
THE FINANCE ACT & THE BUSINESS FACILITATION ACT 2019

Key legislative amendments

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THE FINANCE (MISCELLANEOUS PROVISIONS) ACT 2019 & THE BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) ACT 2019: KEY LEGISLATIVE AMENDMENTS

Axis Fiduciary Ltd in association with BLC Robert & Associates address some of the important features of the legislative amendments following the National Budget 2019/2020 delivered by the Honourable Prime Minister and Minister of Finance Pravind K. Jugnauth before the Mauritian National Assembly on 16 June 2019. The amendments have been passed in the Finance (Miscellaneous Provisions) Act (the “Finance Act”) and The Business Facilitation (Miscellaneous Provisions) Act (the “Business Facilitation Act”). Both Acts give effect to the measures announced in Budget Speech 2019-2020 “embracing a brighter future together” in line with the Government’s development objectives. In the first section, we address the significant changes within the Finance Act and in the second part, we highlight the legislative amendments with regards to The Business Facilitation Act.

PART I - FINANCE ACT

COMPANIES ACT

The notable changes brought to the Companies Act are as follows:

- (a) the definition of a “small private company” has been amended to exclude entities that are listed in the First Schedule to the Financial Reporting Act 2004 which are amongst others:
 - I. Entities listed on the Stock Exchange of Mauritius
 - II. Financial institutions, other than cash dealers, regulated by the Bank of Mauritius
 - III. Financial institutions regulated by the Financial Services Commission, from the following categories:
 - 1. insurance companies, other than companies conducting external insurance business, licensed under the Insurance Act;
 - 2. collective investment schemes and closed-end funds registered as reporting issuers under the Securities Act;
 - 3. CIS managers and custodians licensed under the Securities Act;
 - 4. persons licensed under section 14 of the Financial Services Act to carry out leasing, credit finance, factoring and distributions of financial products to the extent that the services supplied are by retail
 - IV. (1.) Any company which has, during 2 consecutive preceding years, at least one of the following:
 - a. an annual turnover exceeding 500 million rupees; or
 - b. total assets exceeding 500 million rupees.
 - (2.) Any group company which has, during 2 consecutive preceding years, at least one of the following:
 - a. an annual turnover exceeding one billion rupees; or
 - b. total assets exceeding one billion rupees.
- (b) the term beneficial owner and ultimate beneficial owner which was defined as a natural person who holds directly or through a nominee at least 25% of the voting shares in a company or an interest in such shares is now defined as any natural person who ultimately owns or controls a company or the natural person on whose behalf a transaction or activity is being conducted in relation to a company and includes (i) the natural person who ultimately owns or controls a company through direct or indirect ownership of shares in such percentage as may be prescribed, voting rights, ownership interest or control by other means, (ii) where no natural person is identified under (i) or in case of doubt, the natural person who controls the company, (iii) where no natural person is identified under (i) and (ii), the natural person who acts as executive director or has such equivalent executive powers;
- (c) putting an obligation on every company to keep updated records of the beneficial owners or ultimate beneficial owners giving nominee shareholders instructions to exercise a right in relation to shares and the actions taken to identify the beneficial owners or ultimate beneficial owners of the company. In the event that a company ceases to carry on business, the last directors of the company are required to keep the records for a period of at least 7 years from the date of cessation of business;
- (d) in an attempt to promote gender equality, by making it mandatory for the board of directors of a public company to include at least one woman; and
- (e) increasing the maximum number of shareholders allowed by a private company from 25 to 50.

INCOME TAX ACT

A number of significant changes have been brought to the Income Tax Act, the key amendments are:

1. INTRODUCTION OF REAL ESTATE INVESTMENT TRUST (REIT) REGIME

A REIT, which is defined as a collective investment scheme or a closed-end fund authorised as a REIT by the Financial Services Commission will not be liable to income tax and Corporate Social Responsibility levy subject to satisfying prescribed conditions. However, every beneficiary or participant to a REIT shall be liable to income tax on his share of the distribution made by the REIT. The first 50,000 rupees of the amount receivable by an individual in an income year from REIT shall be exempt from income tax.

2. TAX RESIDENCY IN MAURITIUS

The place of effective management has been removed as a criterion for determining tax residency of companies. A company incorporated in Mauritius shall be treated as non-resident if it is centrally managed and controlled outside Mauritius.

3. INTRODUCTION OF CONTROLLED FOREIGN COMPANY (CFC) RULE

The CFC rule has been introduced as an additional anti-tax avoidance provision. A CFC is defined as a non-resident company in which more than 50 per cent of its total participation rights are held directly or indirectly by a resident company or together with its associated enterprises and includes a permanent establishment of the resident company.

Where a resident company carries on business through a CFC and the Director-General considers that the non-distributed income of the CFC arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax benefit, that income shall be deemed to form part of the chargeable income of the resident company.

