

# SUN LIMITED

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## BOARD CHARTER

### OVERVIEW

**Sun Limited** ("SUN" or the "Company") was incorporated as a public company on 10 February 1983 with the Registrar of Companies of the Republic of Mauritius under the name of Sun Resorts Limited, bearing Business Registration Number: Co6003886, and having its registered office at 5<sup>th</sup> floor, Ebène Skies, Rue de l'Institut, Ebène, Republic of Mauritius. On 25 September 2015, the Company changed its name to Sun Limited to reflect the organisational transformation of the corporate structure and emphasise the diversity of its fields of expertise.

SUN has been listed on the official market of the Stock Exchange of Mauritius ("SEM") since 1992 and is registered as a "Reporting Issuer" with the Financial Services Commission ("FSC") since the promulgation of the Securities Act 2005.

SUN is the holding company of an established hotel group in the Indian Ocean ("**SUN Group**"), owning and/or managing six resorts in Mauritius (5\* Luxury Four Seasons Resort Mauritius at Anahita, 5\* Luxury Shangri-La's Le Touessrok Resort & Spa, 5\* Long Beach Golf & Spa Resort, 5\* Sugar Beach Golf & Spa Resort, 4\* La Pirogue Resort & Spa, and 4\* Ambre Resort & Spa) and one resort in the Maldives (5\* Luxury Kanuhura). The Company also holds marketing offices in London, Paris and Frankfurt and representations in Milan, Madrid, India, China, and Japan. SUN also owns two in-house tour operators, namely Soléa Vacances, in France and World Leisure Holidays (Pty) Ltd, in South Africa.

The Company has on issue, as at date, 194,545,072 ordinary shares of no par value, of which 20,118,546 are held as ordinary shares. The majority shareholder of SUN is CIEL Limited, currently holding 50.10% of the said shares.

In accordance with the Listing Rules of the SEM, more than 25% of the shareholding of SUN is in the hands of the public.

The financial year of the Company is 30 June.

## GOVERNANCE STRUCTURE

The Board of Directors of SUN (the “**Board**”) promotes and supports high standards of corporate governance, integrity and ethics that will contribute to the on-going sustainability of the Company, facilitate long-term shareholder value, and enhance benefits that all other stakeholders derive from the Company’s continued success.

The Board is ultimately responsible for ensuring that governance standards are met and is assisted in this regard by the management team of SUN who aims to instill a culture of compliance and good governance throughout the Company. To achieve this, the Company continues to enhance and align its governance structures, policies, and procedures to support its operating environment and strategy.

The Board is the custodian of corporate governance and is structured to perform this function effectively.

The Board works under a set of well-established corporate governance framework and related policies. These include, amongst other rules and regulations, the Constitution of the Company, the National Code of Corporate Governance for Mauritius (2016) (the “**Code**”), Terms of reference of the Board Committees, the Companies Act 2001, the Securities Act 2005, the Listing Rules and Securities (Disclosure Obligations of Reporting Issuers) Rules 2007.

In its endeavor to promote corporate governance best practices, the Board of SUN is pleased to present its Board Charter which has been developed in line with the Code.

### **1. PURPOSE OF THE BOARD CHARTER**

- 1.1. This Board Charter provides the terms of reference for the Board and describes how the Board should operate.
- 1.2. It will be posted on the Company’s website.

### **2. THE BOARD**

#### **2.1. Board Size**

The Constitution of SUN, adopted on 29 November 2006, provides that the minimum number of Directors shall be eight (8) and the maximum number shall be fourteen (14).

#### **2.2. Composition of the Board**

The Board ensures the appropriate balance of skills, experience, independence, and knowledge of the Company thus enabling them to discharge their respective duties and responsibilities effectively.

The Board currently consists of fourteen (14) Directors composed of two (2) Executive Directors, nine (9) Non-Executive Directors and three (3) Independent Non-Executive Directors.

2.3. **Board Meetings**

The Board normally has five (5) scheduled meetings each year; additional ad hoc meetings may be held as and when necessary.

Directors are expected to attend each Board Meeting physically or otherwise by phone or teleconference, unless there are exceptional circumstances that prevent them from doing so.

