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THE FINANCIAL SERVICES DEVELOPMENT (AMENDMENT) ACT 2005
(No. X. of 2005)

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An ACT

To amend the Financial Services Development Act 2001

ENACTED by the Parliament of Mauritius, as follows-

1. Short title

This Act may be cited as the Financial Services Development (Amendment) Act 2005.

2. Interpretation

In this Act –

“principal Act” means the Financial Services Development Act 2001.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended -

- (a) by deleting the definition of “Category 1 Global Business Licence” and replacing it by the following definition -

“Category 1 Global Business Licence” means a licence issued under section 20(5) and includes a licence issued to -

- (a) an external insurer; and
- (b) an insurance manager;

- (b) by inserting the following new definitions in the appropriate alphabetical order -

“controller” in relation to a corporation, means a person-

- (a) who is a member of the governing body of the corporation;
- (b) who has the power to appoint or remove a member of the governing body of the corporation;
- (c) whose consent is needed for the appointment of a person to be a member of the governing body of the corporation;
- (d) who, either by himself or through one or more other persons -
 - (i) is able to control, or exert significant influence over, the business or financial operations of the corporation whether directly or indirectly;
 - (ii) holds or controls not less than 20 percent of the shares of the corporation;
 - (iii) has the power to control not less than 20 percent of the voting power in the corporation;
 - (iv) holds rights in relation to the corporation that, if exercised, would result in paragraphs (ii) and (iii);
- (e) who is a parent undertaking of that corporation, or a controller of such parent undertaking;
- (f) who is a beneficial owner or ultimate beneficial owner of the persons specified in paragraphs (a) to (e) and who appears to the Commission to be a controller of that corporation;

“Enforcement Committee” means the Enforcement Committee established under section 27A;”

“external insurer” has the same meaning as in the Insurance Act 2005;

“financial crime” means -

- (a) an offence that involves fraud or dishonesty under the relevant Acts or any other enactment; or
- (b) an offence under the Financial Intelligence and Anti-Money Laundering Act 2002 or under the Prevention of Terrorism Act 2002;

“Fund” means the Financial Services Fund set up under section 27R;

“guidelines” includes codes, guidance notes, practice notes and such other similar instruments issued by the Commission;

“insurance manager” has the same meaning as in the Insurance Act 2005;

“officer” means a member of the board of director, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a secretary, a partner, a trustee or a person holding any similar function with a licensee;

“Review Panel” means the Financial Services Review Panel established under section 27C;

“rules” means rules made by the Commission under a relevant Act;

“SRO” means a self-regulatory organisation, whether corporate or unincorporate, whose object is to regulate the operations of its members or of the users of its services, their standards of practice and business conduct in order to better protect investors and consumers of securities or related services and includes such other organisations as may be declared or recognised as such by the Commission;

4. Section 7 of principal Act amended

Section 7 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by deleting paragraph (a) and replacing it by the following paragraph-
 - (a) make rules, set standards and provide guidelines;
 - (ii) in paragraph (c), by deleting the words “guidelines or codes of practice” and replacing them by the words “rules and guidelines”;
 - (iii) by deleting paragraph (d) and replacing it by the following paragraph -

- (d) give directions to ensure compliance with a relevant Act, any rule or guideline;
- (iv) by deleting paragraph (e) and replacing it by the following paragraph -
 - (e) with respect to a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee -
 - (i) issue a private warning;
 - (ii) issue a public censure;
 - (iii) disqualify a licensee from holding a licence or a licence of a specified kind for a specified period;
 - (iv) in the case of an officer of a licensee, disqualify the officer from a specified office or position in a licensee for a specified period;
 - (v) impose an administrative penalty; or
 - (vi) revoke a licence.
- (b) by deleting subsections (3), (4), (5) and (6).
- (c) by adding immediately after subsection 10, the following new subsection -
 - (11) The Commission may publish a bulletin at such intervals it thinks fit for the purpose of giving public notice of -
 - (a) any decision or determination by the Commission or the Review Panel under any of the relevant Acts;
 - (b) any statistical report or analysis; and
 - (c) any other information the Commission deems relevant.