The CFC rule shall not apply to a CFC where in an income year-

- (i) accounting profits are not more than EUR 750 000, and non-trading income is not more than EUR 75 000;
- (ii) accounting profits amount to less than 10 per cent of its operating costs for the tax period (the operating costs shall not include the cost of goods sold outside the country where the entity is resident for tax purposes and payments to associated enterprises); or
- (iii) the tax rate in the country of residence of the controlled foreign company is more than 50 per cent of the tax rate in Mauritius.

4. EXTENSION OF THE PARTIAL EXEMPTION REGIME

The 80 per cent partial exemption regime has been extended to cover the following income:

- (i) interest derived by a person from money lent through a peer-to-peer lending platform;

- (ii) income derived by a company from reinsurance and reinsurance brokering activities subject to satisfying conditions as may be prescribed relating to the substance of its activities;
- (iii) income derived by a company from leasing and provision of international fibre capacity subject to satisfying conditions as may be prescribed relating to the substance of its activities; and
- (iv) income derived by a company from the sale, financing arrangement, asset management of aircraft and its spare parts and aviation advisory services related thereto subject to satisfying conditions as may be prescribed relating to the substance of its activities.

5. TAX HOLIDAYS

Tax holidays have been introduced on the following income:

- (i) Four-year exemption on income derived by a company from bunkering of low sulphur heavy fuel oil;
- (ii) Eight-year exemption on income derived by a company from intellectual property assets developed in Mauritius on or after 10 June 2019;
- (iii) Five-year exemption on income derived by a company set up on or before 30 June 2025 and issued with an e-commerce certificate by the Economic Development Board;
- (iv) Five-year exemption on income derived from licensed operation of a peer-to-peer lending platform provided operation starts before 31 December 2020 and the person satisfies the condition relating to the substance of its activities as specified by the Financial Services Commission; and
- (v) Eight-year exemption on income derived by a company set-up on or after 10 June 2019 and engaged in the development of a marina.

6. ALLOWABLE DEDUCTIONS

The following expenditures can now be deductible from gross income:

- an amount equal to 150 per cent of any expenditure incurred by a company operating a hotel on cleaning, renovation and embellishment works in the public realm;
- an amount equivalent to 150 per cent on filing fees incurred by a company in respect of arbitration, conciliation or mediation for the settlement of a dispute before a recognized arbitration institution in Mauritius.

7. COMPANIES ENGAGED IN MANUFACTURING ACTIVITIES IN A FREEPORT ZONE

The reduced income tax rate of 3% has been extended to a Freeport operator or private Freeport developer engaged in the manufacture of goods meant for local market in whole or in part provided that the Freeport operator or private Freeport developer satisfies the conditions relating to the substance of its activities as may be prescribed.

CSR contribution will apply to a Freeport operator or private Freeport developer engaged in the sale of goods on the local market and will be calculated using a prescribed formula.

8. INTRODUCTION OF PRESUMPTIVE TAX ON SMALL ENTERPRISES

Small enterprises may elect to pay a presumptive tax at the rate of one per cent of their gross income as their final tax liability. A small enterprise that has made an election to pay the presumptive tax shall not be entitled to claim any deduction, income exemption threshold, relief or allowance.

A small enterprise is defined as a person:

- (a) Who is engaged in the following activities
 - I. agriculture, forestry and fishing;
 - II. manufacturing excluding restaurants;
 - III. retail of goods, including sale of food to be consumed off premises; and
 - IV. wholesale of goods.
- (b) Whose gross income in an income year does not exceed 10 million rupees; and
- (c) Whose gross income from sources, other than the specified activities, does not exceed 400,000 rupees.

9. INTEREST FROM MONEY LENT THROUGH PEER-TO-PEER LENDING PLATFORM

Gross income derived from a business has been extended to include any interest derived by a person from money lent through any peer-to-peer Lending platform operated under a licence issued by the Financial Services Commission.

A person who derives interest from money lent through any peer-to-peer lending platform may deduct the amount of the debt or interest arising from such amount lent and which is proved to have become bad from any interest received from money lent through the same peer-to-peer Lending platform. Where the amount of debt or interest cannot be fully relieved, the person may claim the unrelieved amount of debt or interest be carried forward and set off against interest received from money lent through the same peer-to-peer lending platform in the succeeding income years. No time limit shall apply for the setting-off of any unrelieved bad debt arising as such.

Payment of interest in a peer-to-peer lending platform is exempt from tax deduction at source.

