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The President of Mauritius assented to the Finance (Miscellaneous Provisions) Act 2020 (Finance Act) on 7th August 2020. This follows the passing of the Finance Act by the National Assembly on 4th August 2020.

In 2020, three major laws have marked the legislative landscape making far-reaching reforms touching upon a variety of sectors of the economy partly in response to the challenges this past year has brought about.

Earlier during the year, with the urgency created by the COVID-19 pandemic and the lockdown in Mauritius, the Parliament passed the COVID-19 (Miscellaneous Provisions) Act 2020 (COVID-19 Act) which made amendments to 56 legislations to cater for the impact of the coronavirus and provided for the relaxation of certain requirements during the affected period.

This was followed by the Anti-Money Laundering and Combating of the Financing of Terrorism (Miscellaneous Provisions) Act 2020 (AML/CFT Act) which was passed by the National Assembly on 07 July 2020 to bring further reforms in the financial services sector in order to comply with the recommended international best practices of the Financial Action Task Force (FATF).

The AML/CFT Act is a very important piece of legislation and a timely response to the FATF and European Union following the inclusion of Mauritius on the FATF’s list of ‘Jurisdictions under Increased Monitoring’ and the EU’s list of high risk third countries.

Finally, the Finance Act gives effect to the measures announced in the Budget Speech 2020-2021 ‘Our New Normal – The Economy of Life’. The Finance Act is largely designed to cope with the new normal following the COVID-19 pandemic and is a continuity of the major structural reforms being implemented by the Government.

In particular, the use of digital technology has been introduced in key legislations as a means of compliance with legal obligations and companies engaged in the tourism industry that are most affected by the aftermath of the coronavirus have been granted time extension for the payment corporate tax dues.

The Finance Act brought a major structural reform to the National Pension system. With effect from 01 September 2020, the existing National Pension Fund will be replaced by the Contribution Sociale Généralisée (CSG). Under the new system employers and employees of the private sector and (now) self-employed will be required to contribute to the CSG at the rates to be prescribed by the Minister of Finance in respect of their remuneration.
While the Finance Act does not specify the amount that needs to be contributed to the CSG, the Minister of Finance has, in his Budget Speech, proposed a progressive system, whereby in respect of employees earning up to MUR 50 000, a contribution at the rate of 1.5% must be made by the employees and 3% by their employers and in respect of employees earning more than MUR 50 000, a contribution of 3% must be made by the employees and 6% by their employers.

A contribution of MUR 150 (approx. USD 3.75) has been proposed for self-employed people. The application of the CSG on the salaries of employees with no capped amount (as was previously the case) is a disguised tax on the contributories and an additional burden on businesses in these difficult times.

Further, the low flat rate MUR 150 (approx. USD 3.75) applicable to self-employed people, questions the fairness of the systems as this would mean that employees earning the minimum wage would contribute the same amount to the CSG as high income earning self-employed people such as top lawyers, doctors and engineers.

While it was widely acknowledged that national pensions needed reform in view of the ageing population and increased social bills brought about by certain recent populist measures, it is not entirely clear how the CSG remains in line with need to enhance the competitiveness of the economy in the wake of certain crises that appear poised to endure for the times to come.

This brief sets out a high-level summary of the main changes made by the Finance Act.
Our Firm

We help our clients overcome legal complexity and unlock opportunity in Africa.

Our track record of providing specialist legal services in the fields of corporate law, banking and finance law and dispute resolution, spans over a century.

With nine offices in seven African countries and over 400 specialist lawyers, we draw on our unique knowledge of the business and socio-political environment to advise clients on a wide range of legal issues.

Everywhere we work, we offer clients a service that uniquely blends expertise in the law, knowledge of the local market and an understanding of their businesses. Our aim is to assist them to achieve their objectives as smoothly and efficiently as possible while minimising the legal and regulatory risks.

Our clients include corporates, multinationals and state-owned enterprises across a range of industry sectors as well as financial institutions and governments.

Our expertise is frequently recognised by independent research organisations. We received awards in three out of four categories at the DealMakers East Africa Awards for 2019: top legal adviser in the M&A Category for both deal flow and deal value, and advised on the Deal of the Year. In the DealMakers South Africa Awards for 2019, we were placed third for deal value in the M&A Category and advised on both the Deal of the Year and the BEE Deal of the Year.
Our Footprint in Africa

We provide integrated legal services throughout Africa from nine offices (Cape Town, Dar es Salaam, Durban, Johannesburg, Kampala, Lilongwe, Lusaka, Moka and Nairobi) in seven countries (Kenya, Malawi, Mauritius, South Africa, Tanzania, Uganda and Zambia).

We work closely with our alliance firm, Aman Assefa & Associates Law Office, in Ethiopia, and our best friends in Nigeria and Mozambique (Udo Udoma & Belo-Osagie and Taciana Peão Lopes & Advogados Associados, respectively). We also have strong relationships with other leading law firms across the rest of Africa.

We are representatives of Lex Mundi, a global association with more than 160 independent law firms in all the major centres across the globe. This association gives us access to the best firms in each jurisdiction represented.
The following are the main amendments made to the Income Tax Act (ITA):

1. **Personal Income Tax**

   **Solidarity levy**

   The Finance Act has increased the rate of solidarity levy applicable to individuals from 5% to 25% and has reduced the threshold of the leviable income from MUR 3.5 million (approx. USD 87 500) to MUR 3 million (approx. USD 75 000).

