satisfied that the audit firm has adequate experience, expertise and resources to audit such financial statements.



Insurance Act 2005

New Definitions

The following new definitions have been inserted in the Insurance Act:

- “Custodian”- a person holding a Custodian services (non-CIS) license under The FSA 2007 or any other person duly licensed as a custodian in an equivalent foreign jurisdiction and approved by the Commission.
- “custodian agreement”- any agreement relating to the appointment and functions of a custodian, to which a structured investment-linked insurance business policyholder or the insurer and the custodian are parties
- “settlement”- the act of discharging obligations by transferring funds between 2 or more insurers



Latest Regulatory Update

Coming to the latest regulatory update, we are pleased to announce that Mauritius is now “Compliant” or “Largely Compliant” with all the 40 Recommendations of the Financial Action Task Force (FATF).

On the 2nd of September 2022, at the 22nd Council of Ministers Meeting of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Mauritius was successfully re-rated ‘Largely Compliant’ with FATF’s Recommendation Number 15 which was the only recommendation where Mauritius still had a rating of ‘Partially Compliant’.

By coming up with robust legal frameworks and improving the transparency of virtual asset transactions, Mauritius has not only been upgraded to ‘Compliant’ or ‘Largely Compliant’ but it has also strengthened its position as a trustworthy and eminent jurisdiction which abides by the best international practices in terms of AML/CFT.



Family Offices

Mauritius, being a well-regulated and trusted jurisdiction, provides investors with lucrative business and investment opportunities. The fact that Mauritius is politically, economically and socially stable ensures security and certainty and is hence the ideal choice of destination for the establishment of Family Offices. This section of the newsletter provides an overview of the types of Family Office Licences in Mauritius, the legislative provisions governing them as well as their legal requirements.

Two types of Family Office Licences are available in Mauritius, namely the Family Office (Single) Licence

Two types of Family Office Licences are available in Mauritius, namely the Family Office (Single) Licence (“SFO”) and the Family Office (Multiple) Licence (“MFO”). Family Offices are regulated by the Financial Services Commission (“FSC”).

According to The Family Office (Rules) 2020, the Family Office may be wholly owned by family clients and exclusively controlled by family members/entities.

The family office must have no clients other than family clients. Family clients also extend to legal arrangements, companies, partnerships, foundations or other similar structures.

Additionally, the application for a Family Office Licence (SFO and MFO) must be made by a person with appropriate experience in the field of wealth management, private banking, investment management (and/or any relevant field as deemed appropriate by the FSC).

Section 4(2) states that – A Family office cannot have clients other than “family clients”. Schedule 1 of The Family Office (Rules) 2020 defines family as “persons who are connected to individuals within the entity”.

According to section 5, the activities covered by family office include the following:

- administration and management of investments, assets and/or estate(s)
- administration and management of concierge services
- management of accounting and reporting
- administration and management of philanthropic services
- providing training and development to the incoming generations
- administration and management of disaster recovery planning
- administration of risk management
- provision of administrative support
- ensuring compliance with domestic and international legislations
- establishing family governance, wealth strategies, family board(s) including family charter(s)
- providing tax advisory and compliance services
- advising on wealth planning and protection; and
- any other activities as may be approved by the Commission.

It should be noted that the value of the assets and/or investments of each family under SFO or MFO management must be more than USD 5 Million.

Minimum stated unimpaired capital requirements

- An SFO shall, at all times maintain a fully paid minimum stated unimpaired capital of at least USD 35,000.
- An MFO shall, at all times maintain a fully paid minimum stated unimpaired capital of at least USD 70,000.

Designation of an Officer

A family office shall, at all times, designate an approved officer, who shall be responsible for:

- filing an application for a licence with the Commission (FSC);
- filing with the Commission such other document as may be required including the annual compliance statement
- obtaining, keeping and maintaining appropriate records of the SFO or MFO to substantiate that it is compliant with the Rules or under any relevant Acts
- Responding to queries from the Commission

Money Laundering Reporting Officer (“MLRO”)

A Family Office shall, at all times, have a designated MLRO and a Deputy MLRO approved by the FSC, who shall comply with its duties under the Rules and any relevant Acts.

Professional Indemnity Cover

The holder of an SFO or a MFO shall subscribe to such insurance policies as are necessary to cover:

- Fraudulent activities of employees;
- Fraudulent instructions;
- Losses arising from the malicious or fraudulent corruption of electronic data or electronic transactions;
- Liabilities arising from breaches of professional duties; and
- Any other activities as the SFO or MFO deems appropriate.

Policies and Controls

- Once the risks have been identified, Family Offices must develop policies and procedures to mitigate risks identified.



Private Trust Company

Whilst there is no definite legislation in Mauritius for the Private Trust Company, the Financial Services Commission (FSC) has declared that where a Private Company acts as a Trustee for a specific number of Trusts for the benefit of a family, rather than offering its services to the public, it will not be considered as carrying out Trust business in Mauritius. Thus, given that it meets certain safeguards, it will not be mandatory to be licenced as per the FSC Act 2007 as a Corporate Trustee. A Private Trust Company can be structured as an Authorised Company or as a Global Business Company.

The requirements of the Mauritius *Private Trust Company* regime include:

- Appointment of a duly licenced Management Company to carry out its Trust administration services and as Company Secretary;
- to abide by the standards of the Financial Services Commission;

Needs to meet the following standards:

- o limit its activities to that of Private Trust business services;
- o always sustain a minimum paid up capital of US\$5,000;
- o offer its Private Trust business services uniquely to connected persons;
- o assign a duly licenced Management Company to deliver its Trust administration services concerning any express Trust to which it is a Trustee, certain Management companies can also include asset management services;
- o appoint the Management Company as Company Secretary; and
- o comply to the AML/CFT Framework.
- o must forthwith notify the Financial Services Commission of any change in the nature and scope of its private trust business; and
- o must provide to the Financial Services Commission, on a yearly basis or upon request, a list of trusts for which it acts as private trustee.
- o In addition, audited accounts will have to be prepared in Mauritius. Therefore, the Private Trust Company should also have a registered auditor.

The significant advantages that Mauritius offers in regard to Private Trust Companies include:

- o It costs less to have a Private Trust Company arrangement than to establish individual Trusts controlled by professional trustees
- o No exchange controls
- o Cost-effective and quality financial services (administration and establishment costs)
- o Less regulatory control
- o No requirement for a 'qualified' Trustee licence for the Private Trust Company to operate as corporate Trustee of the underlying Trusts
- o Flexibility in decision-making
- o The family can monitor actions of the Trustee
- o Able to lodge exotic or high risk assets
- o Clients can have control without compromising the validity of the structure
- o The client who is not at ease with a third party acting as Trustee are protected
- o Family participation in wealth management; and
- o An efficient way to delegate wealth to the next generation (succession planning).



Why Dale Trust?

Our team of seasoned professionals carries worldwide experience and credentials which are essential elements to service clients. We assist at each step of your project and deliver solutions to businesses and high net worth individuals from advisory to elaboration and implementation of projects, structuring, formation services, management services and professional outsourcing and also back office services.

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Dale International Trust Company Limited is a member of the MSI Global Alliance and Mauritius Finance

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