10. SOLIDARITY LEVY APPLICABLE TO INDIVIDUALS - CHANGES TO THE DEFINITION OF "LEVIABLE INCOME"

The definition of "leviable income" has been amended to:

- (i) include the share of dividends of an individual in a resident société or succession to which he would have been entitled as an associate or heir, had the dividends been received by the société or succession been wholly distributed among the associates or heirs, as the case may be; and

- (ii) exclude any lump-sum by way of commutation of pension or by way of death gratuity or as consolidated compensation for death or injury, and paid by virtue of any enactment, from a superannuation fund or under a personal pension scheme approved by the Mauritius Revenue Authority.

11. TAX CREDIT FOR EMPLOYEES

A tax credit of 5% has been introduced in favour of employees deriving in the first month of an income year, a basic salary inclusive of compensation not exceeding 50,000 rupees, provided the total annual net income of the employees in that income year does not exceed 700,000 rupees. An individual whose net income is less than 650,000 rupees in an income year shall not be entitled to the tax credit.

MAURITIUS REVENUE AUTHORITY ACT

A number of changes have been brought to the Mauritius Revenue Authority Act in respect of tax administration, the key amendments are:

VOLUNTARY DISCLOSURE SCHEME FOR SMALL AND MEDIUM ENTERPRISES (SME)

Full waiver of penalties and interest granted to an SME if it makes a voluntary disclosure on or before 29 November 2019, of – (i) its undeclared or under-declared income in respect of year of assessment 2017-2018 and any preceding years of assessment or (ii) its taxable supplies for taxable period ended 30 June 2018 and any preceding taxable periods and payment of the tax due is made in accordance with the disclosure.

If any objection, representations or appeal was or were still pending before the Assessment Review Committee, Supreme Court or the Privy Council in respect of any VAT or income tax assessment as at 10 June 2019, the SME may apply to the MRA for the income tax or value added tax assessed to be considered as a voluntary disclosure. The voluntary disclosure scheme will apply to an SME whose annual turnover for the year of assessment 2017-2018, as a business entity, did not exceed MUR 50 million.

PAYMENT OF TAX ARREARS SCHEME

Full waiver of penalty and interest allowed to an SME to pay arrears of tax owed to the MRA as at 10 June 2019 provided payment is made on or before 31 March 2020 and application for full waiver is made to the MRA before 31 January 2020.

SCOPE OF DISPUTE RESOLUTION

The scope of the Alternative Tax Dispute Resolution and the Expedious Dispute Resolution Tax Scheme have been extended to cover tax assessment in respect of Environment Protection Fee under the Environment Protection Act and duties and taxes under the Customs Act.

REGISTRATION DUTY ACT

The main changes to the Registration Duty Act are as follows:

12. INTRODUCTION OF ADMINISTRATIVE FEE

An administrative fee at a prescribed rate shall now be levied on any deed deposited for registration at the Registrar-General. Where a deed is not presented to the Registrar-General within the prescribed time limit, in addition to the administrative fee, a surcharge equal to 50 per cent of the amount of the administrative fee shall be payable.

13. INTRODUCTION OF THE OBJECTION UNIT

An objection unit has been introduced to hear objections against revised valuation made by the Receiver of Dues in relation to a transfer of movable property. A person who is dissatisfied with the revised valuation made by the Receiver in relation to a transfer of movable property may, on the payment of the duty or tax claimed by the Receiver and no later than 15 days after receiving notice of the Receiver's decision, object to the notice by registered post. The objection unit has a period of 4 months from the date on which the objection is made to deal with the objection. Where the Receiver considers an objection, he shall by notice in writing amend the claim or maintain the claim. If an agreement is reached before the objection unit, the person aggrieved shall not be entitled to lodge written representations with the Assessment Review Committee. Where the value assessed is reduced pursuant to a decision of the objection unit or a decision of the Assessment Review Committee or pursuant to a decision of the Supreme Court or the Judicial Committee of the Privy Council, any amount of tax paid in excess shall be refunded to the transferor and any amount of duty paid in excess shall be refunded to the transferee, together with interest at the legal rate, free of income tax, from the date the payment is effected to the Registrar-General to the date it is refunded.

STATE LANDS ACT

The State Lands Act has been amended to allow a reduction of annual rental by:

- (a) 75 per cent for the first 10 years of the lease with regard to a private health institution or an ayurvedic wellness centre project; and
- (b) 50 per cent for the first 10 years of a lease for industrial or commercial purpose where a company takes over, or acquires all or part of the assets of a company that is in administration, receivership or liquidation, including its premises found on State land, provided that the take-over or acquisition occurs on such conditions relating to safeguard of employment or on such other terms and conditions as the Minister of Housing and Lands may approve.

