

THE CREDIT FACILITIES BILL

(No.....of 2005)

Explanatory Memorandum

1. The object of this Bill is to make provision for the implementation of the recommendations contained in the Report of the Commission of Inquiry on Sale by Levy, the major ones being -
 - (a) the setting up of a Commission on Indebtedness for the purpose of overseeing and, where appropriate, regulating the drawing up and implementation of contracts for the grant of credit facilities; and
 - (b) a change in the judicial process for the sale of property given as security to guarantee the repayment of a credit facility in case of default from a system of public adjudication by auction to a Court controlled system of sealed offers to purchase.

2. The Bill also makes provision for the other recommendations contained in the Report which relate, *inter alia*, to -
 - (a) hire purchase and credit sales agreements;
 - (b) the need for borrowers to insure against payment default;
 - (c) the terms and conditions of credit facility agreements negotiated with a financial institution, and the latter's obligations to provide information to debtors; and
 - (d) the rights and duties of attorneys who act on behalf of creditors.

February 2005

(s)

Minister

THE CREDIT FACILITIES BILL

(No.....of 2005)

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A BILL

To make provision for the implementation of the recommendations contained in the Report of the Commission of Inquiry on Sale by Levy.

ENACTED by the Parliament of Mauritius, as follows’-

PART I – PRELIMINARY

1. **Short title**

This Act may be cited as the Credit Facilities Act 2005.

2. **Interpretation**

In this Act –

“bank” has the same meaning as in the Banking Act 2004;

“Bank of Mauritius” means the Bank established by the Bank of Mauritius Act 2004;

“borrower” means a person to whom a credit facility has been granted;

“bridging finance” means a temporary advance given by a financial institution to any person for a period not exceeding 6 months pending the grant of a credit facility;

“Chairman” means the person appointed as such under section 3 (1) (a);

“Chief Executive Officer” means the person designated as such under section 3 (4) (b);

“Commission” means the Commission on Indebtedness established under section 3;

“credit facility” –

- (a) means a loan, of money granted to a borrower by a financial institution, or a moneylender; and
- (b) includes any form of credit granted to a customer by a dealer; but
- (c) does not include bridging finance on an overdraft, a letter of credit or other similar arrangement;

- “creditor” means a person who has granted a credit facility to a borrower;
- “dealer” has the same meaning as in the Hire Purchase and Credit sale Act;
- “Deputy Chairman” means the person appointed as such under section 3 (1) (a);
- “division” means a division of the Commission referred to in section 4 (1);
- “financial institution” means a body corporate or incorporate, other than the Bank of Mauritius, a dealer or a moneylender, which is licensed or otherwise entitled by an enactment to do business by lending money;
- “guarantor” means a person who has given his property as security for the repayment of a credit facility by a borrower;
- “insurer” has the same meaning as in the Insurance Act;
- “land surveyor”-
- (a) has the same meaning as in the land surveyors Act; but
 - (b) does not include a Government Surveyor;
- “Lombard rate” has the same meaning as in the Moneylenders Act;
- “member” –
- (a) means a member of the Commission; and
 - (b) includes the Chairman and the Deputy Chairman.
- “moneylender” has the same meaning as in the Moneylenders Act;
- “related Acts” means –
- (a) the Hire Purchase and Credit Sale Act;
 - (b) the Moneylenders Act; and
 - (c) Part I of the Sale of Immovable Property Act.

PART II – THE COMMISSION

3. The Commission on Indebtedness

- (1) There is established, for the purpose of this Act and the related Acts, a Commission on Indebtedness which shall consist of -
 - (a) a Chairman and a Deputy Chairman, who shall be persons who have held office as Senior Magistrate for at least 3 years, appointed by the Public Service Commission; and
 - (b) such other members, not exceeding 4 in number, who have experience in the field of banking, commerce, valuation or property transactions, appointed by the Minister.
- (2) Every member referred to in subsection (1) (b) shall -
 - (a) hold office for a term of 3 years and be eligible for re-appointment for one further term;
 - (b) be paid such allowance as the Minister may determine; and
 - (c) subject to subsection (3), be governed by such other terms and conditions as the Minister may approve.
- (3) Section 37 (3) of the Interpretation and General Clauses Act shall apply to a member as it applies to a member of a statutory corporation.
- (4)
 - (a) The Secretary to the Cabinet shall designate such public officers as may, in the opinion of the Chairman, be necessary to assist the Commission in the proper exercise of its functions.
 - (b) One of the officers referred to in paragraph (a) shall be the Chief Executive Officer of the Commission and the other members of the staff shall be under his administrative control.

