APRIL 2022

COMPANY SECRETARIES CIRCLE

POSITION PAPER ON TRADE FEES



POSITION PAPER 1

ABOUT THE COMPANY SECRETARIES CIRCLE

The Company Secretaries Circle was set up in 2015, with the purpose to provide a forum for Company Secretaries to identify, discuss and share topics of concern and best practices, produce position documents and contribute to policy development through consultations with the Government and other regulatory bodies.



The Company Secretaries Circle would like to present this position paper on the matter of trade fee payable by domestic companies and GBC having a physical presence in Mauritius. The purpose of this position paper is:

- To raise awareness on difficulties the industry is currently facing vis a vis the authorities and propose solutions to address these difficulties.
- To standardise procedures and ensure that all stakeholders receive the same information and pay the same fee for similar activities.

INTRODUCTION

All traders require a trade licence to be able to operate any activity.

Classified trade means a business specified in the Schedule of the Local Government (Fees) Regulations 2019 (GN 252/2019) ("The Regulations") as listed in Annexure 1.

A Classified trade as defined in the Local Government Act 2011 refers to a business specified in the Twelfth Schedule to the Act.The Local Government (Fees) Regulations provides for the fees attached to each classified trade.

The section 122 of the Local Government Act and the Local Government (Fees) Regulations, as amended provides for trade fees which is a fee paid by an economic operator to the Local Authority for conducting a classified trade.

Since January 2020, trade fees are paid to the Corporate and Business Registration Department (CBRD).

GENERAL PROVISIONS FOR PAYMENT OF TRADE FEES

Section 122 (4) (d):

Where the fee due in respect of any financial year exceeds the sum of 5,000 rupees, it may be paid by the person in 2 equal instalments, the first one on or before 20 January and the second one on or before 30 June of that financial year.

Exemption for a period of 11 years for payment of trade fees as from 1 January 2017 to 31 December 2027:

Section 122 (6B)

(a) This section shall, in respect of a period of 11 years as from 1 January 2017, not apply to an economic operator carrying out trade activities whose annual trade fee does not exceed 5,000 rupees at 30 June 2016.

(b) Paragraph (a) shall not apply to trade activities regulated under the Excise Act, gambling activities under the Gambling Regulatory Authority Act or such other activities as may be prescribed.



TRADE FEE

According to Section 122 (3) of the Local Government Act "Where a person carries out a classified trade within the administrative area of a Municipal City Council, Municipal Town Council or District Council, he shall pay such fee as may be prescribed to that Council through the Registrar, electronically or in such other manner as the Registrar may determine."

Activities which are required to pay the trade fees are listed in Annexure 1.

The fees are payable as from the 3rd of January 2020 and in accordance with Section 5 of the Regulations, "any fees leviable in respect of any classified trade in Part 1 of the Schedule shall be paid: -

a) By the person to the Council where he carries out the classified trade; and

b) Through the Registrar of Companies ("ROC"), electronically or in such other manner as the ROC may determine, and in accordance with guidelines issued by the Ministry in consultation with the ROC, specifying the procedure for payment of any fees.

ENTITIES HAVING THE OBLIGATION TO PAY TRADE FEES

Entities having the obligation to pay trade fees are:

- Individuals
- Companies
- Sociétés

Hereinafter referred to as "operator" or "economic operator"

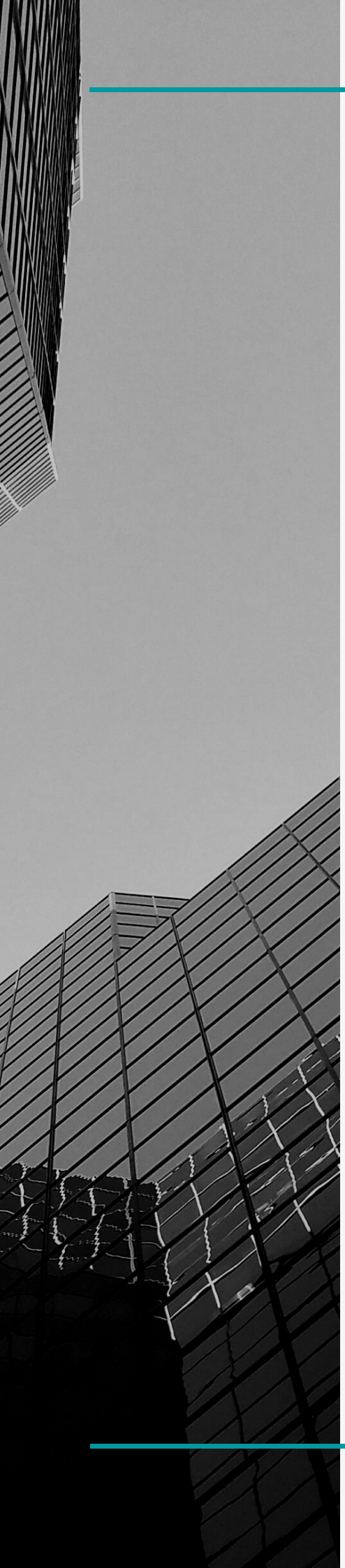
Referring to Section 122 (2) (a) of the Local Government Act, the payment of a trade fee at the ROC, does not dispense the Company of the obligation to obtain any authorisation under Section 117 of the said Act – if applicable.