LAND (DUTIES AND TAXES) ACT

The main changes to the Land (Duties and Taxes) Act are as follows:

- (a) The procedure to be followed when the Registrar-General is dissatisfied with the value mentioned in any deed witnessing the transfer of property has been modified. The notice to be given by the Registrar-General must now be accompanied by a summary of the valuation report, approved by the Registrar-General, which must include the reason for the assessment, the valuation methodology and comparable transactions used where applicable, in order to make an assessment. If the difference between the value of the immovable property assessed and the value in the deed does not exceed 100,000 rupees, notice is not required to be given by the Registrar-General. Further, the Registrar-General no longer has a right of pre-emption. Also, a transferor who is dissatisfied by a claim for additional land transfer tax may object to the decision of the Receiver in the same manner as an objection to the objection unit under the Registration Duty Act.
- (b) The Ministry of Finance and Economic Development may now remit or refund any duty or tax leviable where a person makes an application for an exemption within three years, instead of one year, from the registration date of the deed.

LIMITED LIABILITY PARTNERSHIPS ACT

SECTION 41A (4) - DEFINITION OF BENEFICIAL OWNER

The definitions of "beneficial owner" and "ultimate beneficial owner" have been aligned with the definition in the Companies Act with such modifications and adaptations as may be necessary.

LIMITED PARTNERSHIPS ACT

SECTION 2- DEFINITION OF BENEFICIAL OWNER

The definitions of beneficial owner and ultimate beneficial owner in the Limited Partnerships Act have also been aligned with the definition of the Companies Act with such modifications and adaptations as may be necessary.

FINANCIAL SERVICES ACT

The definition of 'officer' has been extended to include 'money laundering reporting officer, a deputy money laundering reporting officer, a compliance officer' to the existing list which comprised of officers such as members of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a company secretary or a partner. This amendment results in the FSC regulating a money laundering reporting officer, deputy money laundering reporting officer and a compliance officer in a similar manner as a director of a person licensed by FSC to conduct regulated activities. For instance, the appointment of the new 'officers' will require the prior approval of the FSC and to satisfy the 'fit and proper test'.

SECTION 45A - NEW SECTION ON WHISTLEBLOWING

A new section has been introduced to afford protection against any criminal or civil action to a person who reports in good faith to the FSC on a matter which the FSC has functions under the applicable laws. The identity of the reporting person will not be disclosed by the FSC without such person's consent unless

it is necessary for the FSC to do so. Any act of victimization or retaliation against a person who makes a report is an offence. Further any false, malicious or vexatious disclosure by a person is an offence.

SECTION 46 (6A) - POWER OF CHIEF EXECUTIVE TO GIVE DIRECTIONS IN CERTAIN CASES WITHOUT OPPORTUNITY TO MAKE PRIOR REPRESENTATIONS.

Where the Chief Executive of the FSC considers that any delay in giving a direction may cause severe prejudice to the clients of a licensee, the public or any part of the financial services industry, he may issue a direction which will take effect immediately and shall give the licensee an opportunity to make representations as soon as practicable (no later than 7 days from the date the direction was given).

SECTION 48(1) - POWER TO APPOINT ADMINISTRATOR WHEN CONDITIONS OF LICENCE NOT MET

The FSC may appoint an administrator where conditions of a licence are no longer being met by a licensee.

SECTION 71(3)(A) - THE LICENSING CONDITIONS UNDER THE GLOBAL BUSINESS LICENCE HAS BEEN AMENDED TO REFER TO THE INCOME TAX ACT

The requirement for a Global Business licence has been amended to impose that such entity carries out its core income generating activities in, or from, Mauritius as required in the Income Tax Act. The amendment to the Income Tax Act contemplates that a company will be treated as non-resident if it is centrally managed and controlled outside of Mauritius and availability of certain partial tax exemptions is subjected to conditions relating to substance of its activities as may be prescribed.

Prior to such amendment, such entity had to, in addition to other conditions, carry out its core income generating activities in, or from, Mauritius by employing, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities; and having a minimum level of expenditure, which is proportionate to its level of activities.

SECTION 71A (1) - AN AUTHORISED COMPANY IS REQUIRED TO HAVE ITS CENTRAL MANAGEMENT AND CONTROL OUTSIDE OF MAURITIUS.

A company approved by the FSC to operate as an Authorised Company is required to have its central management and control outside of Mauritius.

SECTION 89A - POWER TO EXTEND TIME PERIODS

The FSC is empowered to extend the time period where a person is required to do a particular thing upon an application being made before or after the period has ended.

PART XIB - SINGLE WINDOW SYSTEM

The FSC will offer and administer a facility known as the Single Window System which will act as a centre and channel for expeditious submission of any relevant permits (such as occupational permits and certificates of incorporation).

SECOND SCHEDULE - NEW LICENCES INCLUDED

The list of licences to be issued by the FSC now includes Crowdfunding, Fintech Services Provider and Robotic and Artificial Intelligence Enabled Advisory Services.

Administration of e-commerce has been included as an activity under a Global Headquarters Administration licence.