4. **Procedure of the Commission**

- (1) The Commission shall sit in one or more divisions constituted of the Chairman or the Deputy Chairman and 2 other members and a determination made by a division shall be deemed to be a determination of the Commission.
- (2) A division shall -
 - (a) sit in such place and at such time as the Chairman or, as the case may be, the Deputy Chairman may determine; and

- (b) where it thinks fit, adjourn its proceedings and resume them in such place and at such time as the Chairman or, as the case may be, the Deputy Chairman may determine.
- (3) Where a division is unable to reach a unanimous decision, it shall make a determination by a majority.
- (4) Where any person wishes or is required to report a matter to the Commission or to request the Commission to make a determination on any matter, he shall lodge his report or request in the prescribed form with the Chief-Executive Officer.
- (5) Where the Commission makes a determination, the Chief-Executive Officer shall, within 14 days, communicate it in writing by registered post to the relevant parties.
- (6) Where a determination of the Commission is questioned before the Supreme Court by way of judicial review, the effect of the determination shall not, unless the Judge in Chambers otherwise orders, be suspended.
- (7)
 - (a) A division may –
 - (i) make such orders as may be necessary for requiring, by registered post, the attendance for any person and the production of any document or other article; and
 - (ii) take evidence on oath and, for that purpose, administer an oath.
 - (b) Any person who -
 - (i) fails to attend a sitting of a division or to produce a document or other article on being required to do so pursuant to paragraph (a);
 - (ii) refuses to take an oath or to satisfactorily answer any question put to him before a division;
 - (iii) knowingly gives false evidence or evidence which is incorrect or misleading before a division; or
 - (iv) at a sitting of a division -
 - (A) insults a member; or
 - (B) interrupts the proceedings or commits any other form of contempt,

shall commit an offence.

5. **Protection of members and officers**

No civil or criminal liability shall attach to a member or to a public officer on the staff of the Commission for any act or omission of the member or officer in the exercise in good faith of his functions under this Act.

6. **Powers and duties of the Commission**

The Commission shall –

- (a) have and exercise the powers conferred on it by this Act and the related Acts;
- (b) ensure that adequate information is given to prospective borrowers concerning the proper ways and means of borrowing money;
- (c) strive to strike a fair balance between the rights and obligations of creditors and those of debtors; and
- (d) keep a Register of Indebtedness.

7. **The Register**

- (1) The Commission shall cause to be kept an up to date Register of Indebtedness in such form and manner as may be prescribed so as to clearly show the indebtedness of every person who has benefited from a credit facility which is required to be registered with the Commission pursuant to this Act or the related Acts.
- (2) The Commission shall ensure that -
 - (a) a sufficient number of copies of the Register is available for inspection in such places as may be prescribed; and
 - (b) any person who is authorized or required to inspect the Register is given an opportunity of doing so at all reasonable times.

PART III – CREDIT FACILITY CONTRACTS

8. **Unlawful contracts**

- (1) Where a financial institution grants a credit facility to any person, the contract between the parties shall -

- (a) provide that the facility may only be recalled on the ground that the borrower has failed to effect a payment or to fulfil any other obligation under the contract;
 - (b) provide that the interest payable shall be fixed in relation to the Lombard rate;
 - (c) not contain any provision for-
 - (i) the payment of higher interest by way of penalty; or
 - (ii) the capitalization of interest, except with the prior approval of the Commission;
 - (d) not impose an obligation on the borrower to pay any amount to a law practitioner other than costs ordered to be paid by a Court; and
 - (e) contain, by way of a summary at the beginning or the end of the document, the particulars relating to -
 - (i) the names, occupation and place of residence or business of the parties;
 - (ii) the amount of the credit facility and the terms of its repayment;
 - (iii) the rate of interest chargeable and the periodicity of repayment; and
 - (iv) the property, if any, to be given as security for the performance of the borrower of his obligations.
- (2) Except with the prior approval of the Commission, no person shall give, or offer to give, his principal place of residence as security for the repayment of a credit facility to a financial institution unless the facility is to be used for -
- (a) the purchase, by him or by his child or parent, of the principal place of residence or of land on which it is to be built; or
 - (b) an extension or major repairs to his place of residence.
- (3) Any contract to which a financial institution is a party relating to the grant of a credit facility or to the pledging of an immovable property as

security for its repayment, which is inconsistent with subsection (1) or (2), as the case may be, shall be void and of no effect.