When to pay a trade fee?

The law provides that trade fees shall be paid either in one instalment on or before the 20th of January or where the fees exceed the sum of Rs 5,000, in 2 instalments, the first one on or before the 20th of January and the second one before the 30th of June.

The Local Government Act also provides that arrears should be paid first before being able to pay the trade fees for the current period and a surcharge of 50% of the amount of the trade fees shall be levied in case of non-payment of the relevant trade fees.



As stated above, the Local Government Act has been amended through the Finance (Miscellaneous Provisions) Act 2021 providing that an operator is exempted from payment of trade fees for a classified trade if the trade fee does not exceed Rs 5,000 as at 30th June 2016; and for a period of 11 years as from 1st January 2017.

This exemption, however does not apply for trade activities regulated under the Excise Act, gambling activities under the Gambling Regulatory Authority Act or such other activities as may be prescribed.

According to Sections 122 and 158 of the Local Government Act as subsequently amended, any person who fails to pay the required prescribed trade fees shall commit an offence and shall, on conviction, be liable to a fine not exceeding Rs 25,000.

Methods of effecting payment of the trade fees

Payment of trade fees were previously being made at the trade fee counter at the Municipality concerned. As of 3 January 2020, the ROC was appointed as the collecting agent for the municipalities. An economic operator can either pay the trade fees online on the Corporate Business Registration Department ("CRBD') MNS Portal or at the ROC counter.

Note: the Local Government (Fees) Regulations 2019 provide that the following entities shall use CBRIS for the payment of fees leviable in respect of any classified trade: (a) audit firms; (b)company service providers; (c)companies with turnover of 50 million rupees or more; (d)law firms; (e)management companies or companies with a management licence issued under the Financial Services Act; and (f)registered agents.

Important notes

1.With the enactment of the Finance (Miscellaneous Provisions) Act 2021, the Local Government Act has been amended where an economic operator registered as from 5 August 2021 is exempted from payment of trade fees, in respect of any classified trade for 2 financial years after the first registration of the business.
Moreover, the law provides that part of a financial year is considered one financial year

2. The Local Government Act has been amended so that trade fees payable with respect to classified trades do not apply to any person holding a Tourist Enterprise License and Global Business Companies not having a physical office in Mauritius.

CHALLENGES CURRENTLY BEING FACED BY THE INDUSTRY

ISSUE 1: BUSINESS REGISTRATION

1.The Business Registration Act 2002(BRA) requires in Section 6 that no person shall carry on business in Mauritius unless it is registered.

The difficulty which arises is whether the companies which are set-up for the following reasons should be registered under the BRA and pay the trade fees :-

a) holding shares or investments or for example to buy a villa for personal use;

b) Special Purpose Entities (SPEs), which are entities that are set-up to fulfil specific objectives and are typically used by companies to isolate the firm from financial risk;

c) companies (”service companies”) set up within a group to offer specific services to clients which are charged to clients by the main flagship company of the group and are therefore in themselves not profit centres.

It should be noted that companies incorporated under the Companies Act are deemed to be registered under the BRA. Section 9 refers.

2.To note that the Business Registration Card list/Classified trade list does not capture a number of activities and in such cases, companies are allocated with an activity from the lists which is not in line with their proposed activity.

3.When incorporating a company for which the activity does not feature on the CBRIS drop down list, the applicant has to choose an activity which is available in the list.

4.The ROC does not allow for change in the business activity of a company or updating of places of business as long as trade fees are not settled or clearance obtained from the local authority concerned.

Implication

1.Consequently, all such entities, in so far that they have been issued with a BRC, need to pay the trade fee and choose an activity listed under the list of classified trade which does not include activities as they should have been exempted.