FINANCE (MISCELLANEOUS PROVISIONS) ACT 2017

In the 2017/2018 budget the government introduced a system whereby only a registered tax agent, approved by the MRA, would be allowed to

- (a) Prepare and sign the annual return of a taxpayer
- (b) Represent a taxpayer before the Authority, the ATDR panel and the Assessment Review Committee
- (c) Transact any business on behalf of any person in respect of the person's rights or obligations under any Revenue law.

The whole section has now been repealed in the Finance Act 2019.

VALUE ADDED TAX ACT

SECTION 24 - REPAYMENT OF TAX

VAT suffered on the acquisition of intangible assets such as goodwill on the acquisition of a business or part of a business, computer software, patents or franchise agreement can now be claimed for repayment in the relevant VAT return.

SECTION 53J - LIABILITY TO SPECIAL LEVY

The rate of special levy applicable to banks in respect having a leviable income exceeding 1.2 billion rupees has increased from 4% to 4.5%.

SECTION 63A - TAX LIABILITY OF PRINCIPAL OFFICER OF PRIVATE COMPANY

The definition, responsibility and liability of principal officer of a private company has now been added to the VAT Act. A principal officer shall:

- (a) be answerable for the doing of all transactions carried out by that company
- (b) be required to retain out of any money or property of the company so much as is sufficient to pay VAT which is or will become payable by that company
- (c) be personally liable in respect of the VAT payable by that company to the extent of any amount he has or should have retained.

The principal officer means an executive director, or any other person who exercises, controls or has been delegated the powers to exercise control which would fall to be exercised by the board of directors.

BANK OF MAURITIUS ACT

Several important changes have been brought to banking laws having an impact both at the level of the Bank of Mauritius as well as at the level of the bank licensees.

At the level of the Bank of Mauritius the significant amendments to the Bank of Mauritius Act 2004 are as follows:

- (a) to require the Bank of Mauritius to publish its report on monetary policy at least twice a year, instead of once a year;
- (b) to provide for the Bank of Mauritius to determine the investment policy regarding the management of the official foreign reserves of Mauritius;
- (c) to allow the Bank of Mauritius to appoint external consultants to manage the official foreign reserves of Mauritius on its behalf;
- (d) to allow use of funds from the Special Reserve Fund to repay external debt obligations of the Central Government if this does not have an adverse impact on the efficient discharge of its functions under the Bank of Mauritius Act by the Bank of Mauritius;
- (e) to allow crowd lending platforms to have access to and become participants of the Mauritius Credit Information Bureau; and
- (f) to allow the Bank of Mauritius to seek the collaboration of the Financial Services Commission for the establishment of a central KYC registry.

BANKING ACT

At the level of the licensees, significant amendments brought to the Banking Act are as follows:

- (a) the addition of a regime for the suspension of a banking license to the extent that the Bank of Mauritius is of the view that the licensee bank is not meeting its legal obligations under the Banking Act;
- (b) the provision of circumstances where a director of a bank will be under an obligation to report certain transactions directly to the Bank of Mauritius – these would be in instances where the director is of the view that there has been breaches of the banking or company laws, there may be instances of money laundering, there has been a breach of the banking regulatory regime, certain types of criminal offences would be committed, instances of conflict of interest or other instances of irregularity that would have an impact on the security of the depositors and creditors of the bank; and
- (c) the addition of a whistleblower regime allowing for directors, senior officers, employees and agents of financial institutions to disclose to the central bank that the financial institution or its customers may have been involved in an act amounting to a breach of the banking laws. The amendments provide that a whistleblower will be faced with no criminal or civil liability and shall in no event be victimized.

Complaint against financial institutions:

Multiple changes have been made to the Ombudsperson for Financial Services Act 2018 to ease the process of making complaints against financial institutions.

The time period for a financial institution to respond to the initial representations made by a complainant has been reduced from 3 months to 10 days. Once the financial institution has made a decision concerning a grievance, the complainant now has 6 months to lodge a complaint with the Ombudsperson if that complainant is aggrieved by the decision of the financial institution. Where the complainant does not receive a response from the financial institution within 10 days, the time period for that complainant to lodge a complaint with the Ombudsperson has also been extended to 6 months after the expiry of the 10-day period. In both instances, the time period for filing a complaint with the Ombudsperson has been extended from 3 months.

The Act has also been amended so that a complaint to the ombudsperson no longer needs to be accompanied by a confirmation that the complainant has a sufficient interest in the subject matter of the complaint. In addition, the Ombudsperson or the officers of his office are now allowed to enter the premises of a financial institution to ensure that the instructions, guidelines or requirements he has issued are complied with.