9. **Description and value of property**

- (1) Where any person offers to give an immovable property as security for the repayment of a credit facility, he shall make available to the person who is to grant it a report drawn up by a land surveyor not earlier than 6 months before the date on which the relevant contract is drawn up which-
 - (a) certifies the precise boundaries of the property as they are at the time of the drawing up of the report;
 - (b) briefly describes the buildings, if any, existing on the property;
 - (c) mentions any encumbrances burdening the property, including the existence of any tenancies;
 - (d) embodies a site plan of the property; and
 - (e) gives an estimate of the market value of the property.
- (2) The person who intends to grant the credit facility shall, on receipt of a report referred to in subsection (1), cause its contents to be verified before he agrees to grant it.
- (3) Where a creditor grants a credit facility to any person and the latter or a guarantor gives, or offers to give, an immovable property as security for its repayment, he shall cause a copy of the report referred to in subsection (1) to be appended to the relevant contract.
- (4) No financial institution shall grant a credit facility, the amount of which exceeds 60% of the market value of any property given as security for its repayment which is stated in the report of the land surveyor.

10. **Payment protection insurance**

- (1) Where a creditor grants to any individual a credit facility which -
 - (a) exceeds the prescribed amount; or
 - (b) is to be repaid over a period which exceeds 30 months,the Commission may require the borrower to take out a policy of insurance issued by an insurer to guarantee the repayment of any amount

due to the creditor in case the borrower is unable to honour his obligations because of deaths physical or mental incapacity, loss of employment, cessation of business or any other event which is not the result of the borrower's fault.

- (2) Where an insurer grants a credit facility to any individual and the latter is required to take out a policy of insurance pursuant to subsection (1), it shall not be lawful for the insurer to require the borrower to take out a life insurance policy.

11. **Inspection of Register**

- (1)
 - (a) Where a creditor proposes to grant to any person a credit facility which exceeds the prescribed amount, he shall, before doing so, inspect the Register in order to ascertain whether, having regard to the person's indebtedness, the latter is likely to be able to repay the proposed credit facility.
 - (b) different amounts may, for purposes of paragraph (a), be prescribed in aspect of different categories of creditors.
- (2) The Chief Executive Officer shall keep a record of every inspection conducted pursuant to subsection (1) and of the facts disclosed to the proposed creditor as a result of the inspection.

12. **Registration of contracts**

- (1) Where a financial institution proposes to grant a credit facility to any person, it shall, not later than 14 days after the signature of the contract, forward to the Commission a copy of the contract to be registered.
- (2) Where any person proposes to grant a credit facility which is, pursuant to this Act or the related Acts, required to be registered under this section, he shall, where the repayment is guaranteed on the security of any property by means of a separate contract, forward to the Commission a copy of that contract together with the copy of the contract for the credit facility.
- (3) Any person who is required pursuant to this section or by a related Act to forward a copy of a contract to the Commission to be registered and who fails to do so shall commit an offence.

- (4) Where the person who has granted a credit facility fails to forward to the Commission a copy of a contract which he is required to forward, the borrower or the guarantor, if any, may report the matter to the Commission.
- (5) The Commission may, on receipt of a copy of a contract relating to the grant of a credit facility -
 - (a) give, or refuse to give, its approval in relation to any clause in the contract which -
 - (i) provides for the capitalization of interest; or
 - (ii) purports to pledge a person's principal place of residence;
 - (b) advise the parties on the desirability or appropriateness of any term or condition of the contract; or
 - (c) determine, after hearing the parties, that a clause in the contract is inconsistent with this Act or, as the case may be, a relevant Act.
- (6) Where the Commission makes a determination pursuant to section (5) (c), the relevant clause shall be void and of no effect.

13. **Statements of account**

- (1) Where a financial institution has granted a credit facility to any person, it shall, not later than the end of the month which follows the end of every sixth month for the duration of the contract, forward by registered post to the borrower and to the guarantor, if any, a statement of account showing-
 - (a) the amounts outstanding, in principal and interest, at the beginning of the six month period; and
 - (b) the payments received, in principal and interest, during the six months period.
- (2) A borrower or a guarantor may require the Commission to make a determination that the financial institution has failed to comply, or to fully comply, with subsection (1).
- (3) The Commission may, following a request under subsection (2), direct the financial institution to provide the borrower and the guarantor, if any, and the Commission with such information as it may determine within such time as it thinks fit.

- (4) Any financial institution which fails to comply with a direction under subsection (3) shall commit an offence.