5. Section 10 of principal Act amended

Section 10 of the principal Act is amended in subsection (1) -

- (a) by deleting paragraph (d) and replacing it by the following paragraph -
 - (d) to make rules and provide guidelines under a relevant Act;

- (b) in paragraph (e), by deleting the words “guidelines or codes of practice” and replacing them by the words “rules and guidelines”.

6. Section 15 of principal Act amended

Section 15 of the principal Act is repealed and replaced by the following section -

15. Restrictions on promotion of financial services

(1) No person other than a person licensed, authorised or approved under a relevant Act shall hold himself out to provide financial services in any manner whatsoever and, in particular by publishing or causing to be published an advertisement for or in connection with the provision of financial services that requires a licence, authorisation or approval under a relevant Act.

(2) Where the Commission is satisfied that a person has published or caused to be published an advertisement -

- (a) contrary to subsection (1); or
- (b) in a manner which is unclear, false or misleading in any material particular,

it may, in writing, direct that person to cease or modify the advertisement.

7. Section 17 of principal Act amended

Section 17 of the principal Act is repealed and replaced by the following section -

17. Protection of consumers of financial services and financial products

(1) For the purposes of discharging its functions under this Act, the Commission may develop and promote such programmes and initiatives, where it deems necessary in collaboration with financial institutions or bodies representing the financial services industry, to inform and educate consumers or potential consumers of financial products and financial services.

(2) Any consumer of a financial product or of financial services who is aggrieved by any act or omission of a service provider in the financial services sector may make a complaint in writing to the Commission.

(3) The Chief Executive shall examine any complaint made under subsection (2) and shall take such action as he thinks fit.

(4) The Commission shall, where possible, give a reply to the complainant within 3 months as from the date it receives the complaint.

(5) Where in the course of an examination of a complaint it is suspected that there is a breach of a relevant Act or a rule, the Chief Executive may conduct an investigation under section 27.

(6) The Chief Executive shall not examine a complaint where it is made 12 months after the date of the act or omission unless otherwise authorised by the Board.

(7) The Commission may make such rules or provide such guidelines as may be necessary for the purposes of this section.

8. Section 19 of principal Act amended

Section 19 of the principal Act is amended -

- (a) in subsection (2), by deleting paragraph (b) and replacing it by the following paragraph -
 - (b) which is carried on by a private company or a corporation other than a trust, in such legal form as may be acceptable to the Commission -
 - (i) which does not conduct business with persons resident in Mauritius nor conduct any dealings in Mauritius currency;
 - (ii) which holds a Category 2 Global Business Licence; and
 - (iii) subject to such restrictions and limitations as may be specified in the rules made by the Commission.
- (b) by deleting subsections (4) and (5).

9. Section 20 of principal Act amended

Section 20 of the principal Act is amended -

- (a) by deleting paragraphs (a) and (b) and replacing them by the following subsection -
 - (1) Any person who wishes to conduct a qualified global business may apply -
 - (a) in respect of an activity referred to in section 19(2)(a), for a Category 1 Global Business Licence;

- (b) in respect of a private company or a corporation referred to in section 19(2)(b), for a Category 2 Global Business Licence.
- (b) in subsection (4), by deleting paragraph (c) and replacing it by the following paragraph -
 - (c) approve the application on such terms and conditions as it thinks fit where it is satisfied that the application meets all licensing requirements as set out in such rules or guidelines as may be issued by the Commission.

10. Section 22 of principal Act amended

Section 22 of the principal Act is amended -

- (a) by deleting subsection (1) and replacing it by the following subsection -
 - (1) A corporation holding a licence issued under section 20(5) shall pay such annual licence fee as may be prescribed.
- (b) by deleting subsection (2) and replacing it by the following subsection -
 - (2) Subject to the other provisions of this section, a Category 1 Global Business Licence or a Category 2 Global Business Licence shall lapse where the prescribed annual licence fee in respect of the licence is not settled within the prescribed time limit.
- (c) by inserting immediately after subsection (5), the following new subsection -
 - (5A) Where a Category 1 Global Business Licence or a Category 2 Global Business Licence of a corporation has lapsed under subsection (2), the Commission may issue such directions to the corporation as it thinks fit for the orderly winding-up and dissolution of the corporation.