2.4. **Quorum**

The Constitution of SUN provides that a quorum for a Board Meeting shall be fixed by the Board and, if not so fixed, shall be a majority of the Directors.

A Board Meeting shall be adjourned to the next working day (same time and place) if the quorum is not present within a quarter of an hour past the time appointed. If at such adjourned meeting a quorum is not present, the Directors present not being less than two, shall form a quorum and may transact the business standing to the order of the day.

2.5. **Decisions of the Board**

- Every Director has one vote; and
- The Chairman has a casting vote.

A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.

A Director who has declared his interest, shall not vote on any matter relating to the transaction or proposed transaction in which he/she is interested, and shall not be counted in the quorum present for the purposes of that decision.

Decisions may also be taken by way of written resolutions in accordance with Clause 7 of the Eighth Schedule of the Companies Act 2001 and clause 24.10 of the Company's constitution, as if it had been passed at a meeting of the Board duly convened and held.

2.6. **The Company Secretary**

The Company Secretary, CIEL Corporate Services Ltd, is responsible for the smooth operation of the Company's formal decision making and reporting.

All Directors have access to the advice and services of the Company Secretary who is accountable to the Board for ensuring that the Board procedures are complied with and that the Board is properly guided on all governance matters.

Under the direction of the Chairman, the Company Secretary's responsibilities include ensuring good information flow within the Board and its Committees, between senior management and the Directors, as well as facilitating induction and assisting with professional development.

Moreover, the Company Secretary is the primary channel of communication between the Company and the regulatory bodies, which are the SEM and the FSC.

### 3. BOARD COMMITTEES

The Code provides that Board committees are a mechanism to assist the Board in discharging its duties and responsibilities through a more comprehensive evaluation of specific issues, followed by well-considered recommendations to the Board.

Board committees operate independently to the Board and the Chairman of each committee systematically reports to the Board on matters discussed at the committee meetings.

The committees may, at the Company's expense, request such internal/external professional advice that they consider necessary to perform their duties in the best interest of the Company.

- 3.1. The Board shall establish (and may amend as and when required) the composition and terms of reference ("**TOR**") of the committees. The composition and the TOR as regards each committee shall be reviewed at least once a year by the Board.
- 3.2. As to date and to facilitate effective management, the Board of the Company has delegated clearly defined responsibilities to four (4) specialised committees:

(a) **The Corporate Governance, Ethics, Nomination & Remuneration Committee**

The Corporate Governance, Ethics, Nomination & Remuneration Committee ("**CGENR**") makes recommendations to the Board on (i) all corporate governance provisions to be adopted so that the Board remains effective and complies with prevailing corporate governance principles; (ii) all the essential components with respect to ethics, and (iii) nomination and remuneration matters, including new Board and senior executive nominations.

The CGENR shall consist of at least three (3) members, appointed by the Board, of whom, at least two (2) shall be Independent Non-Executive Directors.

The Board shall appoint a Chairperson from the Independent Non-Executive Directors. Executive Directors shall not be eligible to be appointed as Chairperson or member of the CGENR.

The Executive Directors may also be invited to attend the meetings, as and when necessary.

(b) **The Audit & Risk Committee**

The Audit & Risk Committee (“**ARC**”) has the responsibility to (i) monitor the integrity of the financial statements of the Company and any formal announcements relating to the Company’s financial performance, before submission to the Board; (ii) review the Company’s internal controls and risk management systems; (iii) oversee the process for selecting the external auditor, assess its independence and approve the audit fees; and (iv) monitor and supervise the effective function of the internal audit, and approve the appointment or termination of the internal auditor.

The ARC shall comprise of not less than three (3) Non-Executive Directors, appointed by the Board, of whom, at least two (2) shall be Independent Non-Executive Directors.

The Board shall appoint a Chairperson from the Non-Executive Independent Directors. The ARC meetings may also be attended, by invitation, by designated Executives, the Group Internal Auditor and External Auditor.