   A cap has been introduced on the solidarity levy at the rate of 10% of the sum of an individual’s:

   - Net income (excluding any lump sum by way of commutation of pension, death gratuity or as consolidated compensation for death or injury payable pursuant to any enactment, from a superannuation fund or under an approved personal pension scheme);
   - Dividend income received from tax-resident companies and cooperative societies; and
   - Share of dividend as a partner of a Mauritian resident partnership or heir in a succession had any dividend received by the partnership or succession been wholly distributed among the partners or heir.

   Further, the Pay As You Earn (PAYE) system will now apply to the Solidarity Levy. Where the emoluments of an employee exceeds MUR 230 769 (approx. USD 5 770) in a month, the employer is required to withhold, in addition to the 15% income tax, an additional tax on the amount exceeding MUR 230 769 at the rate of 25%, provided that the additional tax withheld does not exceed 10% of total emoluments.

   **Commentary**

   The solidarity levy was introduced in the Finance Act 2017 as a measure to reduce inequality and applies to tax-resident individuals having chargeable income plus dividends (which is an exempt income) in excess of the prescribed threshold of leviable income (which was previously at MUR 3.5 million (approx. USD 87 500) and is now at MUR 3 million). The solidarity levy is payable on the excess amount. The increase in the rate of solidarity levy will result in individuals having chargeable income in excess of MUR 3 million (approx. USD 75 000) being taxed at a marginal tax rate of up to 40%. The solidarity levy was previously payable through the system of self-assessment. In respect of employees earning more than MUR 230 769, the solidarity levy will now be payable through the PAYE system. However, any such employee, who during an income year derives income from other sources, will continue to pay solidarity levy under the self-assessment system.

   **Income exemption threshold for tax-resident individuals**

   The amount of income exemption threshold that tax-resident individuals may deduct from their net income has been increased as follows:

   - Category A (individual having no dependants): From MUR 310 000 (approx. USD 7 750) to MUR 325 000 (approx. USD 8125);
   - Category B (individual having one dependant): From MUR 420 000 to (approx. USD 10 500) MUR 435 000 (approx. USD 10 875);
   - Category C (individual having two dependants): From MUR 500 000 (approx. USD 12 500) to MUR 515 000 (approx. USD 12 875);
   - Category D (individual having three dependants): From MUR 550 000 (approx. USD 13 750) to MUR 600 000 (approx. USD 15 000); and
   - Category E (individual having four or more dependants): From MUR 600 000 (approx. USD 15 000) to MUR 680 000 (approx. USD 17 000).
2. Corporate Income Tax

Extension of reduced income tax rate of 3%

The benefit of the reduced income tax rate of 3% has been extended to freeport operators and private freeport developers engaged in the retreading of used tyres and recycling of waste meant for the local market.

Commentary

The benefit of the 3% reduced income tax rate is currently limited to companies engaged in export of goods and freeport operators and private freeport developers engaged in the manufacture of goods meant for local market in whole or in part, subject to such companies employing a minimum of five staff members and incurring an annual expenditure exceeding MUR 3.5 million (approx. USD 87,500). Manufacture is defined in the ITA as ‘the transformation of materials or semi-processed materials into finished or semi-finished goods and includes assembly of parts into a piece of machinery, equipment or product’. The Finance Act has included the retreading of used tyres and recycling of waste as a manufacturing activity such that freeport operators and private freeport developers engaged in such activities meant for the local market in whole or in part can now benefit from the fiscal incentive. This is part of the measures taken by the Government for the transition towards a circular economy.

Solidarity levy applicable to telephony

The solidarity levy on telephone service providers charged at the rate of 5% of accounting profit and 1.5% of turnover, which currently applies until the year of assessment commencing on 01 July 2019, has been extended to the subsequent year of assessment and is now permanent.

Tax holidays

An eight-year income tax exemption has been introduced on the following income:

- Income derived from inland aquaculture in Mauritius by a company which has started its operations on or after 04 June 2020;
- Income derived by a company which has started its operations on or after 04 June 2020 and approved by the Higher Education Commission as a branch campus of an institution which ranks among the first 500 tertiary institutions worldwide; and
- Income derived from the manufacturing of nutraceutical products by a company which has started its operations on or after 04 June 2020.

The tax holidays start from the income year in which the company has started its operations.

Allowance for capital expenditures

Electronic, high-precision or automated machinery or equipment

A person who has incurred capital expenditure on electronic, high-precision or automated machinery or equipment on or after 01 July 2020, can now claim a 100% annual allowance in that income year, provided the person does not also claim an annual allowance under the normal annual allowance rules.

Plant and machinery

A manufacturing company that incurs capital expenditure on new plant and machinery (excluding motor cars) during the period from 1 July 2020 to 30 June 2023, can now claim, in the year of acquisition and in each of the two subsequent income years, a tax credit equivalent to 15% of the cost of such new plant and machinery (excluding motor cars).

A company that has incurred capital expenditure on the acquisition of new plant and machinery (excluding motor cars) during the period 01 March 2020 to 30 June 2020 and which has been adversely affected by COVID-19, can claim a deduction of 100% of such capital expenditure by way of investment allowance in that income year, in addition to any other annual allowance that it may be entitled.
**Double deduction**

**Expenditure on medical research and development**

A person engaged in medical research and development that incurs expenditure on medical research and development carried out in Mauritius, shall be allowed a double deduction of that expenditure from his or her gross income.

**Expenditure incurred on patents and franchises**

A company that incurs expenditure for the acquisition of patents and franchises and costs to comply with international quality standards and norms, may deduct from its gross income, twice the amount of the expenditure incurred in that income year. A company that claims such a double deduction, will not be entitled to any other annual allowance in respect of such expenditures.