11. Section 26 of principal Act amended

Section 26 of the principal Act is amended in subsection (2) by deleting the words “International Accounting Standards” and replacing them by the words “International Financial Reporting Standards”.

12. New Part VIA added to principal Act

The principal Act is amended by inserting immediately after Part VI, the following new Part -

**PART VIA—ENFORCEMENT COMMITTEE AND FINANCIAL
SERVICES REVIEW PANEL**

Sub-Part A - Enforcement Committee

27A. Establishment of Enforcement Committee

(1) The Board shall establish an internal committee which shall be known as the Enforcement Committee.

(2) The Enforcement Committee shall consist of -

- (a) 2 Board members appointed every year by the Board;
- (b) not more than 2 members of the staff of the Commission being of a grade not lower than Executive and who shall not be involved in investigations conducted under section 27;
- (c) such members having the expertise that is necessary as may be co-opted by the Enforcement Committee.

(3) The Enforcement Committee may, in respect of a licensee, exercise the disciplinary powers of the Commission to impose an administrative sanction under the relevant Acts and in particular may -

- (a) issue a private warning;
- (b) issue a public censure;
- (c) disqualify a licensee from holding a licence or a licence of a specified kind for a specified period;
- (d) in the case of an officer of a licensee, disqualify the officer from a specified office or position in a licensee for a specified period;
- (e) impose an administrative penalty; or
- (f) revoke a licence.

(4) The Enforcement Committee shall have such other functions as may be conferred upon it under a relevant Act.

(5) The members of the Enforcement Committee shall be appointed on such terms and conditions as the Board shall determine.

27B. Disciplinary proceedings

(1) Where the Chief Executive is satisfied on reasonable grounds that a licensee -

- (a) has contravened any relevant Act, any direction, order or rule issued under a relevant Act or any condition of the licence;
- (b) is carrying out his business in a manner which threatens the integrity of the financial system of Mauritius or is contrary or detrimental to the interest of the public; or
- (c) has committed any financial crime,

he shall refer the matter to the Enforcement Committee for such action as the Enforcement Committee thinks fit.

(2) (a) Where the Enforcement Committee intends to impose an administrative sanction against a licensee it shall issue a warning notice to the licensee, which shall state -

- (i) the intention of the Enforcement Committee to impose an administrative sanction;
- (ii) the type and terms of the administrative sanction; and
- (iii) the right of the licensee to make written representations to the Enforcement Committee within such time period as the Enforcement Committee deems appropriate in the circumstances, but in any case shall not exceed 21 days from the date of the notice.

(b) Where the Enforcement Committee decides to impose an administrative sanction it shall issue a final decision notice to the person stating the type and the terms of the administrative sanction.

(c) Any licensee aggrieved by the decision of the Enforcement Committee may, within 21 days of the issue of the final decision notice, and after giving written notice to the Commission, apply to the Review Panel for review of the decision.

(d) Where no application for review of a final decision is made to the Review Panel, the decision shall not be effective until the period of 21 days specified in paragraph (c) has lapsed.

(e) Notwithstanding any action taken by the Enforcement Committee, the Commission may direct a licensee to take such remedial action as it thinks fit.

(f) Any administrative penalty due to the Commission shall be a debt due to the Commission and may be recovered by the Commission as a civil debt in the court of competent jurisdiction.

(g) All administrative penalties recovered by the Commission shall be paid into the Financial Services Fund.

(h) For the purposes of this Sub-Part –

“licensee” includes any person who is a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee.

Sub-Part B - Financial Services Review Panel

27C. Financial Services Review Panel

There is established a review panel which shall be known as the Financial Services Review Panel and which shall -

- (a) review decisions made by the Commission, an SRO under a relevant Act or such other body or organisation as may be provided under a relevant Act, in accordance with the relevant Act; and
- (b) have such other functions as may be conferred on it by any other enactment.