(c) **The Operational Excellence Committee**

The role of the Operational Excellence Committee (“**OEC**”) is to review the operational performance and discuss the potential for operations-related optimisation, efficiency enhancement across the hotels of SUN as well as potential cross fertilisation amongst the different entities of the CIEL Group to maximise operational best practices. The OEC shall make recommendations to the Board on specific matters to enhance the operational performance of the hotels of SUN, including the delivery of business objectives and requirements, the financial and commercial management and the strategy and business planning.

The OEC shall consist of at least three (3) members, appointed by the Board from amongst members on the Board of Directors.

The Chairman of the Board and the Executive Directors if not members of the committee, are also invited to attend the meetings.

(d) **The Investment Committee**

The role of the Investment Committee (“**IC**”) is to ensure that effective and regular access exists for the debate of the Company’s and its subsidiaries’ investment strategy options and changes thereto, in line with its financing and treasury strategies. The IC is a forum to debate deal flow opportunities, that is any potential investment and disinvestment opportunities available to the Company and its subsidiaries, prior to making recommendations to the Board.

The IC shall comprise of at least three (3) members, appointed by the Board and the Chairman of the Board shall not be the Chairman of the IC.

Other executives of SUN may be invited to attend and participate at the IC meetings.

- 3.3. These committees make recommendations that are submitted to the Board for approval.
- 3.4. There shall be transparency and full and effective disclosure from the board committees to the Board.
- 3.5. A copy of each TOR is available with the Company Secretary and will be made available on the Company's website.

#### **4. CHAIRMAN**

- 4.1. The Board shall elect the Chairman from among its members, provided that he shall not be older than seventy (70) years old.
- 4.2. Subject to the age limit being respected under clause 4.1, the Chairman shall hold office for a period of five (5) years and may, at term of his office, be re-elected by the Board for a further period of five (5) years or such other term as may be determined by the simple majority of the Board.
- 4.3. The Chairman is responsible for the leadership of the Board and ensuring its effectiveness on all aspects of its role. He ensures that the corporate strategy of the Company and the related execution are aligned together with operational efficiencies.
- 4.4. He will be responsible to ensure sufficient information is being provided to each Board member to allow him/her to play fully his/her role not only as a Director.
- 4.5. The Chairman shall have a casting vote as per Clause 24.8.2 of the Constitution of the Company.
- 4.6. In case the Chairman is unable to attend a Board meeting, the Directors present shall choose one of their number to be Chairman during the said Board meeting.
- 4.7. Responsibilities at the top of the Company have been divided between the Board and the Executive Directors of SUN, giving adequate segregation of powers between the Chairman and the management of the Company.

#### **5. OTHER CATEGORIES OF DIRECTORS**

- 5.1 Executive Directors – They are directors involved in the day-to-day management of the Company. They must always manage the conflict between their management responsibilities and their fiduciary duties as a Director, with a view to systematically promoting the best interests of the Company. They must also ensure that the information laid out before the Board accurately and fairly represents their understanding of the Company's affairs.

5.2 Non-Executive Directors – They are directors not involved in the day-to-day management; they play a full role in constructively challenging and developing strategic proposals, as well as chairing and being members of board committees.

5.3 Independent Non-Executive Directors – They are free from any business or other relationship which could materially interfere with the exercise of their independent judgment. They play a crucial role of bringing objectivity to the decisions made by the Board by playing a supervisory role.

## **6. TERMS OF OFFICE OF DIRECTORS**

### **6.1. Election**

Directors shall be elected on a regular basis at the annual meeting of shareholders.

### **6.2. Qualifications**

All Directors shall be individuals of integrity who bring a blend of knowledge, skills, objectivity, experience and commitment to the Board. SUN's Directors meet that recommendation and are able to effectively understand and manage the issues arising in the Company's business, review challenge and reward the achievements of management and optimise the Company's performance.

A Director shall be a natural person of not less than eighteen (18) years old, and not more than seventy-five (75) years old. As from seventy (70) years old, a Director may be appointed or re-appointed subject to Section 138 (6) of the Companies Act 2001<sup>1</sup>.

### **6.3. Disqualifications**

A Director shall not have any convictions for any crimes involving dishonesty, fraud or breach of trust and shall not be prohibited from being a Director under Sections 337 or 338 of the Companies Act 2001<sup>2</sup>.