14. **State land**

- (1) Any lessee of State land may, with the written consent of the lessor, or its authorized agent, pledge his rights to the lease as security for the repayment of a credit facility granted to him or to another person.
- (2) Where any rights to the lease of State land are sold pursuant to section 16
- (3) Oby private contract or by judicial sale pursuant to Part I of the Sale of Immovable Property Act, the purchaser may request the State to transfer the rights in the lease to him at no expense.
- (3) Where the State refuses to accede to a request under subsection (2), the purchaser may seek redress before the Supreme Court and ask the Court to determine -
 - (a) whether the State's refusal to accede to the request is lawful and reasonable; and
 - (b) whether he is entitled to compensation and, if so, in what amount.

PART IV – DEFAULT BY BORROWERS

15. **Reports to the Commission**

- (1) Where -
 - (a) a financial institution which has granted a credit facility; or
 - (b) any other person who has granted a credit facility by means of a contract which is required, pursuant to this Act or a related Act, to be registered under section 12,

is of opinion that the borrower, or the guarantor, if any, has made default in the repayment of any amount due or in the fulfillment of any other obligation, it or he shall report the matter to the Commission.

- (2) Where a borrower or a guarantor is informed by the person who has granted a credit facility that he has made default in the repayment of any amount allegedly due or in the fulfillment of any other alleged obligation, he may, where he does not agree with the averment or contends that the occurrence is not due to his own fault, report the matter

to the Commission not later than 2 months after the date on which he is so informed.

- (3) Where a report is made to the Commission under subsection (1) or (2), it shall enquire into the matter and -
 - (a) use its best endeavors to reach a solution acceptable to all the parties concerned;
 - (b) advise the parties on what, in its opinion, is the best way to reach a solution, including -
 - (i) a temporary suspension of the periodicity or amount of any payment to be made; or
 - (ii) a rescheduling of the periodicity or amount of the payments; and
 - (c) where it thinks fit, determine that the implementation of any scheme of arrangement agreed by the parties shall be subject to its supervision.

16. **Protection of property offered as security**

- (1) Where any property has been pledged as security for the repayment of any amount due on a credit facility, it shall not be lawful for the person who granted the facility to seek to issue execution on the security without first reporting the matter to the Commission.
- (2) Where a report is made to the Commission under subsection (1), it shall enquire into the matter and in so doing have regard in particular to -
 - (a) the relative rights and obligations of the parties; and
 - (b) whether or not the person who granted the credit facility has complied with section 11.
- (3) Following an enquiry made under subsection (2), the Commission -
 - (a) shall -
 - (i) determine what, in its opinion, is the most suitable way to avoid the sale of the property by judicial process; and

- (ii) where, in its opinion, the property must be sold, use its best endeavors to assist in, or promote the sale of the property by private contract;
- (b) may order -
 - (i) the temporary suspension of the periodicity or amount of any payment to be made;
 - (ii) the person who granted the credit facility to waive or write off any interest unpaid; or
 - (iii) a rescheduling of the periodicity or amount of the payments; and
- (c) may determine that the implementation of any scheme of arrangement agreed by the parties shall be subject to its supervision.

17. **Order for sale by judicial process**

- (1) The Commission shall, where it is satisfied that it has exhausted all other possible means of doing otherwise, issue an order authorizing the person who granted the credit facility to present a petition to the Master under Part I of the Sale of Immovable Property Act.
- (2) The Commission shall, within 14 days of the date on which an order under subsection (1) is made, cause a copy of the order to be transcribed at the office of the Conservator of Mortgages who shall forthwith insert in the margin of the transcription the fact that notice of the order has been given to the owner of the property in accordance with section 4 (5).

18. **Effect of order under section 17**

- (1) (a) Where an order under section 17 (1) has been transcribed, any sale or mortgage of the property which is the subject of the order which the owner purports to, carry out between the date of transcription and that on which the sale by judicial process takes place shall, subject to paragraph (b), be void and of no effect.
- (b) The owner of the property may, during the period specified in paragraph (a), sell the property with the approval of the Commission where the latter is satisfied that the owner has -

- (i) deposited with the Master an amount which is sufficient to cover the costs of the proceedings and that which is due to the creditor and to any other inscribed creditor; and
 - (ii) notified the creditor and the other inscribed creditors in writing that the deposit has been made.
- (2) Where an order under section 17 (1) has been transcribed, any lease of the property which is the subject of the order which the owner purports to grant between the date of transcription and that on which the sale by judicial process takes place shall be void and of no effect.
- (3) Except where any property which is the subject of an order under section 17 has been leased or the Supreme Court or a Judge otherwise orders pursuant to sections 129 to 137 of the Sale of Immovable Property Act, the owner shall, until the property is sold by judicial process or in accordance with subsection (1) (b), remain in possession as judicial sequestrator.
- (4) It shall not be lawful for any person who is in possession of any property which is the subject of an order under section 17 to cut down timber or otherwise diminish the value of the property.