27D. Membership of the Review Panel

(1) The Review Panel shall consist of the following members, appointed by the Attorney-General -

- (a) a Chairperson and a Deputy Chairperson, each of whom shall be a barrister of not less than 5 years' standing; and
 - (b) 4 other members who shall be appointed and who shall be persons having experience in the field of business, finance and law.
- (2) Subject to this Act, a member of the Review Panel -

- (a) shall be appointed for a period of 3 years on such terms and conditions as the Attorney-General may determine and he shall be eligible for re-appointment; and
 - (b) shall take the oath of confidentiality specified in the Third Schedule.
- (3) Members of the Review Panel may be paid such fees and allowances as the Attorney-General may determine.

27E. Termination of appointment

- (1) A member of the Review Panel may resign by giving one month's notice in writing to the Attorney-General.
- (2) A member of the Review Panel shall cease to hold office where -
- (a) the member becomes bankrupt, assigns his estate for the benefit of creditors or makes an arrangement with his creditors; or
 - (b) the member is convicted of a financial crime.
- (3) The Attorney-General may, by notice, terminate the appointment of a member of the Review Panel where -
- (a) without reasonable excuse, the member fails to perform the duties of his office;
 - (b) in the opinion of the Attorney-General, the member is unfit to be a member because of misconduct or default in the discharge of his duties as a member; or
 - (c) the member is unfit to discharge his duties as a member because of a mental or physical infirmity.

27F. Staff

The Commission shall extend such technical, administrative and secretarial assistance as may be necessary to enable the Review Panel to properly discharge its functions under the relevant Acts or under any other enactment.

27G. Annual report

The Chairperson of the Review Panel shall, as soon as practicable after 30 June, and in any event before 31 October, in each year -

- (a) prepare a report describing the operations of the Review Panel during the year that ended on 30 June in that year; and
- (b) give a copy of the report to the Attorney-General to be laid before the Assembly.

27H. Composition of Review Panel for particular matters

(1) For the purpose of dealing with a particular application for review, the Review Panel shall consist of the Chairperson or Deputy Chairperson and 2 other members.

(2) The Chairperson shall assign members for the purposes of subsection (1).

27I. Disclosure of interests by members of the Review Panel

(1) A member of the Review Panel who has or acquires an interest, pecuniary or otherwise, that may conflict with the proper performance of the member's functions in relation to a particular matter to be considered by the Review Panel -

- (a) shall disclose the interest to the Chairperson of the Review Panel and where the member is the Chairperson, the disclosure shall be to the Attorney-General; and
- (b) shall not participate as a member in any proceeding of the Review Panel in relation to the matter without the approval of the Attorney-General.

(2) The Attorney-General shall not give his approval under paragraph (1)(b) unless he is satisfied that the interest shall not prevent the member from acting impartially in relation to the matter.

27J. Restriction on powers of the Commission, the Enforcement Committee and SROs after application for review made

After an application is made to the Review Panel for a review of a decision, the decision may not be altered or set aside and a new decision made except by the Review Panel or with the consent of the parties to the proceeding and the consent of the Review Panel.

27K. Conduct of reviews

(1) Where the subject of an application for review is a decision of the Enforcement Committee, the Commission shall be a party to the proceedings.

(2) The Commission may be a party to review proceedings for any other decision.

(3) Any party to proceedings before the Review Panel may be legally represented and shall be allowed reasonable opportunity to present its case and in particular, to inspect documents which the Review Panel proposes to consider in determining the matter.

(4) The Review Panel shall not be bound by the rules of evidence but may inform itself on any matter as it thinks appropriate.

27L. Procedure

(1) The Review Panel may, for the purposes of the performance or exercise of any of its functions and powers, hold hearings.

(2) Hearings shall be conducted in public unless otherwise directed by the Review Panel.

(3) The Review Panel shall meet at such time and place as the Chairperson thinks fit.

(4) Subject to the relevant Acts, the Review Panel shall regulate its proceedings as it thinks fit and shall ensure that proceedings are conducted in a manner which is consistent with the rules of natural justice and procedural fairness.