### **6.4. Office**

As per Clause 21.2 of the Company's Constitution, every Director of the Company shall hold office until his/her resignation, disqualification or removal. At such expiry, he/she shall continue in office until a fresh appointment is made.

### **6.5. Re-election**

Before recommending a member of the Board for re-election, the Board must carefully consider his or her past performance on the Board.

### **6.6. Alternate Director**

A Director shall have the power from time to time to nominate, by notice in writing to the Company, any person not already a Director and who is acceptable to the majority of the other

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<sup>1</sup> Section 138 of the Companies Act 2001 is reproduced at the end of this Board Charter.

<sup>2</sup> Sections 337 and 338 of the Companies Act 2001 are reproduced at the end of this Board Charter.

Directors to act as an alternate Director in his/her place on an occasional basis. Most of the meetings shall be attended in priority by the Director himself. The Board member shall ensure that his/her alternate is fully aware of the present Board Charter.

**6.7. Compliance**

A copy of the present Board Charter will be provided to each Board member upon his appointment and the said member shall adhere to the said Board Charter by acknowledging receipt and signing a copy thereof. He / She shall in doing so undertake to comply with same. A signed copy will be retained by the Company Secretary for record.

**7. GENERAL DUTIES OF DIRECTORS**

7.1. The Directors shall comply with their legal, statutory and equitable duties and obligations when discharging their responsibilities as Directors. Broadly, these include:

- (a) acting in good faith, with honesty and integrity and in the best interest of the Company;
- (b) ensuring that they have the time to devote to diligently carry out their responsibilities and duties to the Company;
- (c) acting with care and diligence and for proper purpose;
- (d) avoiding conflicts of interest at all times and disclosing any actual or potential conflicts of interest which may exist or be thought to exist as soon as the Director becomes aware of the issue;
- (e) refraining from disclosing to unauthorized persons or making improper use of information gained through the position of Director and from taking improper advantage of the position of Director;
- (f) discharging diligently their duties and obligations to the Company;
- (g) observing and fostering high ethical standards and a strong ethical culture in their organization;
- (h) with the committees' assistance, preparing and presenting the financial statements in accordance with International Financial Reporting Standards and in compliance with the Companies Act 2001;
- (i) notifying the Company of any direct and indirect interests in the shares of the Company, interests in any transactions, potential and existing conflicts of interests and share dealings; and
- (j) complying with the Securities Act 2005, the relevant FSC Rules and the requirements of the Listing Rules.

7.2. The attention of the Directors is drawn to Section 143 of the Companies Act 2001<sup>3</sup>.

7.3. Directors of a public and listed company have additional duties as regards to their 'interests' in the Company's affairs. Their attention is also drawn to Sections 147, 148, 153(2), 154, 156, 161(7)

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<sup>3</sup> Section 143 of the Companies Act 2001 is reproduced at the end of this Board Charter.

and 221(2) of the Companies Act 2001, to Rules 10 to 12 of the Appendix 6 of the Listing Rules and to Sections 90, 91 and 111 of the Securities Act 2005.

7.4. When acting in his/her capacity of Director, the latter shall be entitled to take into account the interests of shareholders he/she is representing but should always act in the best interests of the Company.

7.5. **Representation on boards of SUN's subsidiaries**

When discharging his/her obligations as Director of a subsidiary of SUN, the Director will act in the best interest of that company. However, that Director will also be entitled (if so permitted by the constitution of that subsidiary) to act in a manner which he/she believes is in the best interests of SUN even though it may not be in the best interests of that company and this as per the provisions of Section 143 (2) and (3) of the Companies Act 2001.