2.Service companies do not charge directly for their services, which are included in the fees of the flagship companies given the latter pay the trade fee. The imposition of a requirement for these service companies to also pay the trade fee leads to these entities having to incur the fee twice.

3.Companies are having to either choose an activity which is not in line with their real activity due to the absence of such activity on the list or as chosen. This is tantamount to misrepresentation and can have serious legal implications for the Management Company/Company Secretary and their respective clients for a situation which is beyond their control.

4.Delays in changing the business activity or places of business of a company can impact on a company’s operations especially in cases where it has to submit a copy of its BRC for a transaction.

Proposed Solutions:

1. The companies carrying out Exempted activities should be exempted from paying the trade fee and we are proposing a list of such activities as per Annexure 2.

2. The BRC list of activities and classified trade list should include a category called 'Exempt'.

3. A new category namely 'Other' should be created to cater for activities which are not on the BRC list of activities and classified trade list.

4. The ROC can consider amending its "Amendment to BRC Form" to include "effective date of change". In that way, companies will not have to wait for trade fees to be cleared to update their records.

It should be noted that, all arrears up to 30 June 2019 have been waived.

5. The ROC can consider allowing for other places of business to be amended so long as trade fees since the time the ROC was appointed to act as the collecting agent for trade fees (i.e. January 2020) are settled, with an intimation to the company to deal with any issues with respect to outstanding trade fees prior to that period being settled with the concerned municipalities / district councils.

ISSUE 2: LAND PROMOTER AND PROPERTY DEVELOPER ("LP & PD")

For companies classified as LP and PD, the structure is usually such that the client will set up a master Holding Company ("Hold Co") with one underlying Special Purpose Vehicle (SPVs) for each real estate project. This usually translates into several SPV's. The Hold Co and each SPV are expected to pay the trade fee of MUR 100,000, which is significant.



Implication:

This can lead to an exodus of such structures from Mauritius to other competitors with more business friendly jurisdictions.

Proposed Solution:

We propose that the Hold Co alone be classified as "LP & PD" and thus pay the trade fee of MUR 100,000 but for each underlying SPV to be exempted from trade fee.



ISSUE 3: INACCURACY OF CBRIS

1. Quite a few companies did not appear on CBRIS as at 20 January 2021 so payment of trade fee (1st instalment 2020/2021) could not be effected for those companies online.

2. Even in June 2021, some companies still did not appear on the CBRIS and for others which appeared, there were a lot of discrepancies. For instance, some companies which had already effected payment for the 1st instalment of 2020/2021 in January 2021 but the payment was still appearing as "due" on the system as at June 2021. In view of this issue, the system did not allow settlement for the 2nd instalment of 2020/2021 at the end of June 2021 for these companies.

3. For some companies, when paying the 2nd instalment 2020/2021 in June, penalties for 2019 were appearing on the system which were not there when payment for the first instalment was made in January 2021 and the payments could thus not be effected.

4. In cases of amalgamation of companies, the CBRIS is unable to transfer any arrears due by the transferor company to the surviving company's account.

5. Initially, companies were referred to the Municipality/District Council concerned (based on the location of the registered office of the company) to seek a waiver for the penalties due. Upon presentation of these waiver letters, the ROC was then waiving the penalties due. However, the Municipality/District Council being swamped with numerous requests is no longer acceding to the request for the waiver letters.

Implication:

1. Payment could not be made for many companies for the reasons listed above.

2. In trying to sort issues for past fees, a company finds itself incurring additional fines until the past issues are sorted out.

Proposed Solution:

1. To ensure that CBRIS is fully accurate and reflects the correct outstanding amount.

2. In order to make the process of settlement of trade fees smooth in the future, the ROC and the Ministry of Local Government should agree on a waiver for penalties for non-payment of previous years fees or communicate on a payment arrangement to clear all dues.

It is noted that further to the promulgation of the New Regulations 2021, business operators will be granted an amnesty on trade fees, related penalties and interests that were due prior to 1 January 2020.

ISSUE 4: INCONSISTENCY ON THE TRADE CODE ON BRC V/S TRADE CODE RECEIVED FROM ROC

The trade code on the BRC of a Company for some particular trades is inconsistent with the trade code received from the ROC on the receipt of payment.

An example would be: Trade code 75003 on a BRC for Activities of Holding, Management, Investment companies (with or without managing) is shown as Trade Code 75003 for Registered Office of Company or Activities of Head Office from ROC on the receipts issued by the ROC.

Proposed Solution:

The trade code should be uniform throughout all official documents issued by the ROC and/or to the company.