(5) The Chairperson of the Review Panel may make rules, not inconsistent with this Act, for or with respect to the procedure of the Review Panel.

(6) The rules of procedural fairness, shall apply to the Review Panel proceedings.

27M. Powers of the Review Panel

(1) For the purpose of reviewing a decision, the Review Panel may -

- (a) take evidence on oath or affirmation; and
- (b) proceed in the absence of a party who has had reasonable notice of the proceedings; and
- (c) adjourn the proceedings from time to time.

(2) The Review Panel may, for the purposes of a hearing, summon a person to appear before the Review Panel and may -

- (a) give evidence; or
 - (b) produce books, documents or other records in the possession, custody or control of the person or persons named in the summons that are mentioned in the summons.
- (3) A member of a Review Panel hearing an application for review may -
- (a) require a person appearing before the Review Panel to give evidence either to take an oath or to make an affirmation; and
 - (b) administer an oath or affirmation.
- (4) The Review Panel shall regulate its meetings and proceedings in such manner as it thinks fit.

27N. Protections

(1) A law practitioner or other person appearing before the Review Panel on behalf of a party has the same protection and immunity as a law practitioner has in appearing for a party in proceedings in the Supreme Court.

(2) Subject to this Act, a person summoned to attend or appearing before the Review Panel as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings before the Supreme Court.

27O. Failure to comply with summons

(1) A person served with a summons to appear as a witness before the Review Panel shall not, without reasonable excuse -

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

(2) A person served with a summons by the Review Panel to produce a book, document or other record shall comply with the summons.

(3) A person appearing as a witness before the Review Panel shall not, without reasonable excuse -

- (a) when required by the Review Panel to take an oath or make an affirmation, refuse or fail to do so;
 - (b) refuse or fail to answer a question that he is required to answer by the Review Panel; or
 - (c) refuse or fail to produce a document that he was required to produce by a summons under this Act.
- (4) A person appearing as a witness before the Review Panel shall not give evidence that, to his knowledge, is false or misleading.
- (5) A person shall not -
- (a) insult a member of the Review Panel in or in relation to the exercise of his powers or functions as a member;
 - (b) interrupt the proceedings of the Review Panel;
 - (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Review Panel is sitting; or
 - (d) do any other act or thing that would, if the Review Panel were a court of law, constitute a contempt of the court.
- (6) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20,000 rupees and to imprisonment for a term not exceeding 5 years.

27P. Determination

- (1) The Review Panel may -
- (a) affirm the decision under review;
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and -
 - (i) make a decision in substitution for the decision so set aside;
 - (ii) remit the matter to the Commission, the Enforcement Committee or the SRO, as the case may be, for

reconsideration in accordance with any directions or recommendations of the Review Panel; or

(iii) make any other ancillary order as it may deem fit.

(2) A decision of the Review Panel shall be made by a majority of the votes of the members forming the Review Panel for the particular matter.

(3) A decision of the Review Panel shall be in writing, and include the reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(4) The Review Panel shall cause a copy of its decision to be served on each party to the proceedings.

(5) Subject to subsection (6), a decision of the Review Panel shall come into operation forthwith upon the giving of the decision.

(6) The Review Panel may specify in a decision that the decision shall not come into operation until a later date specified in the decision and, where a later date is so specified, the decision shall come into operation on that date.

(7) Unless otherwise directed by the Review Panel, all decisions of the Review Panel shall be published in such form, medium and manner as the Review Panel thinks fit.

27Q. Judicial Review

Any person aggrieved by the decision of the Review Panel may apply to the Supreme Court by way of judicial review.

Sub-Part C - Financial Services Fund

27R. Financial Services Fund

(1) There shall be established by the Commission a Financial Services Fund.

(2) The funds of the Fund shall be used for the following purposes -

(a) to promote the education of consumer of financial services;

(b) 25 per cent of the total funds of the Fund shall be credited to such compensation fund set up under the relevant Acts as may be determined by the Commission; and

- (c) to meet the remuneration and expenses of the Review Panel.
- (3) No disbursement of money shall be made from the Fund except -
 - (a) for the purposes of the Fund; and
 - (b) with the authorisation of the Managing Committee set up under section 27S.