**8. BOARD ACCOUNTABILITIES AND RESPONSIBILITIES**

In discharging its duties, the Board has the following main overall responsibilities:

- (a) management, direction and performance of the Company; and lead and control the Company's business;
- (b) be responsible for the performance and affairs of the Company;
- (c) ensure that the Company complies with all relevant laws, regulations and codes of best business practice;
- (d) build a sustainable business through consistent, profitable growth whilst safeguarding the interest of the shareholders and wider stakeholders;
- (e) determine strategies to enhance shareholder value in the long term whilst taking into account the interest of the shareholders;
- (f) approve the Company's and the Group's annual budget;
- (g) approve the audited and unaudited quarterly financial statements;
- (h) approve the annual report;
- (i) ensure that the Board communicates with shareholders and relevant stakeholders openly and promptly with substance prevailing over form;
- (j) through authorities delegated to its committees, direct and review the investments and operations within an agreed framework of controls, allowing risk to be assessed and managed within agreed parameters;
- (k) direct the commercial and economic well-being of the Company by properly balancing the level of risk with expected returns;
- (l) be responsible for risk governance and ensure that the Company develops and executes a comprehensive and robust system of risk management; and ensure the maintenance of a sound internal control system;
- (m) contribute fully in developing and sustaining the SUN Group corporate culture, that upholds ethical responsible decision-making across the Group;
- (n) approve capital requirements of the Company;

- (o) exercise leadership, enterprise, intellectual honesty, integrity and judgment in directing the Company to achieve reasonable prosperity for the Company and the SUN Group;
- (p) monitor and review the capital and solvency positions of the Company;
- (q) ensure that the Company satisfies the solvency test for each declaration of dividend;
- (r) present a fair, balanced and understandable assessment of the Company's financial, environmental, social and governance position, performance and outlook in its annual report;
- (s) nominate the representatives of the Company to represent the latter on subsidiaries' boards;
- (t) establish formal and transparent arrangements to appoint and maintain an appropriate relationship with the Company's auditor;
- (u) determine the remuneration of the Directors;
- (v) approve policies dealing with Directors' liabilities, indemnities and insurance if any; and
- (w) ensure that the conflicts of interest issues are dealt by the Board members as per all relevant laws, regulations and codes of best business practice.

## **9. ETHICAL STANDARDS AND GOOD CORPORATE GOVERNANCE**

- 9.1. The Board and all Directors are expected to comply with the ruling of the Code. The Board fully supports the principles of good corporate governance contained in the Code, and is committed to the improvement and development of appropriate structures, processes and procedures throughout the group in support of these principles.
- 9.2. Pursuant to the implementation of the Code and its "Apply-and-Explain" new philosophy SUN, as a public interest entity, will be required to report on corporate governance and explain in its annual report how these principles have been applied. Where material deviation from any principle contained within the Code occurs, an explanation should be given in the annual report.
- 9.3. All Directors are expected to behave ethically and professionally at all times and to observe the highest standards of corporate governance, hence protecting and promoting the reputation, performance and core values of the Company and its subsidiaries.
- 9.4. The Board of the Company commits itself to act with integrity and honesty. In that respect and as a matter of Board policy, Directors are expected to conduct themselves with the highest ethical standards.
- 9.5. A Code of Conduct has been developed for the Company. The employees, officers and Directors are strongly encouraged to adhere to the Code of Conduct and to abide by its terms.. The Directors will need to ensure that the values and principles incorporated in the Code of Conduct be disseminated in the SUN Group.

The Board has approved a Share Dealing Policy and Conflict of Interest/Related Party Transactions Policy which provide clear guidance to officers of the Company on the practice to be followed.

**10. SUSTAINABILITY ACCOUNTABILITIES**

All Directors are expected to foster the implementation of the Sustainability strategy and infrastructure policies and procedures established at the level of SUN covering the following key projects which have been earmarked by the Company:

- **Environmental Protection Projects**
  - Energy Efficiency Conservation and Management
  - Management of Fresh Water Resources
  - Air Quality Protection and Noise Control
  - Waste Water Management
  - Waste Minimisation, re-use and re-cycling
- **Community Engagement Projects**
  - The three areas of focus being *Enfant, Education et Maladie*
- **Governance**
  - Ethical governance and transparency framework

**11. REVIEW AND AMENDMENT OF THE PRESENT BOARD CHARTER**

The Board may at any times review and amend the present Board Charter by a simple majority decision of its members.

Approved by the Board of Directors on the 19 June 2019.