ISSUE 5: INCONSISTENCY ON THE CLASSIFIED TRADE LIST PUBLISHED BY THE GOVERNMENT GAZETTE V/S THE LIST ON CBRIS

The classified trade list as published in the Government Gazette is not the same as the one used at the ROC and available on CBRIS. We understand from the ROC that the trades are sometimes split.

Proposed Solution:

That one and same list be made available and be published on the website of the ROC to clear all confusion and inconsistency.



OTHER PROPOSALS/SUGGESTIONS

1. Display of the trade fee periods on CBRIS and update of platform

Issue: Trade fee periods are currently listed as follows on the platform: 2019/2020- 2020/2021- 2020/2021 which can be confusing. Also, trade fees payable/due are not always up to date on platform.

Proposal: It would be advisable if the period were instead displayed as follows, to avoid any confusion, to be clearer and more precise, and to ensure that the platform is always updated.

01st Jan 2021 to 30th June 2021 payable at latest by 30 June 2021
01st July 2021 to 31st December 2021 payable at latest by 20 January 2022

2. Dedicated help desk for trade fees issues

Issue: No specific person / contact person at the ROC to direct queries in respect of trade fee. Queries via email are often left unattended. Different advice and instructions are provided when same queries are raised with different officers of the ROC.

Proposal: A dedicated help desk with appropriately trained officers would resolve all these issues.





CONCLUSION

As highlighted on the Economic Development Board of Mauritius website, the CBRD / ROC is a one stop shop for starting a business. It cannot be denied that the government bodies and service providers in Mauritius have made and are continuously making considerable efforts to successfully keep pace with the ever-changing global business environment, the proof being that Mauritius ranks 13th globally in the World Bank's Ease of Doing Business Report 2020. Initiatives to revamp the administrative procedures in line with a business environment which is becoming more and more digitalised are welcomed, the more so that such initiatives can lead to Company Secretaries being able to perform their role more efficiently.

One such initiative was to appoint the ROC to act as the collecting agent for the payment of trade fees since January 2020. It is however a reality that there have been challenges since this new arrangement has been implemented. As of date, the process is still not seamless. Following the challenges enumerated above, the Company Secretaries Circle has put forward proposals which we strongly believe will help to make the transition and process for payment of trade fees smoother. While it is appreciated that the ROC has been proactive in trying to provide assistance and solutions to issues raised since January 2020, it is also undeniable that the collaboration of all stakeholders (Ministry of Local Government, Company Secretaries, Company Representatives and the ROC) is of essence to allow companies to go through this transition and close all the issues relating to trade fees with the least disruption possible to business. Needless to say that the sooner all the stakeholders meet around a table to agree on the best way forward and to streamline the procedures, the better it will be for our industry and for the jurisdiction as a whole.



ANNEXURE 1

CLASSIFIED TRADE LIST

For more information regarding the classified trade list, please copy and paste the following link to your browser:

https://companies.govmu.org/Documents/trade%20fee/tradefees_govtNotices2019.pdf

MEMBERS OF THE FORUM

Sheila Ujoodha (Chairperson)
Nigaar Abubaker Esmael
Marie-Anne Adam
Sharon Ah Lin
Ruksana Amide
Christian Angseesing
Vinod K Bussawah
Poonam Chumun
Virginie Corneillet
Doris Dardanne
Clothilde de Comarmond
Nathalie Gallet
Sophie Gelle
Patricia Goder
Bhavna Gokhool
Preety Gopaul
Patricia Grenouille
Nesmah Ibrahim
Louis Denis Koenig
Sabrina Kong
Aadil Kureemun
Steve Leung
Veronique Magny-Antoine
Ambrish Maharahaje
Sandrine Moussa
Nafeeza Mulung (Secretary)
Sudhir Nathoo
Shahista Nemchand
Kareen Ng
Marivonne Oxenham
Nisha Proag-Dookun
Shailen Soobah
Helene Thevenau



ANNEXURE 2

EXEMPTED ACTIVITIES LIST

NO.	ACTIVITY
01	Investment holding activities
02	Holds property for personal use
03	Acting as General Partner
04	Acting as Settlor of a Trust
05	Acting as Corporate Director
06	Acting as Nominee Director
07	Acting as Nominee Shareholder
08	Underlying SPV's of a Land Promoter and Property Developer

Mauritius Institute of Directors
1st Floor, Standard Chartered Tower
19 Cybercity, Ebene, 72201, Mauritius
T (+230) 468-1015
F (+230) 468-1017
www.miod.mu