27S. Administration of the Fund

(1) The Fund shall be administered by a Managing Committee which shall consist of a Chairperson and not more than 4 members as may be designated by the Minister.

(2) The Managing Committee shall be convened by the Chairperson at such time and place as he thinks fit.

(3) The Managing Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

- (4) The Managing Committee -
 - (a) shall comply with such directions of a general character as the Minister may give; and
 - (b) furnish to the Minister such information with respect to the discharge of its functions as the Minister may require.

27T. Audit and accounts

(1) The Managing Committee shall, as soon as practicable after 30 June, and in any event not later than 31 October in each year, cause to be published a report of its functions, activities, affairs and financial position during the year ending 30 June in that year.

(2) The Managing Committee shall forward a copy of every report referred to in subsection (1) to the Minister and to the Commission.

13. Section 41 of principal Act repealed and replaced

Section 41 of the principal Act is repealed and replaced by the following section -

41. Immunity and protection

(1) No action shall lie against the Commission or any of the following persons -

- (a) a member of the Board;
- (b) a member of a technical committee;
- (c) a member of the Enforcement Committee;
- (d) a member of the Review Panel;
- (e) the Chief Executive;
- (f) an employee of the Commission;
- (g) a person to whom functions or powers of the Commission have been delegated under a relevant Act;
- (h) a person appointed by the Commission, or appointed by a licensee in accordance with a direction of the Commission, to investigate the affairs of a licensee or a matter relevant to a relevant Act,

for anything done or omitted to be done by the Commission or the person in the performance, in good faith, of the Commission's or the person's functions, or the exercise, in good faith, of the Commission's or the person's powers, under a relevant Act.

(2) For the purposes of the Public Officers' Protection Act, the persons mentioned in subsection (1) shall be deemed to be public officers.

14. Section 43 of principal Act amended

Section 43 of the principal Act is amended in subsection (1) by adding after the word "direction" the word ", rule.

15. New section 43A added to principal Act

The principal Act is amended by inserting immediately after section 43 the following new section -

43A. Prosecution

(1) Subject to subsection (2), the Commission may institute criminal proceedings against any person in respect of any offence under the relevant Acts.

(2) No prosecution for an offence under any of the relevant Acts shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

16. Section 45 of principal Act amended

Section 45 of the principal Act is amended –

- (a) in the heading by inserting immediately after the word “Regulations” the words “and rules”;
- (b) in subsection (2), by inserting immediately after paragraph (a), the following new paragraph -
 - (aa) provide for a code of ethics for the members of the Board and the employees of the Commission relating to -
 - (i) acceptance of gifts or any other reward;
 - (ii) restricting the holding of shares and other interests in any licensee or the disclosure of such interests; and
 - (iii) acting as or accepting a function as an officer of a licensee or employment with a licensee during or after the termination of their employment with the Commission;
- (c) by adding immediately after subsection (2) the following new subsection -
 - (3) (a) The Commission may make such rules as it thinks fit for the purposes of this Act.
 - (b) Any rules made by the Commission under this Act may provide for the taking of fees and levying of charges.

17. First Schedule to principal Act amended

The First Schedule to the principal Act is amended -

- (a) by deleting Part I and replacing it by the following Part -

PART I

Relevant Acts

Insurance Act 2005
Protected Cell Companies Act

Securities Act 2005
Securities (Central Depository, Clearing and Settlement) Act
Trusts Act 2001

- (b) by deleting Part II and replacing it by the following Part -

PART II

Financial services or financial business activities

Factoring business
Leasing business
Mortgage finance
Retirement benefit schemes
Such other financial services or financial business activities as may be approved by the Commission.

18. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended by deleting the following item –
Insurance

19. Third Schedule to principal Act amended

The Third Schedule to the principal Act is amended by deleting the words “(section 33)” and replacing them by the words “(sections 27D and 33)”.

20. Commencement

- (1) This Act shall come into operation on a date to be fixed by Proclamation.
(2) Different dates may be fixed for different sections of this Act.
-