## EXTRACTS OF THE COMPANIES ACT 2001

### PART XI – DIRECTORS AND THEIR POWERS AND DUTIES

#### Sub-Part C - Appointment and removal of directors

##### 133. Qualifications of directors

- (1) A company shall appoint a natural person as director.
- (2) No person shall be appointed, or hold office, as a director of a company if he is a person who -
  - (a) is under 18 years of age;
  - (b) subject to section 138(4) to (7), is, in the case of a public company, over 70 years of age;
  - (c) is an undischarged bankrupt;
  - (d) would, but for the repeal of section 117 of the Companies Act 1984, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act;
  - (e) is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under sections 337 or 338;
  - (f) is not a natural person;
  - (g) has been adjudged to be of unsound mind;
  - (h) by virtue of the constitution of a company, does not comply with any qualifications for directors; or
- (3) A person who is disqualified from being a director but who acts as a director shall be deemed to be a director for the purposes of a provision of this Act that imposes a duty or an obligation on a director of a company.

##### 138. Removal of directors

- (1) Notwithstanding anything in its constitution or in any agreement between it and a director, a director of a public company may be removed from office by an ordinary resolution passed at a meeting called for the purpose that include the removal of a director.
- (2) Subject to the constitution of a company, a director of a private company may be removed from office by special resolution passed at a meeting called for the purpose that include the removal of the director.

- (3) The notice of meeting shall state that the purpose of the meeting is the removal of the director.
- (4) The office of director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual meeting commencing next after the director attains the age of 70 years.
- (5) Where the office of director has become vacant under subsection (4), no provision for the automatic reappointment of retiring directors in default of another appointment shall apply to that director.
- (6) Notwithstanding anything in this section, a person of or over the age of 70 years may –
  - (a) by an ordinary resolution of which no shorter notice is given than that required to be given for the holding of a meeting of shareholders, be appointed or re-appointed as a director of that company to hold office until the next annual meeting of the company or be authorised to continue to hold office as a director until the next annual meeting of the company; or
  - (b) in the case of an application for incorporation of a public company, be appointed with the consent in writing of the proposed shareholders.
- (7) Nothing in this section shall limit or affect the operation of any provision in the constitution of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age below 70 years.
- (8) The provisions of the constitution of a company relating to the rotation and retirement of directors shall not apply to a director who is appointed or re-appointed pursuant to subsections (5) to (7) but such provisions of the constitution shall continue to apply to all other directors of the company.

#### **Sub-Part D - Duties of directors**

##### **143. Duty of directors to act in good faith and in best interests of company**

- (1) Subject to this section, the directors of a company shall -
  - (a) exercise their powers in accordance with this Act and with the limits and subject to the conditions and restrictions established by the company's constitution;
  - (b) obtain the authorisation of a meeting of shareholders before doing any act or entering into any transaction for which the authorization or consent of a meeting of shareholders is required by this Act or by the company's constitution;

- (c) exercise their powers honestly in good faith in the best interests of the company and for the respective purposes for which such powers are explicitly or impliedly conferred;
  - (d) exercise the degree of care, diligence and skill required by section 160;
  - (e) not agree to the company incurring any obligation unless the director believes at that time, on reasonable grounds that the company shall be able to perform the obligation when it is required to do so;
  - (f) account to the company for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as directors of the company, except remuneration, pensions provisions and compensation for loss of office in respect of their directorships of any company which are dealt with in accordance with section 159;
  - (g) not make use of or disclose any confidential information received by them on behalf of the company as directors otherwise than as permitted and in accordance with section 153;
  - (h) not compete with the company or become a director or officer of a competing company, unless it is approved by the company under section 146;
  - (i) where directors are interested in a transaction to which the company is a party, disclose such interest pursuant to sections 147 and 148;
  - (j) not use any assets of the company for any illegal purpose or purpose in breach of paragraphs (a) and (c), and not do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost, otherwise than in the ordinary course of carrying on its business;
  - (k) transfer forthwith to the company all cash or assets acquired on its behalf, whether before or after its incorporation, or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company;
  - (l) attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse; and
  - (m) keep proper accounting records in accordance with sections 193 and 194 and make such records available for inspection in accordance with sections 225 and 226.
- (2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company, act in a manner which he believes is in the best interests

of that company's holding company even though it may not be in the best interests of the company.