**Extension of time for payment of income tax for companies operating in the tourism industry**

Companies engaged in specified activities in the tourism industry and (a) having accounting period ending on any date during the period September 2019 to June 2020 or (b) having due date for payment of tax under the advance payment system (APS) during the calendar year 2020, will be allowed the following extension of time for payment of annual income tax or tax payable under the APS system:

- half of the tax must be paid by 29 December 2020; and
- the remainder must be paid by 28 June 2021.

**Measure targeted to companies carrying on life insurance business**

Companies carrying out life insurance business can opt to be liable to tax on the higher of the actual basis of tax or 10% of the profit attributable to shareholders, adjusted for capital gains and losses (Alternative Minimum Tax).

**Commentary**

Insurance companies that carry out life insurance business are entitled to make certain adjustments to their total net income such that part of the income from the life insurance business are excluded from that net income. With the introduction of the Alternative Minimum Tax, insurance companies will be subject to a minimum tax based on the profits of the company as a whole and may be at a disadvantage. The amendments to the ITA do not clarify what constitute ‘profit attributable to shareholders’ and this could give rise to practical challenges.
Value Added Tax

The key amendments to the Value Added Tax Act (VAT Act) are as follows:

**Introduction of arm’s length principle to VAT**

Where a supply is not made in the course of an arm’s length transaction, the value of the supply would now be the open market value of the supply or such other amount as the MRA may determine.

**Commentary**

The amendments do not limit the application of the arm’s length principle to transactions between related parties. We hope that the MRA issue guidelines as to what would constitute a transaction that is not entered into at arm’s length and how the open market value of the supply would be ascertained.

**Reverse charge**

The reverse charge provision on supply of services received from abroad has been amended such that it is now applicable only if (a) the taxable supply performed or utilised in Mauritius is made by a person who does not belong in Mauritius and is not VAT registered; and (b) the recipient of the supply is a VAT registered person.

**Commentary**

This measure would require foreign suppliers who make taxable supplies of digital or electronic services to be registered in Mauritius for VAT purposes and to apply 15% VAT on taxable supplies.

**Apportionment of supplies for input tax claims**

Where a VAT registered person is engaged in a project spanning over several years and the MRA is of the opinion that the apportionment of input tax between taxable supplies and exempt supplies on a pro-rated basis is not appropriate, it may require the registered person to apply an alternative basis of apportionment for input tax.
Property Tax

**Land (Duties and Taxes) Act**

The Land (Duties and Taxes) Act has been amended to extend the list of exemption from land transfer tax to include the transfer of a portion of freehold land during the period from 01 July 2020 to 31 December 2020, to a company undertaking construction of housing estates of at least five residential units provided that the construction is completed by 31 December 2021.

The transfer of shares, assets, or property to a subsidiary of the Bank of Mauritius is now exempted from registration duty and land transfer tax.

**Registration Duty Act**

**Exemption from registration duty**

The following are now exempted from registration duty:

- The transfer of a portion of freehold land during the period from 01 July 2020 to 31 December 2020, to a company undertaking construction of housing estates of at least five residential units provided that the construction is completed by 31 December 2021;
- The acquisition of immovable property for use as a Life Science Research Centre certified by the Economic Development Board; and
- The issue or transfer of shares in companies trading on the venture market operated by the Stock Exchange of Mauritius.

**Extension of exemption**

The exemption from registration duty on the acquisition by a Mauritian citizen of a house having a value not exceeding MUR 6 million (including under vente en état futur d’achèvement (VEFA) during the period 01 September 2016 to 30 June 2020 has been extended to cover an acquisition period of up to 30 June 2022 and the threshold for the value of the property has been increased from MUR 6 million (approx. USD 150 000) to MUR 7 million (approx. USD 175 00).

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Tax Administration

During the lockdown period the MRA had put in place temporary facilities for the electronic submission of tax returns and electronic payment of tax dues. This has proved to be very effective and the MRA is now embracing greater reliance on electronic systems. A series of measures that have been introduced to that effect are set out below:

The MRA may give any correspondence, notice of assessment, determination or other notice or document electronically.

- The MRA may approve or set up such system as it considers appropriate for the secure electronic service of notices and documents and payment of taxes.
- Every person who is required to submit a return or statement will be allocated an e-tax account. A tax representative will, in addition to his or her e-tax account, be allocated a tax representative e-tax account. The e-tax account or the tax representative e-tax account will be used to file a return, statement of income or other document to the MRA and make payment of any tax to the MRA.
- It is now mandatory to submit and effect payment (where applicable) electronically in respect of the following:
  - quarterly return under the advance payment system (in respect of companies);
  - statement under the current payment system (in respect of individuals deriving rental income or income from business);
  - amended return;
  - return in respect of a trust or a resident société;
  - return in respect of the estate of a deceased person.
- Registration for VAT purposes can now be made through the Companies and Business Registration integrated System operated by the Registrar of Companies.
- Where output tax exceeds input tax, the difference must now be paid electronically to the MRA at the time the VAT return is submitted.
The following are the key amendments to the Companies Act (CA):

**Independent directors in public companies**

The CA introduces the requirement of the Board of directors of a public company to include, at all times, at least two independent directors. Independent director has been defined as a director who is a non-executive director and who:

- is not an employee;
- does not have material business relationship with the company either directly or as a partner, shareholder, director or senior employee of an organisation that has such relationship with the company;
- does not receive remuneration from the company except remuneration or any other benefit given to him as a director in accordance with section 159;
- is not a nominated director representing a substantial shareholder;
- does not have close family ties with any of the advisers, directors or senior employees of the company;
- does not have cross directorships or significant link with other directors through involvement in other companies or other organisations; and
- has not served on the Board for more than nine continuous years from the date of his or her first election.

