



## INTERCONTINENTAL TRUST

International Tax & Management Services

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### DUTIES OF DIRECTORS UNDER MAURITIAN LAW

A director of a Mauritian company must, as from the date of his appointment, comply with certain duties and obligations as set out under the Companies Act 2001 of Mauritius (the “Act”). These duties and obligations will apply in the same way to ‘alternate directors’. Similarly, directors are also bound to inform the relevant authorities of any change in their personal particulars. Hence, they should be familiar with the provisions of the law relating to them as directors of a Mauritian company.

#### DUTIES AND OBLIGATIONS OF DIRECTORS AND ALTERNATES

##### 1. Attendance at meetings

Directors should attend meetings of the company with reasonable regularity, unless prevented from doing so by illness or reasonable excuse. Private companies may operate on a more relaxed regime and the attendance at meetings of the directors of the company would depend upon how a particular company’s business is organized and the part which the director could reasonably be expected to play. Also, a director who tenders an apology prior to the meeting and has that apology accepted by the Board could be considered to have a “reasonable excuse”.

Where a director is not able to attend a meeting of the directors, he may appoint an alternate to act in his stead. **By appointing an alternate, the director shall be compliant with the Act.** In compliance with the provisions of the Act, an alternate director has the same rights, duties and liabilities as any other director in the same position. It is worth noting that a provision of our Code of Corporate Governance which provides that although an individual may act as alternate for more than one director, no individual should exercise more than two votes at a Board meeting.

However, this provision of the Code of Corporate Governance has been disapplied to companies holding Category One or Two Global Business Licenses, except for those category 1 Global Business companies which provide financial services or collective investment schemes.

##### 2. Disclosure of Interest (Section 143(1)(i) of Act)

If directors are interested in a transaction to which the company is a party, then they have a duty to disclose such interest to the Board prior to entering into such transactions and record such interest in the interest register of the company.

##### Meaning of “interested”

A director of a company shall be interested in a transaction to which the company is a party where the director is a party to, or shall or may derive a material financial benefit from the transaction or has a material financial interest in or with another party to the transaction.

Not all transactions fall within the ambit of the above mentioned section. Transactions between holdings and subsidiaries are excluded.

In a private company the interested director may still attend the meeting and vote on any matter relating to the transaction provided he has disclosed his interest under Section 148 of the Act. He may also sign any document in relation to the transaction on behalf of the company.

Note that a failure by a director to comply with the disclosure requirement shall not affect the validity of a transaction entered into by the company or the director.

A director of a company shall not be required to comply with the disclosure requirement under Section 148 of the Act where the transaction or proposed transaction is between the director and the company; and the transaction or proposed transaction is or is to be entered into in the ordinary course of the company’s business and on usual terms and conditions.



### **3. Exercise degree of care, diligence and skill and act in the best interest of the Company**

Directors should 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 and impliedly conferred.

Directors should exercise such degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

A director of a company which 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.

A director of a company which 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. Actions to be duly authorized**

Directors should exercise their powers in accordance with the Companies Act of 2001 and within the limits and subject to the conditions and restrictions established by the company's constitution.

Directors should obtain the authorization 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 the Companies Act 2001 or the company's constitution.

#### **“Major Transaction”**

Section 130 of the Act provides that a company shall not enter into a ‘major transaction’ unless the transaction is:

- (a) approved by special resolution, or
- (b) contingent on approval by special resolution.

Major transaction means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets, the value of which is more than 75% of the value of the company's assets before the acquisition;
- (b) the disposition of or an agreement to dispose of, whether contingent or not, assets of the company, the value of which is more than 75% of the value of the company's assets before the disposition; or
- (c) a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than 75% of the value of the company's assets before the transaction

Also note that, a simple ordinary resolution of shareholders would be required where the aforesaid transaction involves more than 50% of the value of the company's assets before the transaction.

Furthermore, it is to be noted that the requirement under Section 130 of the Act does not apply to Investment Companies as defined in the Act and may, for Category One or Category Two Global Business companies, be disapplied by a unanimous shareholders' resolution. However, the unanimous shareholders' resolution will have to be renewed each time there is a change in shareholders by reason of a transfer of shares, issue of shares to new shareholders or by death, bankruptcy or otherwise.

### **5. Competition with the company**

Directors should not compete with the company or become a director or officer of a competing company, unless it is approved by the company.

### **6. Keeping of accounting records**

Directors should keep proper accounting records in accordance with Act and make such records available for inspection.



## 7. Insolvency

Where directors believe that the company is unable to pay its debts as they fall due, they should forthwith call a meeting of the Board to consider whether the Board should appoint a liquidator or an administrator.

### “Solvency test”

The law provides that a certain number of transactions cannot be approved by the Board of directors unless the directors are satisfied that the company would, upon such transactions being effected, satisfy the solvency test. The directors would be required to sign a Solvency Certificate stating that, in their opinion, the company shall satisfy the solvency test upon the transactions being effected.

*Examples would be:*

- Making distributions
- Acquisition or redemption of company’s own shares [Sect. 68 of the Act]
- Financial assistance in connection with purchase of shares [Sect. 81 of the Act]
- Reduction of stated capital [Sect. 68(4) of the Act]

### How to satisfy solvency test

For the purposes of the Act, a company shall satisfy the solvency test where:

- (a) the company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company’s assets is greater than the sum of :
  - (i) the value of its liabilities; and
  - (ii) the company’s stated capital.

In determining whether the value of a company’s assets is greater than the value of its liabilities, the Board may take into account the most recent financial statements of the company, prepared in accordance with the International Accounting Standards.

## 8. Powers of directors not to be delegated

- Section 52 : Powers of the Board to issue shares at any time, to any person and in any number
- Section 56: Consideration for issue of shares  
In issuing shares, the Board shall determine the amount of the consideration for which the shares shall be issued and shall ensure that such consideration is fair and reasonable to the company and to all existing shareholders.
- Section 57(3): Shares not paid in cash
- Section 61: Board to authorize distribution
- Section 64: Issuing shares in lieu of dividends
- Section 65: Offering shareholders discounts
- Section 69: Purchase of own shares
- Section 78: Redemption of shares at option of Company
- Section 81: Restriction on giving financial assistance
- Section 88: Change of registered office
- Section 246 and 247: Amalgamation proposal

## 9. Change in personal particulars of directors

Under Section 142 of the Act, if there are any changes in the personal particulars of directors as recorded, such as name, address, passport number etc, they are required to provide details of such changes in the prescribed form to the Registrar of Companies.

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**Intercontinental Trust Ltd is regulated by the Financial Services Commission in Mauritius.**

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