

# The Finance (Miscellaneous Provisions) Act 2020:

Key legislative amendments

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## 1 Introduction



It will be recalled that the Hon. Minister of Finance, Economic Planning and Development presented the Budget 2020-2021 at a time of unprecedented crisis – locally and globally. The Finance (Miscellaneous Provisions) Act 2020 (No. 7 of 2020) amends a series of legislation for the implementation of the measures announced in the Budget Speech 2020-2021 with the objective to create a New Normal for the ultimate benefits of all stakeholders in the country. In this document, we address the main legislative amendments.

## 2 Banking Act amended (the “BA”)

### Introduction of Digital Banking Business and Removal of Moneylending as a Licensable Activity

Amongst the most noteworthy amendments made to the BA is the introduction of the digital banking license. Digital banking business regroups the category of banking activities which are conducted on a purely digital platform. Holders of this new licence may be exempted from certain provisions of the BA. More details on the framework of this new licensable activity are expected in the forthcoming guidelines from the Bank of Mauritius. Another important amendment to the BA is the removal of the moneylending business as a licensable activity in the BA and from the supervision of the Bank of Mauritius to now fall within the ambit of the Financial Services Act and the supervision of the Financial Services Commission.

### Additional requirements for the grant of exchange dealer licence and moneychanger licence

The BA has been amended to make the grant of foreign exchange dealer licence and moneychanger licence subject to sections 7(2), 4 and 4(A) of the BA. In a nutshell, these sections address the conditions which an applicant should comply with to undertake foreign exchange/moneychanging business, such as limitations as to the name under which the applicant will operate and the requirement for physical presence in Mauritius.

### Definition of related party and significant interest revisited

The Finance (Miscellaneous Provisions) Act 2020 brings important changes to the definition of “related party” and “significant interest” under the BA. A related party is now also identified as being a director or senior officer of a financial institution, or of a body corporate in control of or under the control of the financial institution.

As from now on, a person will qualify as having a significant interest if that person owns, directly or indirectly, alone or together with a related party, or otherwise having a beneficial interest which amounts to 10% or more of the capital or of the voting rights of a financial institution will be considered to have a significant interest. Similarly, a person having for itself or together with a related party the ability to appoint directly or indirectly 20% or more of the members of the board of a financial institution will also qualify as having a significant interest.

## 2 Banking Act amended (the “BA”) (Continued)

### **Additional power granted to the Bank of Mauritius in connection with: (i) the power to make directives, (ii) determination of minimum capital requirement of banks, (iii) the time period to deliver financial statements and the appointment of auditors.**

The powers of the Bank of Mauritius have been enlarged with the power to issue directives in connection with, amongst other things, the limitation of management and remuneration of officers/directors of a financial institution, disclosure of information pursuant to the issue of a credit or charge by a bank. Moreover, the Bank of Mauritius has been granted the sole discretionary power to determine the minimum capital requirements which banks should maintain in Mauritius and to extend the time limit of submission of financial statements or the appointment of auditors by financial institutions.

### **Increased powers of the conservator**

In a conservatorship, the conservator may, with the approval of the board of directors of the Bank of Mauritius, be vested with all the powers of the shareholders, directors and officers of the financial institution in order to operate the financial institution in its own name or succeed all rights, title, powers and privileges of the financial institution or its shareholders pursuant to the assets of the financial institution. The conservator is empowered to offer the assets or shares of the financial institution for sale irrespective of the financial institution's consent. Furthermore, the conservator has now the power to execute any instrument in the name of the financial institution or commence any action or proceedings to which the financial institution may be a party.

The powers of the conservator have also been extended to the reorganisation of the financial institution. To the extent

that a reorganisation plan proposed by the conservator is refused in writing within 30 days by the holders of not less than one-third of the aggregate amount of deposits and creditors comprising for not less than one-third in value of the aggregate for the claims of creditors other than subordinated creditors, the conservator may propose another reorganisation plan to all depositors and other creditors who shall not receive full payment under the plan.

### **Complaints by a customer of a financial institution**

Previously an aggrieved customer would deliver a written complaint to the financial institution, the institution was bound to reply to the complaint within 3 months of receipt. The changes introduced, impose to a financial institution to make a decision within 10 days from the date of the complaint, past this period the complainant will have the right to escalate his complaint to the Ombudsperson. The Ombudsperson has under the Ombudsperson for the Financial Services Act 2018 been vested with wide powers and prerogatives to deal with the complaints raised against financial institutions and to grant the remedies.