**Commentary**

Whilst there was previously no statutory requirement to have independent directors on the board of directors of public companies in Mauritius, the second principle of the code of corporate governance issued in 2016 sets out the requirement of all boards of directors of public interest entities (PIE) to include a combination of executive directors, independent directors and non-independent non-executive directors. The definition of an independent director introduced in the CA fundamentally mirrors the comprehensive guidelines set out in the code to determine what constitutes an independent director. This new addition to the CA therefore creates a legal obligation on public companies to have at least two independent directors as opposed to only a recommendation. This follows the introduction of the requirement of at least one woman on the board of a public company in the Finance Act 2019, demonstrating the importance placed on board and corporate governance matters by the government in these recent years.

**Duty of directors**

The list of duties owed by directors of companies has been extended to include a duty to act in a manner which is not oppressive, unfairly discriminatory, or unfairly prejudicial to shareholders of the company.

The failure by a director to comply with his or her fiduciary duties set out in the CA is now specifically listed as an offence which, on conviction, is subject to a fine not exceeding MUR 100,000, and to imprisonment for a term not exceeding 12 months.

**Commentary**

The provision of a statutory duty for directors to act in a manner which is not oppressive, unfairly discriminatory, or unfairly prejudicial to shareholders of the company and the making of any breaches of directors’ duties as a specific offence are additional protection to shareholders in line with international best practices. Shareholders of Global Business Companies and Authorised Companies that cannot avail of the prejudiced shareholder protection under the CA would now have a specific claim to the extent that they are unfairly prejudiced as a result of an act of the directors.
The following are the main amendments to the Financial Services Act (FSA):

Moneylending

Moneylending activities will now be regulated by the Financial Services Commission (FSC) under the FSA and a new section 14A has been included in the FSA which, inter alia, provides that subject to certain exemptions as provided under the FSA, any person, other than a bank or a non-bank deposit taking institution, whose business is that of moneylending or who provides, advertises or holds himself out in any way as providing that business, whether or not he possesses or owns property or money derived from sources other than the lending of money, and whether or not he carries on the business as a principal or as an agent is required to apply for a licence. Only a company is entitled to apply for a moneylending licence.

Commentary

Moneylending was previously regulated by the Bank of Mauritius. It will now fall under the purview of the FSC which will regulate moneylending. As at date, the Bank of Mauritius has not issued any moneylending licence in Mauritius. Global players looking at transactions in Mauritius have long toyed with the idea of debt investments but have had to tread in a carefully guarded debt market. While mezzanine lending has been a good fallback, pure debt investments in the global business sector have been hindered by the differential regulatory approaches to domestic and offshore lending. In times where businesses globally are in search of cheaper and more flexible debt, and equity is proving too volatile an instrument, it is hoped that there will be a clearer path for the setting up of debt funds and alternative debt instruments within the global business sector, thus positioning Mauritius also as a centre for debt financing, at par with other international financial centres.

Introduction of leniency for filings of audited financial statements

A new section 30A has been introduced to empower the FSC to extend the prescribed period during an emergency period for filing of its yearly audited financial statements. An emergency period includes a period during which a curfew order, or similar restriction on the movement of persons is in force under any enactment on the ground of public order, public health or public safety or a period where Mauritius has been affected by a natural disaster. The FSC may also exempt a person from complying with the obligation to apply from the requirement to file yearly financial statements.

Commentary

All licensees have the obligation to file annual financial statements within six months after the close of their respective financial year except where it is otherwise required by the FSC or any relevant act. Administrative penalties are applicable for late filing of financial statements under the Financial Services (Administrative Penalties) Rules 2013. The amendments by the Finance Act allow the FSC to provide for flexibility to its licensees to comply with this requirement in specific circumstances and therefore to avoid such administrative penalties. This is an important change given that it considers the force majeure element during the pandemic.

New duty of auditor

The Finance Act also introduced a duty on an auditor to report to the FSC any matter which gives the auditor reasonable grounds to believe that (a) there has been a material adverse change in the risks inherent in the business of the licensee with the potential to jeopardise the ability of the licensee to continue as a going concern, (b) the licensee may be in contravention of the FSA or any regulations made under the FSA, FSC Rules or any directions issued by the FSC, (c) a financial crime has been, is being or is likely to be committed, (d) serious irregularities
have occurred, or (e) there has been non-compliance with the laws of Mauritius.

Commentary

This is a new provision that has been introduced in the FSA which imposes a new obligation on auditors to inform the regulator where they have reasonable grounds to believe that any of the events specified in the FSA has occurred. Auditors already had these obligations in relation to reporting issuers, other than collective investment schemes under the Securities Act 2005. This new change has now extended the obligation in relation to all the licensees of the FSC. It is unclear at this stage whether this duty will be risk-based depending on the level of activity of the licensee and the likelihood of systemic risks posed by its potential failure, or if this duty would also be extended to simple holding structure where the increased compliance costs would surely be disproportionate to the objectives of whistleblowing.
The following are the main amendments to the Insolvency Act (IA):

Power of Court to ‘cram down’

The IA has been amended to provide for the powers of the Court to impose a restructuring of debt in a bankruptcy arrangement despite objections from creditors where (a) a deed of company arrangement between a company and its creditors or any class of its creditors has been voted on at the watershed meeting; (b) the creditors meant to be bound by the deed of company arrangement are placed in two or more classes of creditors for the purpose of voting on the deed of company arrangement at the relevant meeting; (c) at least one class of creditors resolves that the company executes the deed of company arrangement; and (d) at least one class of creditors does not resolve that the company executes the deed of company arrangement.