19. **Effect of writing off**

Notwithstanding any other enactment, where an amount due by a borrower is written off on an order made by the Commission or any other scheme of arrangement supervised by the Commission involves a writing off, the borrower shall be deemed to have incurred a valid loss involving a bad debt.

PART V – MISCELLANEOUS

20. **Offences**

Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

21. **Regulations**

- (1) The Minister may, for the purposes of this Act or a related Act, make such regulations as he thinks fit.
- (2) Any regulations made under subsection (1) -
 - (a) may provide for the taking of fees and the levying of charges; and

- (b) may provide that any person who contravenes them shall commit an offence under this Act.

22. **Consequential amendments**

- (1) The Hire Purchase and Credit Sale Act is amended -
 - (a) in section 2-
 - (i) by inserting the following definition in its proper alphabetical place -

“Commission” has the same meaning as in the Credit Facilities Act 2005;
 - (ii) in the definition of “credit sale agreement”, by deleting the word “dealership” and replacing it by the word “ownership”;
 - (iii) in paragraph (a) of the definition of “dealer”, by deleting the word “and” and replacing it by the word “or”;
 - (iv) by deleting the expression “lending and financing agency” and replacing it by the expression “lending or financing agency”; and
 - (v) in the definition of “Minister”, by deleting the word “trade” and replacing it by the word “Commerce”;
 - (b) in section 3 (1), by deleting paragraph (a) and replacing it by the following paragraph -
 - (a) This Act shall apply to every hire purchase agreement and to every credit sale agreement other than an agreement between an importer or manufacturer and a wholesaler or retailer or between a wholesaler and a retailer.
 - (c) in section 4 (1), by deleting paragraphs (c) and (d) and replacing them by the following paragraphs -
 - (c) where the cash price exceeds Rs 10,000 or such other amount as may be prescribed, the dealer has inspected the Register of Indebtedness in accordance with section 11 of the Credit Facilities Act 2005;

- (d) the agreement is incorporated in a document in the form set out in the Second or Third Schedule, as the case may be;
 - (e) where the cash price exceeds Rs 10,000 or such other amount as may be prescribed, the document has been registered with the Commission in accordance with section 12 of the Credit Facilities Act 2005; and
 - (f) the hirer or buyer has effected the down payment, if any.
- (d) in section 7 (1), by deleting the words “one rupee” and replacing them by the words “50 rupees or such other amount as may be prescribed”.
 - (e) in section 7 (2), by deleting the words “shall be liable, on conviction, to a fine not exceeding 100 rupees” and replacing them by the following words -

“shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees”.
 - (f) in section 11 (4), by adding, after the word “hirer”, the following words -

“and obtain the approval of the Commission”.
 - (g) in section 11A (2), by adding, after the word “buyer”, the following words -

“and obtain the approval of the Commission”.
 - (h) by inserting, immediately after section 20, the following new section -

20A Advertisements

- (1) No person shall, in any manner whatsoever, publish or cause to be published, an advertisement relating to the hire purchase or credit sale of any goods which -
 - (a) is or is likely to be, misleading to readers, viewers or listeners; or

- (b) indicates, or tends to indicate, that a hire purchase or credit sale agreement may be entered into in contravention of this Act.
- (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees.
- (2) The Law Practitioners Act is amended by inserting, immediately after section 15, the following new section -

15A. Invoices and receipts

- (1) Where an Attorney provides a service to any person, he shall not claim or receive any fee unless he issues a vatable invoice to the person.
 - (2) Where an attorney receives a fee from any person, he shall forthwith issue to the person a receipt which sets out-
 - (a) the precise nature of the service he has rendered; and
 - (b) the amount he has received.
- (3) The Moneylenders Act is amended -
 - (a) in section 2, by inserting the following definition in its proper alphabetical place -

“Commission” has the same meaning as in the Credit Facilities Act 2005;
 - (b) in section 12 (1) (a), by deleting sub-paragraphs (i), (ii) and (iii) and replacing them by the following sub-paragraphs -
 - (i) where the principal exceeds Rs 10,000 or such other amount as may be prescribed, the moneylender has inspected the Register of Indebtedness in accordance with section 11 of the Credit Facilities Act 2005;
 - (ii) a memorandum in writing of the contract is drawn up and signed by the parties or their respective agents;