Conservator of Mortgages:

The Transcription and Mortgage Act 1863 has been amended to allow the Conservator of Mortgages to publish on its website information relating to immoveable property transferred in accordance with a deed of transfer registered with the Registrar General. The Transcription and Mortgage Act has also amended to revise the fees payable for the inscription of various categories of documents in addition to inserting additional categories of documents.

SECURITIES ACT

SECTIONS 30 AND 31

The FSC may, through FSC Rules, declare that the requirement to seek an investment adviser licence or to be licensed to conduct any solicitation regarding securities transactions, will not apply to persons as specified in the FSC Rules.

SECTION 155 – FSC RULES

The list of matters on which the FSC may make rules has been extended to include the authorisation of agents of investment dealers as well as the authorisation and supervision of real estate investment trusts.

COURT PROCEDURES

The Courts (Civil Procedure) Act has been amended so as to increase the number of instances in which leave will be granted by the court to file and serve Mauritian proceedings outside the jurisdiction, namely by adding that such leave may be granted where any action, relief, dispute, third party claim in which a corporation holding a Global Business Licence, an Authorised Company, a collective investment scheme or a protected cell company is one of the parties. This is a welcome change to cater for instances where the Mauritian proceedings do not fall squarely within one of the pre-existing categories.

The Deposit of Powers of Attorney Act has been amended to increase the registration fee for registering a power of attorney to represent a foreign litigant in court proceedings from 500 rupees to 10,000 rupees.

FREEPORT ACT

The Freeport Act has been amended to extend a saving provision so that a company issued with a freeport certificate before 14 June 2018, in relation to the carrying out of a manufacturing activity, shall, on application made to the Economic Development Board, be authorised to build, develop and manage its own infrastructural facilities, as a private freeport developer, subject to the company continuing to carry out the same manufacturing activity.

SUGAR INDUSTRY ACT

The Sugar Industry Efficiency Act has been amended to provide that no land conversion tax is payable on the conversion of agricultural land where the applicant undertakes to use the proceeds arising from the conversion for any expenditure effected in relation to the construction of new roads that would otherwise have been financed by Government under a cost sharing scheme approved by Cabinet, including drains, water and electricity ducts, landscaping and associated works in connection with a smart city project under the Smart City Scheme prescribed under the Economic Development Board Act.

ECONOMIC DEVELOPMENT BOARD ACT 2017 AMENDED

The Act has introduced an e-commerce scheme and any person who intends to engage in e-commerce activities shall apply for an e-commerce certificate from the Economic Development Board.

LOCAL GOVERNMENT ACT

A Building and Land Use Permit granted in respect of an economic activity indicates the cluster to which the economic activity belongs. The amendment specifies that where there is a change in economic activity within the Sui Generis activities [other than Commercial, Industrial and Services cluster], a fresh Building and Land Use Permit shall be required.

GOOD GOVERNANCE AND INTEGRITY REPORTING ACT

The definition of Enforcement Authority has now been amended to include the Mauritius Police Force and the Commissioner of Police has been added to the list of persons having a duty to report unexplained wealth. The term unexplained wealth now also includes any property held by a person for another person which cannot be satisfactorily accounted for.

A new schedule has been added to the Act listing the bodies which would fall under the definition of a public sector agency namely (a) any Ministry or Government department (b) any local authority (c) any statutory body and (d) the Mauritius Police force.

A. DUTY OF CONFIDENTIALITY OR ANY OTHER PROVISION UNDER ANY OTHER ACT

Public sector agencies may now exchange any relevant information with the Integrity Reporting Services Agency (“the Agency”) and persons or entities having a duty to report unexplained wealth may now report to the Agency notwithstanding duties of confidentiality or other provisions under other Acts.

B. FREEZING OF TRANSFERS/PLEDGES/DISPOSAL OF PROPERTY

The Act has been amended to stipulate that when a statutory request has been served in respect of a property, no transfer, pledging or disposal thereof shall be made.

C. PRIVILEGE

The inscription of privilege shall now not lapse 42 days from the date of the deposit of the memoranda at the office of the Conservator of Mortgages if it has been renewed within the 42 days.

D. MAURITIAN CITIZENS COUNTRY OF RESIDENCE

The Act has now been amended to provide for the Agency to make an application for an Unexplained Wealth Order or an order for the payment of its money equivalent, to also include the case of Mauritian citizens irrespective of their countries of residence.

E. EXEMPTIONS

- The Agency shall be exempt from payment of any levy, rate, charge or fee.
- No registration fee shall be payable in respect of any document signed or executed by the Agency under which the Agency is a beneficiary.

NON-CITIZENS (PROPERTY RESTRICTION) ACT

As set out in the Non-Citizens (Property Restriction) Act, a non-citizen who wishes to hold, purchase or otherwise acquire a property in Mauritius should make a written application to the Prime Minister’ Office (“PMO”) and on receipt of such application, the PMO may issue to the applicant a certificate authorizing him to hold, purchase or otherwise acquire the property.