The Court may, on the application of an administrator or, with leave of the Court, on the application of a company or creditor, approve the deed of company arrangement and order that the deed of company arrangement be binding on the company and all classes of creditors intended to be bound by the deed of company arrangement.

Such an order can be made by the Court where the creditors representing at least 75% in value of all creditors who are intended to be bound by the deed of company arrangement have voted in favour of the deed of company arrangement; and the Court is satisfied that no provision of the deed of company arrangement would be (a) oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors; or (b) contrary to the interests of the company as a whole.

Commentary

This change introduces the concept of ‘majority rule’ in creditor decision-making during insolvencies and provides a clear statement in the law that despite objections from minority creditors, the Court may, subject to certain conditions, impose a restructuring of debt and approve the deed of company arrangement in the situations mentioned above, and the scope of application of such power given to the Court is specified in the amended IA. In addition to the requirement for at least 75% of the creditors who will be bound by the decision to vote favourably to the deed of company arrangement, the Court must also be satisfied that no provision of the deed of company arrangement is deemed as being oppressive, unfairly prejudicial, unfairly discriminatory or contrary to the interests of the company as a whole.
Banking

Banking Act (BA)

The main amendments to the BA are as follows:

Introduction of digital banking business and a digital banking licence

- The definition of ‘Bank’ is amended to cater for the digital banking business and the definition of ‘banking licence’ now includes a digital banking licence.
- The BA is amended to cater for any banking business carried on exclusively through digital means or electronically, thereby providing for a new definition of ‘digital banking business’. This particular amendment to the BA is brought, especially, to cater for the introduction of digital currency which the Bank of Mauritius is now empowered to issue and it is likely that with the introduction of the new digital currency framework, guidelines from the Bank of Mauritius will be forthcoming.
- A new subsection to cater for a bank which has been granted a banking licence by the central bank to carry on exclusively digital banking business is now included in section 7 relating to the grant or refusal to grant banking licence, of the BA.

Amendment to the provisions relating to Conservatorship

- The powers and duties of a conservator appointed by the central bank are widened in scope in that the conservator now has, inter alia, all the powers of the shareholders, directors and officers of the financial institution concerned and may operate the financial institution in its own name unless otherwise specified by the central bank. With a time limit now imposed unless the board of directors of the central bank determines otherwise, a financial institution must not be placed under conservatorship for more than 180 days.
- The provisions of the BA relating to the rehabilitation or reorganisation of a financial institution are amended to now enable the conservator to propose, subject to the other provisions of the BA, another reorganisation plan to all depositors and other creditors who will not receive full payment under the plan.

Other amendments

- Moneylending is no longer within the purview of the Bank of Mauritius. The definition of ‘moneylender’ in the BA is accordingly deleted and the provisions in respect of licensing of moneylenders are repealed. Moneylending now falls under the purview of the FSC (please refer to Section F (Financial Services and Reporting) above).
- The BA is amended to provide for directives in addition to guidelines and instructions.
- The BA now makes reference to the Credit Scoring Services Agency which is established under the new section 52B of the Bank of Mauritius Act (dealt with further below).

Commentary

The BA is now further strengthened by the provision of a new framework for digital banking as a means of diversifying our financial services sector. This new defined framework in respect to the introduction of the digital banking services now places Mauritius in a position of a competitive International Financial Centre.

The broadening in the scope of powers and duties of a conservator is a much-welcomed change as a means of an enhanced way to offer more protection of the assets of a financial institution for the benefit of its depositors and creditors. With the wider scope of powers of the conservator, it is likely that a financial institution will be allowed to trade and come out of a bad financial position without any disruption caused to the business that would otherwise jeopardise the interest of the
depositors and creditors. Lastly, it is apposite to note that moneylending is no longer regulated by the Bank of Mauritius and now falls under the purview of the FSC as elaborated in Section F (Financial Services and Reporting) above.

**Bank of Mauritius Act (BoM Act)**

The following changes have been made to the BoM Act:

**Introduction of digital currency**

With the introduction of the digital banking business and a digital banking licence under the BA, digital currency is now introduced in the BoM Act and the Bank of Mauritius (BoM) is empowered to issue digital currency.

**Green and Blue Bonds**

The BoM Act is amended to cater for the ability of the BoM to raise loans by itself or through its subsidiary, or acting as agent of Government, by the issue of securities for investment in projects or companies promoting the sustainable economic development of Mauritius, including the blue economy and green economy. This amendment is in line with the proposal made during this year’s Budget Speech regarding the introduction of new products in line with the recommendations of the 10-year blueprint to diversify our financial services sector.

**Establishment of Credit Scoring Services Agency**

The BoM may now by itself, through a subsidiary or any other legal entity, establish a credit scoring services agency for the purpose of providing credit scores on an applicant for credit on such terms and conditions as it may determine. ‘Credit score’ is defined as an assessment of the creditworthiness of an applicant for credit. The BoM may make use of information available in the Credit Information Bureau and may request any person to provide it with such information as it may consider necessary for the establishment of the Credit Scoring Services Agency. Such person and the Credit Information Bureau are required, notwithstanding any confidentiality provisions under the BoM or any other enactment, to extend assistance to, and comply with the request of, the Credit Scoring Services Agency.