- (iii) a copy of the memorandum is delivered or sent by registered post to the borrower or his agent within 7 days of its signature; and
 - (iv) where the principal exceeds Rs 10,000 or such other amount as may be prescribed, the document has been registered with the Commission in accordance with section 12 of the Credit Facilities Act 2005.
- (c) in section 12 (3) (a), by adding the following words after the word “made” -
- “and the date on which it is to be repaid in full”.
- (4) The Sale of Immovable Property Act is amended -
- (a) by repealing Part I and replacing it by the following Part -

PART I – SALE OF PROPERTY BY ORDER OF THE COMMISSION

2. Interpretation of Part I

In this Part –

- (a) “petition” means a petition lodged under section 3 or 4;
- (b) “petitioner” means a person who has lodged a petition;
- (c) “Receiving Order” means an Order made under section 6;
- (d) the following words have the same meaning as in the Credit Facilities Act 2005.

“borrower”, “Commission”, “creditor”, “guarantor”.

3. Petition for sale

- (1) Where the Commission has, pursuant to section 17 of the Credit Facilities Act 2005, made an order for the sale of any property by judicial process, the creditor may, not later than 6 weeks after the order was made, petition the

Master in writing to make a Receiving Order and forward a copy of the petition to the Commission.

- (2) The petition shall set out, with full particulars, the statement of account of the borrower and of the guarantor, if any, at the date on which the petition is drawn up.
- (3) Where the petition is lodged more than 5 years after the day on which the creditor granted the credit facility to the borrower, the creditor shall, with his petition, file a report from a land surveyor containing the particulars relating to the property specified in section 15 of the Credit Facilities Act 2005.
- (4)
 - (a) A petition under this section shall be served in person on the borrower and the guarantor, if any, as well as on every other inscribed creditor not later than 14 days before the date fixed by the Master for the hearing of the petition.
 - (b) Where an inscribed creditor holds a vendor's privilege, the person lodging the petition shall require the vendor to enter any action in cancellation of sale before the Master draws up a memorandum of adjudication of the property.
 - (c) Where the vendor has entered an action in accordance with paragraph (b) he may apply to a Judge in Chambers for an order directing the Master to stay the sale proceeding before him on such terms as he thinks fit.
- (5) Where the creditor has not petitioned the Master within the time limit specified in subsection (1), the Commission shall request the Conservator of Mortgages to erase the transcription of the order for sale.

4. **Settlement with petitioner**

- (1) Where the borrower or the guarantor, if any, has paid the amount owed to the petitioner in full while the matter is pending before the Master, he shall inform the Commission accordingly.

- (2) Any other inscribed creditor may, not later than 14 days after the day on which a settlement under subsection (1) has been reached -
 - (a) petition the Master for the making of a Receiving Order; and
 - (b) forward a copy of the petition to the Commission.
- (3) A petition under subsection (2) shall comply with the formalities set out in section 3 (2) and (4) (a) and (b) and, where the inscribed creditor's petition is based on a default in the repayment of a credit facility, he shall comply with section 3 (3).
- (4) Where no petition is lodged under subsection (2), the Commission shall request the Conservator of Mortgages to erase the transcription of the order for sale.

5. **Hearing of petition**

- (1)
 - (a) Any borrower or guarantor may apply to the Master for assistance to resist a petition.
 - (b) Where the Master is satisfied that the person applying-
 - (i) does not have a monthly income exceeding Rs 6000 ; and
 - (ii) is not the owner of any other immovable property, he shall assign an attorney to assist him.
 - (c) An attorney appointed under paragraph (b) shall be paid such fee as may be determined by the Chief Justice.
- (2) Where the borrower or the guarantor, if any, informs the Master that the petition is resisted, the Master shall fix a date on which the matter will be heard on its merits.
- (3) The Master may, where it is shown to his satisfaction that a substantial part payment has been offered to the

petitioner and been accepted by the latter, postpone the hearing, or the sale as the case may be, but not more than twice, for a period not exceeding 6 months in the aggregate.

- (4) The hearing of a petition shall take place in Rodrigues where –
 - (a) the borrower is ordinarily resident there; or
 - (b) the property given as security for the repayment of a credit facility is situated there.