Property means an immoveable property, whether freehold or leasehold, in Mauritius and includes:-

- in relation to a trust or otherwise, any rights or interest in immoveable property, whether legal or beneficial; or
- any shares.

The Non-Citizens (Property Restriction) Act has been amended whereby the Prime Minister will be empowered to give his approval for the acquisition of shares by a non-citizen in a company holding an immoveable property, after the acquisition has been made, if he is satisfied (a) of the credentials of the non-citizen and (b) that the omission to seek prior authorization for the transaction was due to a mistake or oversight.

HUMAN RESOURCE DEVELOPMENT ACT

The Human Resource Development Act has been amended to reduce in respect of employees earning a salary not exceeding Mauritian Rupees 10,000 per month for the period 01 July 2019 to 30 June 2020, (i) the rate of training levy payable by an employer from 1.5% to 1% and (ii) the rate to be remitted by the Ministry to the Human Resource Development Council for the National Training Fund, from 1% to 0.5%.

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT

Previously, any person undertaking construction works of less than Rs 500,000 (VAT exclusive) was not required to be registered under the provisions of the Construction Industry Development Board Act. This figure has been revised to Rs 1, 000,000.

Furthermore, there have been changes to the grades of contractors. As a matter of fact, contractors are classified into 8 grades (A to H) allowing them to undertake construction works up to a contract value. A contractor is not allowed to undertake construction works above his grade limit and the grades of contractors in the Second Schedule of the Act has been repealed and amended. With the new changes in place, the limits to which a contractor was allowed to undertake construction has increased, providing more flexibility for contractors who were not capable of exceeding their threshold limits.

UNITED NATIONS (FINANCIAL PROHIBITIONS, ARMS EMBARGO AND TRAVEL BAN) SANCTIONS ACT 2019

The definition of “financing of terrorism” has been amended such that now means a person who wilfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they are to be used, or in the knowledge that they are to be used, in full or in part to commit an offence in breach of an enactment specified in the Second Schedule to the Convention for the Suppression of the Financing of Terrorism Act or a terrorist act or by a terrorist organisation or terrorist, even in the absence of link to a specific terrorist act.

CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM ACT

The definition of “act of terrorism”, “terrorist”, “terrorist organization”, “funds or other assets” now have the same meaning as act as defined in the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019. Proceeds are now not limited to funds but also includes assets.

The definition of “financing of terrorism” has also been amended such that it shall be an offence for any person who willfully provides or collects funds or other assets by any means, directly or indirectly, with the unlawful intention that they are to be used, or in the knowledge that they are to be used, in full or in part

- (a) to commit an offence in breach of an enactment specified in the Act or an act of terrorism or
- (b) by a terrorist organisation or a terrorist.

For an act to constitute an offence under the above (a) it shall not be necessary that the funds or other assets have actually been used to carry out the offence in breach of the enactment specified in the Second Schedule to the Act or the act of terrorism.

For an act to constitute an offence under the above (b) it shall not be necessary that the funds or other assets have actually been used by the terrorist organisation or the terrorist.

PREVENTION OF TERRORISM ACT

The definition of “act of terrorism” also includes a terrorist act as defined in the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 and the definition of “proscribed organisation” have the meaning as per the aforementioned Act.

Any 2 or more persons who associate for the purpose of committing, or attempting to commit, participating as an accomplice, organizing or directing any other person to commit an act of terrorism or contributing to the commission of an act of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the act of terrorism or with the knowledge of the intention of the group to commit an act of terrorism shall commit an offence and shall, on conviction, be liable to penal servitude for a term of up to 35 years.

It shall now be an offence for any person who receives training from, or in any manner participates in training with, a proscribed organisation.

Reference to “or a person declared to be suspected international terrorist under section 10(1)” has been removed in the Act in the section which talks about it being an offence for any person who in any manner or form solicits support for, or tenders support in relation to an act of terrorism or to a proscribed organization.

PART II - BUSINESS FACILITATION ACT

COMPANIES ACT

The Companies Act has been amended to provide that the board of a company must ensure that dividend is paid within 12 months from the date on which the dividend was declared. The instances where the Court may disqualify a person from being a director or promoter of a company have been extended to include a director of a company who has caused prejudice to the company which has resulted in a successful claim by a shareholder.