### **Duty of confidentiality**

**The transmission of information to the Credit Scoring Services Agency is now be excluded from the scope of the duty of confidentiality imposed by the BA on every person having access to the books, accounts, records, financial statements or other documents of a financial institution.**

### 3 Bank of Mauritius Act amended

The amendments to the Bank of Mauritius Act 2004 follow the theme laid out in the BA for the facilitation of digital banking. The Bank of Mauritius Act 2004 has been amended to allow the Bank of Mauritius to issue digital currency which shall be legal tender in Mauritius alongside notes and, to a limited extent, coins. In doing so, the Bank of Mauritius Act now makes it an offence for any person other than the Bank of Mauritius to issue digital currency in Mauritius.

The Finance (Miscellaneous Provisions) Act 2020 also amends the Bank of Mauritius Act 2004 to allow the Bank of Mauritius to issue securities for the purpose of investing in projects promoting the sustainable economic

development of Mauritius. Such investments will not form part of the official foreign reserves of Mauritius.

Lastly, the Bank of Mauritius Act 2004 has been amended to allow the creation of credit scoring services agencies. The purpose of a credit scoring services agency shall be to provide credit scores on an applicant for credit. In establishing a credit scoring services agency, the Bank of Mauritius may make use of information available in the Mauritius Credit Information Bureau also established under the Bank of Mauritius Act 2004 or request any person to provide it with information it considers necessary for that purpose.

### 4 Business Registration Act amended

The Business Registration Act has been amended to highlight that the Registrar of Companies ('Registrar') shall be the Central Repository of business licences and information. Accordingly, every public sector agency shall forward electronically a copy of any permit, licence, authorisation or clearance to the Registrar for publication in the Companies and Businesses Registration Integrated System ("CBRIS").

**5 Companies Act amended (“CA”)**

The Companies and Business Registration Integrated System, commonly known as ‘CBRIS’ and which is the electronic system operated by the Registrar of Companies, shall now provide for registration as a registered person under the Value Added Tax Act.

The CA has formalised the concept of ‘independent director’ and included a definition thereto, who shall be a non-executive director and who –

- (a) is not an employee;
- (b) 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;
- (c) does not receive remuneration from the company except remuneration or any other benefit given to him as a director in accordance with section 159;
- (d) is not a nominated director representing a substantial shareholder;
- (e) does not have close family ties with any of the advisers, directors or senior employees of the company;
- (f) does not have cross directorships or significant link with

other directors through involvement in other companies or other organisations; and  
(g) has not served on the Board for more than 9 continuous years from the date of his first election.

In light of the above, it is now a requirement that the Board of directors of a public company includes at all times at least 2 independent directors.

The specified duties of directors under section 143 has been extended to require that the director acts at all times in a manner which is not oppressive, unfairly discriminatory or unfairly prejudicial to shareholders. Any director who fails to comply section 143 shall commit an offence which now constitutes a criminal liability and, on conviction, shall be liable to a fine not exceeding MUR 100,000 and to imprisonment for a term not exceeding 12 months.

The temporary measure which empowered the Registrar of Companies to issue Practice Directions, guidelines or such other instructions for the purpose of administering the CA during Covid-19, has been terminated.

**6 Economic Development Board Act 2017 amended**

The Economic Development Board Act 2017 has been amended as follows:

(A) The Yacht Promotion Scheme has been added to the list of schemes administered and managed by the Economic Development Board.

(B) A new section has been added on ‘Application for Smart and Innovative Mauritius Development certificate’. Any person who intends to engage in a smart and innovative-driven project under the Smart and Innovative Mauritius Development Scheme shall make an application to the Chief Executive Officer for a Smart and Innovative Mauritius Development certificate in such form and manner as the Economic Development Board may determine.

(C) The sub-part on ‘Promotion and Development of

sports’ which covers the sports economic commission, its objects, functions and composition among others has been repealed.

(D) A new sub-part has been added on ‘Business Obstacle Alert Mechanism’ whereby there shall be, for the purpose of business facilitation, a Business Obstacle Alert Mechanism and the functions of the Business Obstacle Alert Mechanism shall be to:

- (i) enable an enterprise to log in any bottlenecks in relation to delays in the determination of licences, permits, authorisations or other clearances;
- (ii) enquire about any issue and make recommendations to public sector agencies; and
- (iii) report and publish any remedial action taken.