6. **Receiving Order**

- (1) Where, following the hearing of a petition, the Master is satisfied that the petitioner has, on a balance of probabilities, proved his case, he shall make a Receiving Order for the protection of the property of the borrower or the guarantor, if any.
- (2) Where a Receiving Order is made, the Official Receiver shall become the Receiver of the property given as security for the repayment of the credit facility.
- (3) As from the date on which a Receiving Order is made, no person to whom the borrower or the guarantor, if any, is indebted in respect of a provable debt shall have any remedy against the property or the person of the borrower or the guarantor, if any, in respect of the debt, or shall institute any proceedings in respect of the debt before any Court except with the leave of the Master or such terms as he may think fit.
- (4) The Master may, where it is shown to be necessary for the protection of the property, at any time after the lodging of a petition and before a Receiving Order is made, appoint the Official Receiver to be interim receiver of the property and direct that subsection (3) shall apply to the borrower and the guarantor, if any.

7. **Duties of Official Receiver**

- (1) Where a Receiving Order has been made, the Official Receiver shall be responsible for -

- (a) managing the property which is the subject of the Order, with the assistance of such person as may be approved by the Master; and
 - (b) promoting the sale of the property.
- (2) For the purposes of subsection (1) (b) the Official Receiver shall -
 - (a) give the widest publicity to the fact that the property is to be sold;
 - (b) ensure that an appropriate notice is posted up on the property indicating that it is to be sold;
 - (c) make appropriate arrangements to enable any prospective buyer to visit the property and obtain any information he may require including information relating to the approximate amount of costs that may be due; and
 - (d) issue a public invitation requiring prospective buyers to forward to the Master sealed offers to purchase and to make a non refundable deposit of 5% of the purchase price.
- (3) No offer to purchase may be made by -
 - (a) the Master or his Deputy, or any public officer posted to his office except with the written consent of the Attorney-General;
 - (b) the borrower or the guarantor, if any, or his guardian or curator; or
 - (c) any director or other officer of the petitioner where the latter is a body corporate.
- (4) where one or more offers to purchase have been received, the Master shall fix a date on which the sealed offers will be opened.
- (5) Subject to subsection (6), the Official Receiver shall, offer to sell the property to the person who has made the best offer and who satisfies him, by means of a bank guarantee

or such other means as he thinks fit, that he is able to pay the purchase price.

- (6) (a) Where no offer received exceeds the market value of the property as stated in the land surveyor's report by at least 60% the Official receiver shall call for fresh invitations to purchase in accordance with sub section (2) (d).
- (b) The Master shall after examining the fresh offers direct the Official Receiver to offer to sell the property to the person who made the best offer and who complies with subsection (5).

8. **Sale of property**

- (1) Where the Official Receiver and the prospective purchaser have agreed on the sale of the property, the Master shall, subject to subsection (2), draw up a memorandum of adjudication which shall constitute, in favor of the purchaser, a title deed to the property.
- (2) The Master shall not deliver the memorandum to the purchaser until the latter has deposited with him an amount to cover the costs claimable by him, the purchase price and the duty payable for the registration and transcription of the title deed.
- (3) Where the Master delivers the memorandum of adjudication to the purchaser, he shall forthwith inform the Commission of the fact, and the Commission shall require the Conservator of Mortgages to erase the transcription of the order made for the sale of the property.
- (4) Where the purchaser does not, within 14 days of being required to do so by the Master, comply with the requirements of subsection (2), the Official Receiver shall again invite fresh offers for the purchase of the property in accordance with section 7.

9. **Registration duty**

Notwithstanding any other enactment, no registration duty shall be payable where any property sold under section 8 is purchased by an ascendant or a descendant of the borrower or the guarantor, if any.

10. **Part payments and settlement**

Where any part payment or settlement is made by the borrower or the guarantor, if any, in favor of a petitioner, the amount shall be deposited with the Master who shall remit it to the person who is entitled to receive it after deducting any amount due for costs.

11. **Service under this Part**

Where any document is required to be served on any party under this Part, the usher shall only serve the document where he is satisfied, on an examination of the party's National Identification Card or passport, that the service will be properly effected.

12. **Costs**

- (1) The Chief Justice shall, by regulations, prescribe the fees payable and allowable in respect of any proceedings under this Part.
- (2) Any expenses incurred by the Official Receiver in the performance of his duties under this Part shall -
 - (a) be a charge on the Consolidated Fund; and
 - (b) be recoverable from the person who eventually purchases the property sold.