INSOLVENCY ACT

A number of changes have been brought to the Insolvency Act, the most notable of which are the following

- (a) restriction of the qualification of insolvency practitioners to individuals ordinarily resident in Mauritius, which reflects the current practice;
- (b) clarification that a body corporate may not act as liquidator of a company;
- (c) where there is no agreement between a liquidator and creditors or a committee thereof, abolition of a remuneration based on a percentage of gross realization proceeds and replacement thereof with a prescribed fee. At the time of writing, such prescribed fee is yet to be published in regulations passed by the Ministry of Finance and Economic Development;
- (d) by providing for a prescribed ranking of claims in the receivership of companies. Although the regulations prescribing such ranking are yet to be published at the time of writing, it is a welcome change that will end several uncertainties about the interplay between the Insolvency Act and the Civil Code on this issue;
- (e) in the administration of companies, the introduction of a requirement for an administrator to hold meetings of classes of creditors at the watershed meeting at which creditors decide the fate of the administration. Regulations are awaited as to how the votes of different classes will be treated. Additional provisions have been introduced in order to ensure that dissenting creditors are not discriminated against and that creditors receive at least what they would receive in an insolvent liquidation of the company;
- (f) in cross-border insolvencies, a welcome change is the abolition of a requirement of reciprocity before foreign insolvency proceedings can be recognized in Mauritius. The proclamation of the Ninth Schedule to the Act, which contains provisions based on the UNCITRAL Model Law, is awaited; and
- (g) the Act has also clarified so as to ensure that appeals from decisions of the Bankruptcy Division of the Supreme Court do not operate as an automatic stay of such decisions and it is the appellate court which will have a discretion whether to grant such stay. This amendment aims at ensuring that decisions of the Bankruptcy Division, which after all is a specialist division, are not unduly delayed or hampered simply by lodging an appeal.

LOCAL GOVERNMENT ACT AND BUILDING CONTROL ACT

Where a building has a floor area of more than 150 square metres, an application for a Building and Land Use Permit shall be made through the National Electronic Licensing System referred to in section 27A of the Economic Development Board Act 2017.

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 of Businesses, electronically or in such other manner as the Registrar may determine.

Any fee payable shall be paid by the person at the time of registration of the business or not later than 15 days after the start of the classified trade and, thereafter, in respect of every subsequent financial year, which shall be due on 20 January. Where the fee exceeds the sum of 5,000 rupees, it may be paid 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.

Every person carrying on a classified trade shall display, in a conspicuous place at each of his business premises, the receipt acknowledging payment of the fee or where the classified trade is exempted, the business registration card or, in specific circumstances, the exemption certificate issued by the Municipal City Council, Municipal Town Council or District Council.

INFORMATION AND COMMUNICATION TECHNOLOGIES ACT

The Information and Communication Technologies Act is amended in section 17(3) to make it clear that the ICT Authority, in addition to its power to issue directives and guidelines, also has the power to grant such authorisation, approval or clearance as are incidental or conducive to the attainment of its objects and the discharge of its functions under the ICT Act.

ELECTRONIC TRANSACTIONS ACT

The Electronic Transactions Act is amended to allow a public sector agency (such as a Ministry, Government department, local authority or a statutory body) to share information, through its electronic system, with another public sector agency or a private sector institution.

IMMIGRATION ACT AMENDED

The Immigration Act has been amended to include a new definition namely 'Young Professional' who shall be eligible to the status of a resident (means holder of a permanent residence). Young professional' is defined as a non-citizen who:

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- (a) has completed at least an undergraduate degree in a local tertiary education institution recognized by the Tertiary Education Commission; and
 - (b) is employed in Mauritius by virtue of a contract of employment and registered as such with the Economic Development Board.

NON-CITIZENS (EMPLOYMENT RESTRICTIONS) ACT

The Non-Citizens (Employment Restrictions) Act has been amended to regulate the timeline for processing applications for work permits. Any request for additional information must be made by the Ministry within four working days from the date of receipt of the application and the Ministry must within three working days from the effective date of the application, forward the application to the Passport and Immigration Office or such other public sector agency, which must in turn provide its clearance within 5 working days, failing which the clearance shall be deemed to have been obtained.

OCCUPATIONAL SAFETY AND HEALTH ACT

The Occupational Safety and Health Act (OSHA) has been amended by repealing the provisions on the prevention and

extinguishing of, and escape, from fires. Concurrently, the provisions to that effect in the Mauritius Fire and Rescue Service Act have been reinforced. OSHA has also been amended so as to impose on the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training a deadline of 15 working days to approve or refuse a factory building permit.

FILM ACT

Further to the changes brought to The Film Act 2002, from now on, every application for the permit to import a film shall be made in such manner as may be prescribed. Prior to this, in addition to the above condition, any person who wanted to obtain a permit had to make a payment on the prescribed fee in accordance with the relevant guidelines. Moreover, in the past, the Minister was able to grant the permit to such terms and conditions that he may impose after considering an application and further to the changes, this discretion has been removed.

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The contents of this publication are not intended to constitute any legal, financial and/or tax advice and may not be relied as such by any person. Should you wish to obtain such advice, you are required to consult a law practitioner, financial adviser or tax adviser.