**Commentary**

The introduction of the central bank digital currency and the Green and Blue Bond frameworks by the BoM, in line with the recommendations of the 10-year blueprint, further enhance the competitiveness of the financial services sector in Mauritius. While the digital currency framework is particularly new, we are yet to see its application in practice and very much look forward to any directives, instructions or guidelines issued in respect of same by the BoM. Further, the establishment of a credit scoring services agency in addition to a credit information bureau and a central KYC registry is a welcomed change in that it will assist the BoM in monitoring information received on potential borrowers.
Workers’ Rights Act (WRA)

The main amendments to the WRA are as follows:

Introduction of new qualifications in the conversion of full-time to part-time regime

Where a full-time worker enters into an agreement to work part-time during the period starting 01 June 2020 and ending on 31 December 2020 (or such other period as may be prescribed), the agreement shall:

• be in writing and for a period not exceeding three months; and
• provide an option to the worker to revert to full-time work:
  • at the expiry of the period of three months; or
  • before the expiry of the period of three months with the consent of his employer.

An employer will not require a full-time worker to enter into an agreement to perform part-time work, except where the agreement is in writing and for a specified period of time and provides an option to the worker to revert back to full-time work at the expiry of the specified period and with the approval of the supervising officer.

The Finance Act has clarified that a part-time worker who has been required to shift from a full-time agreement, and whose employment has been terminated, may be ordered to be paid severance allowance where the Court finds such termination unjustified.

For the purpose of calculating the severance allowance, a month’s remuneration would be:

• the remuneration drawn by the worker for the last complete month of his or her employment on a full-time basis; or
• an amount computed in the manner as is best calculated to give the rate per month at which the worker was remunerated over a period of 12 months before the termination of his or her agreement, including payment for extra work, productivity bonus, attendance bonus, commission in return for services and any other regular payment, whichever is higher.

Portable Retirement Gratuity Fund

Contributions made to the Portable Retirement Gratuity Fund are now deductible from any amount payable under the compromise agreement.

Work during adverse weather conditions

An employer shall now not require a worker to report to work or to continue to work where during a period of extreme weather conditions, an order is issued by the National Crisis Committee requiring any person to remain indoors, or a state of disaster is declared and any direction for the purpose of assisting and protecting the public is issued under section 37 of the National Disaster Risk Reduction and Management Act. The employer shall pay to the worker:

• a full day’s remuneration where:
  • no work can be performed owing to the weather conditions; or
  • the worker resumes work for two hours or more;
• a half day’s remuneration where
  • work has been stopped before the worker has completed two hours of work; or
  • the worker resumes work for not more than two hours.

Special allowance

The MRA may pay such special allowance as may be prescribed to such category of workers as may be prescribed.

End of year bonus

The end of year bonus section in the WRA has been qualified to apply only to those workers
who draw a monthly basic wage or salary of not more than MUR 100 000 (approx. USD 2 500).

**Termination of employment**

Further restrictions have been placed on the reduction of workforce and closure of enterprises section. No employer can reduce the number of workers in his employment, during such period as may be prescribed, except (i) an employer which provides services in specific sectors (air traffic control, civil aviation and airport, customs, electricity, health, hotel services, hospital, port, radio and television, refuse disposal, telephone, transport of passengers and goods, and water supply) or (ii) an employer that has applied for any of the financial assistance schemes set up by the Development Bank of Mauritius Ltd, Mauritius Investment Corporation Ltd, Stated Investment Corporation Limited, for the purpose of providing financial support to an enterprise adversely affected by the consequences of the COVID-19 virus and his application has not been approved. Where there is a breach of this provision, the Redundancy Board may order the employer to reinstate the employee in his or her former employment with payment of remuneration from the date of the termination of his or her employment to the date of his or her reinstatement or pay him or her the equivalent of three month’s remuneration for every 12 months of continuous employment as severance allowance.

Additional provisions are made for transition unemployment benefit so that where, following the expiry of the COVID-19 period, the employment of a worker is terminated for any reason and the worker reckons at least 30 days’ and less than 180 days’ continuous employment with the same employer as at the date of the termination of his or her employment, the worker shall be entitled to the payment of a transition unemployment benefit of MUR 5 100 (approx. USD 128) per month for the period starting on 01 July 2020 and ending 31 December 2020. This section comes to fix the amount payable to such a worker for these six months, otherwise it would have been 90% of the basic wage for the first three months and 60% as from the fourth month to the sixth month.

**Commentary**

It can be seen, through the amendments, that the intention of the Government is to provide additional security to the workforce, particularly following the COVID-19 crisis. It is a welcome amendment to the existing laws that in the event of extreme weather conditions, employees are no longer required to report to work. Now, safety of employees will not be compromised and with increasing use of remote working (where available), the negative impact on businesses will also lessen.

Of note, is the amendment to the end of year bonus provision under the WRA. There are two pieces of law which provides for end of year bonus - the WRA and the End of Year Gratuity Act. The WRA provides for the payment of an end of year bonus equivalent to 1/12 of the earnings of an employee for the year payable in December or at the time of termination of his or her employment during the year. The End of Year Gratuity Act provides for the payment of an end of year bonus in the month of December equivalent to 1/12 of the basic wage or salary of an employee provided the employee is in employment on 31 December and does not provide for the payment of the bonus on termination of employment during the year. The amendments have clarified that the end of year bonus will be as per the End of Year Gratuity Act for employees earning a basic salary of more than MUR 100, 000 and as per the WRA for employees earning a basic salary less than MUR 100,000.