13. **Distribution of purchase price**

- (1) Where the Master has delivered the memorandum of adjudication to the purchaser in accordance with section 8, he shall forthwith require every inscribed creditor to prove his claim to him within 14 days.

- (2) The Master shall, upon receipt of the claims made pursuant to subsection (1), draw up a provisional scheme for the distribution of the purchase price of the property and -
 - (a) cause it to be posted up outside his office; and
 - (b) invite any interested party who wishes to do so to file an objection to the scheme within a delay to be fixed by him.
- (3) Where no objection is received pursuant to subsection (2) (b), the Master shall proceed to confirm the scheme and cause the amount deposited with him to be distributed.
- (4)
 - (a) Where an objection is raised to the provisional scheme, the Master shall fix a day for the hearing of the objection in presence of every interested party.
 - (b) The Master shall, after hearing any objection, proceed to confirm or amend the scheme and cause the amount deposited with him to be distributed in accordance with his determination.
- (b) by repealing Part II, the existing Parts III, IV, V, VI, VII, VIII and IX being renumbered II, III, IV, V, VI, VII and VIII respectively;
- (c) in section 100 (2), by deleting paragraph (a) and replacing it by the following paragraph -
 - (c) a description of the property indicating its approximate area, its precise location and the nature of the buildings, if any, existing thereon;
- (d) in section 101 (2), by deleting the words “shall be similar to that specified in section 23, and shall be served in the manner specified in that section” and replacing them by the following words -

“shall –

- (a) be served on him at the domicile elected by him in his inscription or, if no domicile has been elected, in person or at his actual or last known domicile in Mauritius; and
 - (b) inform him that, unless he commences his action in cancellation of sale before the day fixed for adjudication, he shall be foreclosed qua the adjudicatee from having the cancellation decreed.
- (e) in section 138, by deleting the word “shall” and replacing it by the following words –
- “of Part I shall, notwithstanding the repeal of that Part,”;
- (f) in section 139, by deleting subsection (2) and replacing it by the following subsections -
- (2) An outbidding shall be made by petition specifying, in a summary manner -
 - (a) the grounds on which the application is made; and
 - (b) the parties against whom it is made.
 - (3) The Master shall, at the foot of the petition, make an order fixing the day for the hearing of the petition, and may join as a party any person whose rights may, in his opinion, be affected by the application.
- (g) in section 142, by deleting the words “Third Schedule” and replacing them by the words “First Schedule”;
- (h) in section 149 (1), by deleting the words “as provided in section 44,”;
- (i) in section 152 (2), by deleting the words “Fourth Schedule” and replacing them by the words “Second Schedule”;
- (j) in section 165 (1) (b), by deleting the words “in the manner provided in sections 34 and 74” and replacing them by the words “and the attorney prosecuting the sale shall be entitled to claim a percentage of the sale price in accordance with the Legal Costs and Fees Regulations 2000”;
- (k) in section 168, by deleting the words “under section 44,”;

- (l) in section 173, by deleting the words “under sections 40 and 41” and replacing them by the words “in Port Louis”;
- (m) in section 208, by deleting the words “in accordance with sections 53 and 54” and replacing them by the following words -
 - “which shall -
 - (a) specify the ground on which it is made and the parties against whom it is made; and
 - (b) be served on those parties and such other parties as the Master may order not less than 3 days before the hearing”
- (n) by repealing section 227;
- (o) by repealing the First and Second Schedules, the existing Third Schedule and Fourth Schedule being retitled “First Schedule” and “Second Schedule” respectively.

23. **Transitional provisions**

- (1) Where a person has, before the commencement of this Act, granted a credit facility which has not been repaid and which he would, pursuant to this Act or a related Act, have been required to cause to be registered under section 11 if it had been granted after its commencement, he shall, not later than 6 months after its commencement, cause a copy of the relevant contract to be forwarded to the Commission.
- (2) Where a person referred to in subsection (1) fails to comply with it, the borrower or a guarantor, if any, may report the matter to the Commission.
- (3) Where the Commission receives a report under subsection (1) or (2), it shall forthwith cause the particulars of the contract to be entered in the Register.
- (4) Where any property has been the subject of a memorandum of seizure under the provisions of the Sale of Immovable Property Act that are repealed by this Act and the sale by public adjudication has not, at the commencement of this Act, taken place, the Master shall make a Receiving Order pursuant to section 6 of the sale of Immovable Property Act and sections 5 to 13 of that Act shall thereupon apply to the sale of the property.

24. **Commencement**

This Act shall come into operation on a day to be fixed by Proclamation.