- (3) A director of a company that is a subsidiary, other than a wholly-owned subsidiary, may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company and with the prior agreement of the shareholders (other than its holding company), act in a manner which he believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (4) A director of a company incorporated to carry out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the constitution of the company, act in a manner which he believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.
- (5)
  - (a) Subject to paragraph (b), the duties imposed by this section shall be owed to the company, and not to the shareholders, debenture holders or creditors of the company.
  - (b) Without prejudice to any other action with regard to the same matter that is lawfully available, including an action under section 170, any member or debenture holder, as the case may be, may apply to the Court for -
    - (i) a declaration that an act or transaction, or proposed act or transaction, by the directors or any director or former director constitutes a breach of any of their duties under this Act;
    - (ii) an injunction to restrain the directors or any director or former director from doing any proposed act or transaction in breach of their duties under this Act.

## **PART XXVIII – OFFENCES AND PENALTIES**

### **337. Persons prohibited from managing companies**

- (1) Where -
  - (a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company;
  - (b) a person has been convicted of an offence under section 332, 333, 334 or 335 or of any crime involving dishonesty; or
  - (c) a person has been convicted under section 46 of the Stock Exchange Act 1988 as an insider;

- (d) a person has been convicted of an offence under Part IX of the Securities Act 2005.

that person shall not, during the period of 5 years following the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company, unless that person first obtains the leave of the Court which may be given on such terms and conditions as the Court thinks fit.

- (2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than 14 days' notice of that person's intention to apply.
- (3) The Registrar, and such other persons as the Court thinks fit, may attend and be heard at the hearing of any application under this section.
- (4) A person who acts in breach of this section, or of any order made under this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 400,000 rupees or to imprisonment for a term not exceeding 2 years.
- (5) In this section, "company" includes a foreign company that carries on business in Mauritius.

### **338. Court may disqualify directors**

- (1) Where -
  - (a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company, or has been convicted of a crime involving dishonesty punishable on conviction with a term of imprisonment exceeding 3 months;
  - (b) a person has committed an offence under this Part;
  - (c) a person has, while a director of a company -
    - (i) persistently failed to comply with this Act, the Companies Act 2001 or the Securities Act 2005 or, where the company has failed to so comply, persistently failed to take all reasonable steps to ensure such compliance;
    - (ii) been convicted in relation to the performance of his duties as director;
  - (d) within the period of 7 years before the making of the application, a person to whom the application relates, was a director of 2 or more companies and in relation to each of those companies, that person was wholly or substantially responsible for the company -

- (i) being wound up;
- (ii) ceasing to carry on business because of its inability to pay its debts as and when they become due;
- (iii) having a receiver or manager of its property appointed; or
- (iv) entering into a scheme of compromise or arrangement with its creditors,

the Court may make an order that the person shall not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of a company for period not exceeding 5 years as may be specified in the order.

- (2) Any person who intends to apply for an order under this section shall give not less than 14 days' notice of his intention to the person against whom the order is sought, and on the hearing of the application, the person against whom the order is sought may appear and give evidence or call witnesses.
- (3) An application for an order under this section may be made by the Registrar, the Official Receiver, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company; and on the hearing of -
  - (a) an application for an order under this section by the Registrar or the Official Receiver or the liquidator; or
  - (b) an application for leave under this section by a person against whom an order has been made on the application of the Registrar, the Official Receiver, or the liquidator, the Registrar, Official Receiver, or liquidator shall appear and call the attention of the Court to any matters which may be relevant, and may give evidence or call witnesses.
- (4) Notwithstanding the criminal liability of the person against whom the order is made, an order under this section may be made on the ground for which the order is to be made.
- (5) The Court shall, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar shall give notice in the *Gazette* of the name of the person against whom the order is made.
- (6) Any person who acts in contravention of an order under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to imprisonment for a term not exceeding 5 years.
- (7) In this section, "company" includes a foreign company.