**National Pensions Act (NPA)**

Replacement of the existing system of National Pension with the Contribution Sociale Généralisée (CSG) with effect from 01 September 2020
Under the CSG, every employee (as may be prescribed) and every employer of such employee will be required to pay the CSG at such a rate and on such remuneration as may be prescribed. Self-employed people would also be required to contribute to the CSG at such rate as may be prescribed. The CSG shall be payable in respect of the month of September 2020 and for every subsequent month.

Any person who became an insured person under the existing pension system prior to 01 September 2020 will remain an insured person on or after 01 September 2020 until he or she ceases to be an insured person. However, no contribution will be payable by such a person or his or her employer in respect of any period following the end of the month of August 2020.

Every benefit payable under the NPA (other than the benefit under the CSG or such other benefit as may be prescribed) will be calculated in accordance with the NPA and on the amount of the contribution paid by the insured person.

**Commentary**

The contributions made by every employer and employee to the National Pensions Fund have now been replaced by the CSG. As from 01 September 2020, every employer, employee and now self-employed people will be required to pay the CSG to the revenue authorities at such rates as to be prescribed. While the Finance Act does not specify the amount that needs to be contributed to the CSG, the Minister of Finance has in his Budget Speech proposed a progressive system, whereby in respect of employees earning up to MUR 50 000, a contribution at the rate of 1.5% must be made by the employees and 3% by their employers and in respect of employees earning more than MUR 50 000, a contribution of 3% must be made by the employees and 6% by their employers. Should these rates be maintained (and not capped as used to be the case with the existing national pension system), this will be a considerable strain on businesses in these difficult times. Further, a contribution of MUR 150 (approx. USD 3.75) to the CSG has been proposed for self-employed people.

**National Savings Fund Act (NSFA)**

The NSFA has been amended to include a non-citizen in the definition of employee, except where the (a) non-citizen is employed by an export manufacturing enterprise who has resided in Mauritius for a continuous period of less than two years; and (b) the non-citizen holds a work permit and is an employee of a foreign contractor engaged in the implementation of a project which is funded up to not less than 50% of the estimated project value, from grant or concessional financing, as the Ministry of Finance may approve, from a foreign State.

**Non-Citizens (Employment Restriction) Act**

The scope for non-citizens to be employed without a permit has been extended to a holder of a residence permit under the Immigration Act and to a member of the Mauritian Diaspora under the Mauritian Diaspora Scheme prescribed under the Economic Development Board Act 2017.

**Private Pension Schemes Act**

A fund has been introduced for abandoned funds whereby, in the event that a beneficiary has not claimed his or her benefits under a private pension scheme for seven years or more and after a notice has remained unanswered, the entitlement of the beneficiary shall be deemed to have been abandoned and the total amount of funds would be transferred to a fund established for such abandoned funds.
COVID-19 Measures

A number of changes which were brought by the COVID-19 (Miscellaneous Provisions) Act (the COVID Act) have been further amended or repealed by the Finance (Miscellaneous Provisions) Act. Some of the COVID-19 measures that have ceased to apply are set out below. The Finance Act has also brought some relief to companies operating in the tourism sector that have been mostly impacted by COVID-19 by exempting them from payment of fees for certificates, licences or permits issued under the Tourism Authority Act for a period of two years.

Insolvency Act

Statutory Demand

- The time period for an application to set aside a statutory demand and to be served on a creditor was extended from 14 to 28 days by the COVID Act but the IA has been amended again to provide for a time period of 14 days.
- The time period for a debtor company to pay the debt, enter into a compromise or compound with the creditor or give a charge over its property which was increased to two months by the COVID Act has also been reduced to one month.

Receivers and Managers

Under the IA as amended by the COVID Act, any appointment of a receiver by a chargee through an instrument of charge or any appointment of a receiver or receiver and manager by a chargee under an instrument during the COVID-19 period was of no effect and was void. This provision has now been repealed.

Companies Act

The Registrar of Companies is no longer empowered to issue practice directions, guidelines or such other instructions during the COVID-19 period and for such further period as the Registrar may determine for the good administration of the Companies Act.

Limited Liability partnerships Act and Limited Partnerships Act

The Registrar of Companies is no longer empowered to issue practice directions, guidelines or such other instructions during the COVID-19 period and for such further period as the Registrar may determine for the good administration of the Limited Liability partnerships Act and/or the Limited Partnerships Act.

Tourism Authority Act – Exemption of payment of renewal fee for expiry of certificate, licence or permit

Holders of tourist accommodation certificate, tourist expertise licence, pleasure craft licence for commercial purposes or canvasser permit are now exempt from payment of any renewal fee for a period of two years on the expiry of his or her certificate, licence or permit, as the case may be. If any of them have paid such fees between 01 June 2020 and 05 June 2020, they shall be refunded. Licenses expired anytime between 20 March 2020 to 30 June 2020 shall be deemed not to have expired and shall remain valid until their renewal or a period of two years from their date of expiry, whichever is earlier.
Business Facilitation

The Finance Act has brought several changes to ease the business environment. The main changes are set out below:

**Companies and Business Registration Integrated System (CBRIS)**

The CA now allows the CBRIS, the electronic system operated by the Registrar, to be operational for the registration as a registered person under the Value Added Tax Act.

**Commentary**

VAT registrations have long been in the form of manual submissions of registration forms to the postal address of the Mauritius Revenue Authority. Allowing online electronic submission online through the CBRIS demonstrates the gradual computerisation of the registry which will significantly simplify VAT registration.