## 7 Financial Reporting Act amended

The Finance (Miscellaneous Provisions) Act 2020 has amended section 63 of the the Financial Reporting Act by adding the following new subsection with the existing provision being numbered as subsection (1): (2) The National Committee on Corporate Governance shall be a body corporate.

## 8 Financial Services Act amended (“FSA”)

Section 30 of the FSA relating to the requirement to file Audited Financial Statements (“AFS”) with the Financial Services Commission (“FSC”), has been extended with three additional provisions. Firstly, considering the COVID-19 lockdown period which Mauritius implemented from March to May 2020, the FSC is now empowered to extend the period for filing AFS during an emergency period.

Secondly, the FSC may by rules, exempt a person or any class of persons from the requirement to file AFS under IFRS if it is of the opinion that it would not be practicable for that person or class of persons to comply with the said requirement. The last addition to Section 30 imposes a duty on any auditor of a licensee to report in writing to the FSC, any matter that give 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, any regulations made under the FSA, any 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, the auditor shall report such matter in writing to the FSC.

**It is to be noted that the FSA clearly states any duty which is imposed by the FSC to an auditor, shall not be breached by reason of his communicating in good faith to the FSC any of the information listed above.**

Furthermore, the FSA now provides for a list of entities that would be ‘exempted persons’ and has also been revised to provide that the enforcement committee shall comprise among others, of not more than 4 instead of 2, employees being of a grade not lower than Executive and not involved in investigations of the licensee.



## 9 Immigration Act amended

The Immigration Act has been amended as follows:

(A) The list of schemes under which a non-citizen can purchase an immoveable property and have the status of resident of Mauritius has been extended such that the list now includes the Integrated Resort Scheme, Real Estate Scheme, Invest Hotel Scheme, Property Development Scheme or Smart City Scheme. The purchase price of the immovable property has also been revised downward from 500,000 US dollars to 375,000 US dollars or its equivalent in any other hard convertible foreign currency.

Moreover, the list of dependents of a non-citizen who holds an immovable property as aforementioned or who is an investor/a self-employed/a professional or has a permanent residence permit or retired non-citizen permit or who is coming to serve in Government to service the public sector or who also have the status of resident of Mauritius, has been extended to include 'Parent'.

(B) The validity period for an Occupation Permit ('OP') and the Retired non-citizen permit has been extended from 3 years to 10 years.

(C) The validity of a permanent residence permit has been extended from 10 years to 20 years. Anyone with an Occupation Permit or Retired non-citizen permit may apply for the status of permanent resident at the expiry of a period of 3 years within the 10-year permit period, subject to satisfying the relevant criteria.

(D) The holder of an occupation permit as professional or the holder of a residence permit as a retired non-citizen may invest in any business provided that –

- he is not employed in the business;
- he does not manage the business; and
- he does not derive a salary or employment benefits from the business.

Notwithstanding the above, a holder of an occupation permit as professional may hold shares in a business where he is employed provided that he is not a majority shareholder.

**10 Income Tax Act amended (“ITA”)**

ITA has been amended by deleting the definition of “solidarity levy”. In section 16c, by deleting the words “3.5 million” wherever they appear and replacing them by the words “3 million” and in subsection 2 by replacing 5% by 25%.

The tax payable by a company deriving income from life insurance business shall be the normal tax payable or 10% of the relevant profit subject to other subsections.

The levy under subsection (1) shall be calculated at the rate of 5% of the accounting profit and 1.5% of the turnover of the operator in respect of the year of assessment commencing on 1st July 2020 and in respect of every subsequent year of assessment.

Subject to the ITA, every person who, in an income year who derives total net income of an amount exceeding the Category A Income Exemption Threshold specified in the Third Schedule, gross income derived from business exceeding 2 million rupees, emoluments in respect of

which tax has been withheld under section 93, income which has been subject to tax deduction at source under section 111C or has leviabale income under section 16B or chargeable income shall in respect of that income year, submit electronically to the Director-General, not later than 15 October following that income year.

The ITA also include additional investment allowance to companies affected by COVID-19. Where a Company has during the period 1 March 2020 to 30 June 2020 incurred capital expenditure on the acquisition of new plant and machinery, it shall in addition to the deduction to which it may be entitled under section 63, be allowed a deduction of 100% of the capital expenditure so incurred by way of investment allowance in respect of the income year in which the expenditure is incurred.