**Establishment of Business Obstacle Alert Mechanism**

The Economic Development Board Act has been amended to provide for the establishment of a Business Obstacle Alert Mechanism (BOAM) for the purpose of business facilitation. The BOAM will enable enterprises to log in any bottlenecks in relation to delays in the determination of licences, permits, authorisations or other clearances, enquire about any issue and make recommendations to public sector agencies, and report and publish any remedial action taken.

Restoration of a company in the company’s register

The Act abolishes the requirement by the applicant to pay publication costs prior to restoration of a company to the register, and also amends the requirement to give public notice to two daily newspapers having wide circulation in Mauritius, to only giving notice in the Gazette and by any electronic means.
Changes as per Finance Act

<table>
<thead>
<tr>
<th>Changes as per Finance Act</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-citizen holding immovable property under the Integrated Resort Scheme, Invest Hotel Scheme or Smart City Scheme whose value is not less than USD 375 000 will have the status of resident.</td>
<td>The threshold for the value of the property has been reduced from USD 500 000.</td>
</tr>
<tr>
<td>Parents of, non-citizens stated above, holders of a valid residence or occupation permit and having granted the status of permanent resident and non-citizens coming to serve the Government under the Service to Mauritius Programme for a period not exceeding three years, will have the status of resident. This is a new addition to the laws.</td>
<td>Previously only spouses and dependents of these specified persons were granted the status of resident in Mauritius.</td>
</tr>
<tr>
<td>A person who invests at least USD 375 000 or an equivalent amount in the specified activities of the Schedule of the IA which include agro-based industry, education, initial public offering will now be able to apply for the status of permanent resident.</td>
<td>The threshold for the minimum investment has been reduced from USD 500 000.</td>
</tr>
<tr>
<td>Any investor or self-employed non-citizen who is a holder of an occupation permit or any retired non-citizen who is a holder of a residence permit may apply for the status of permanent resident within the 10-year occupation or resident permit period.</td>
<td>Previously the timeline for making such application was at the expiry of three years of the occupation or residence permit.</td>
</tr>
<tr>
<td>The validity of a permanent residence permit has been extended to 20 years.</td>
<td>The validity was for period of 10 years prior to this change.</td>
</tr>
<tr>
<td>The holder of an occupation permit under category professional may hold shares in a business where he is employed provided that he is not a majority shareholder.</td>
<td>Previously, holders of such category of occupation permit were not allowed to hold shares in the companies where they were employed.</td>
</tr>
</tbody>
</table>

Economic Development Board Act

The Finance Act has also amended the Economic Development Board Act (EDBA) and one of the key changes is the repealing of the First Schedule of the EDBA in its entirety and replacing it with a new schedule which provides for the new criteria for registration with the Economic Development Board and for eligibility of permanent residence permit. The main changes to the First Schedule of the EDBA are as follows:

- In relation to occupation permit under category investor, the threshold for initial investment has been reduced from USD 100 000 to USD 50 000.
- In order to be eligible for an occupation permit, the minimum monthly basis salary for professionals...
in pharmaceutical manufacturing and food processing sectors is MUR 30 000 (reduced from MUR 60 000). For renewal of an occupation permit of a self-employed person, his or her minimum business income must be MUR 800 000 per year as from the third year of registration. The criteria of cumulative business income of at least MUR 2.4 million during the three years preceding the application for occupation permit and with a business income of at least MUR 600 000 per year is no longer applicable. • In relation to permanent resident permit, the following changes have been made to the criteria of eligibility for investors:

<table>
<thead>
<tr>
<th>Eligibility criteria prior to Finance Act</th>
<th>Eligibility criteria after Finance Act</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For any investor:</strong></td>
<td><strong>For any investor:</strong></td>
</tr>
<tr>
<td>1. Holder of an occupation permit as investor; and</td>
<td>1. Holder of an occupation permit as investor for at least three years; and</td>
</tr>
<tr>
<td>2. An aggregate turnover of at least MUR 45 million for any consecutive period of three years.</td>
<td>2. A minimum annual gross income of at least MUR 15 million for three years preceding application or its aggregate.</td>
</tr>
<tr>
<td><strong>For an investor with a minimum investment of USD 500 000:</strong></td>
<td><strong>For an investor with a minimum investment of USD 375 000:</strong></td>
</tr>
<tr>
<td>Investment of at least USD 500 000 in a qualifying business activity.</td>
<td>Minimum investment of USD 375 000 in a qualifying business activity.</td>
</tr>
</tbody>
</table>

• The First Schedule also now provides for a new part III which sets out the following criteria for eligibility for permanent residence permit for different categories of persons who have been a holder of an occupation permit or residence permit for at least three years immediately before 1 September 2020:

<table>
<thead>
<tr>
<th>Category</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investor</td>
<td>Cumulative turnover of at least MUR 12 million during the three years preceding the application.</td>
</tr>
<tr>
<td>Self-employed</td>
<td>Cumulative business income of at least MUR 2.4 million during the three years preceding the application.</td>
</tr>
<tr>
<td>Professional in the information and communication technologies (ICT) sector and business process outsourcing (BPO) sector</td>
<td>Monthly basic salary of at least MUR 30 000 during the three years preceding the application.</td>
</tr>
<tr>
<td>Professional in any other sector</td>
<td>Monthly basic salary of at least MUR 60 000 during the three years preceding the application.</td>
</tr>
<tr>
<td>Retired non-citizen</td>
<td>Monthly transfer of at least USD 1 500 or its equivalent in freely convertible foreign currency, during the period of three years or cumulative transfer of at least USD 54 000 or its equivalent in freely convertible foreign currency, during the period of three years.</td>
</tr>
</tbody>
</table>
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