A Company shall be entitled to the additional allowance provided it satisfies the Director-General that it has been adversely affected by COVID-19.

**11 Insolvency Act amended**

The Insolvency Act has been amended to give the Bankruptcy Division of the Supreme Court (the “**Court**”) power to order that a deed of company arrangement (a “**DOCA**”) be binding on the company and all classes of creditors where there are at least two classes of creditors and one of the classes resolves that the company executes the DOCA. The power of the Court to do so shall apply where the DOCA has been voted on at the watershed meeting and at least one class of creditors resolves that the company execute the DOCA while at least one other class does not resolve that the company executes the DOCA. Such order of the Court may be applied for by the administrator or, with leave of the Court, on application of the company or creditors.

In ordering that a DOCA be binding in these circumstances, the Court must be satisfied that creditors representing at least 75 per cent in value of all creditors who are intended to be bound (voting in person, by proxy vote or by postal vote) have voted in favour of the DOCA. In addition, the Court must also be satisfied that no provision of the DOCA would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors or contrary to the interests of the company as a whole.



**12 Insurance Act amended**

The amendments to the IA are aimed towards the provisions relating to the Compensation Fund. In particular,

i. The purpose of the Compensation Fund, under Section 88(1)(b) of the IA, for the **payment of compensation** to persons suffering personal injury in traffic accidents where the tortfeasor or the vehicle which caused the injury is untraceable, subject to such limitations and restrictions as may be prescribed, has been broadened to include **any other payments** in addition to the **payment of compensation**.

ii. Secondly, under Section 90(2)(b), the payments into a sub-fund shall now be utilized **for the purposes** of that sub-fund, with the removal of the limitative previous version which provided that the payments into the sub-fund had to be used for **compensation to meet only** the purposes of that sub-fund.

iii. The third amendment to the IA now provides for regulations to be made under the IA for the purposes of determination of payments generally to be made from the Compensation Fund by the managing committee.

**13 Land (Duties and Taxes) Act Amended**

The Land (Duties and Taxes) Act has been amended to allow the transfer of freehold land during the period of 1 July 2020 to 31 December 2020 to a company registered under the Income Tax Act 1995 for the construction of housing estates of at least 5 residential units to be exempted from payment of land transfer tax.

Prior to the amendments brought by the Finance (Miscellaneous Provisions) Act 2020, the Land (Duties and Taxes) Act exempted certain transfers or vente en état future d'achèvement by companies registered for the construction of housing estates from payment of land transfer tax. Transfers of housing units forming part of a housing estate were exempted transfers provided that the value of the housing units did not exceed MUR 2.5 million or MUR 6 million where the project was registered under the Income Tax Act 1995 during the year 2012 and during the period 1 January 2013 to 30 June 2019 respectively. The Finance (Miscellaneous Provisions) Act 2020 has extended the threshold to MUR 7 million for residential units registered under the Income Tax Act 1995 for the period 1 July 2020 to 31 December 2020. Such transfers will be exempted from payment of land transfer tax where the transfer is made on or before 20 June 2022. The corresponding changes (with additional conditions) have also been made to the Registration Duty Act to provide an exemption in relation to registration duty.

In addition, the requirement for Economic Development Board certification for a deed witnessing the transfer of land for the construction of a warehouse to be exempt from duty and taxes as further particularised in the Land (Duties and Taxes) Act has also been modified. As from the proclamation of the Finance (Miscellaneous Provisions) Act 2020, certification from the Economic Development Board will no longer be required for the exemption to apply provided that the deed of transfer contains an undertaking from the purchaser regarding the use of the building. However, following the amendments to the Registration Duty Act by the Finance (Miscellaneous Provisions) Act 2020, the Registrar-General will be entitled to claim the registration duty exempted together with a penalty of 20% of the amount of duty exempted if purchaser's undertakings relating to the use of the building are not true.

**The Land (Duties and Taxes) Act has also been amended to allow deeds witnessing the transfer of shares, assets or property to a subsidiary of the Bank of Mauritius to be exempted from such duty and taxes as specified further in the Land (Duties and Taxes) Act.**

## 14 Limited Liability Partnerships Act amended, Limited Partnerships Act amended and the Foundation Act amended- (the “Acts”)

With the COVID-19 pandemic currently under control in Mauritius, the Acts are being amended by repealing section 9A and 50B that were introduced in the two Partnerships Acts and the Foundations Act, respectively. These provisions were temporary measures introduced following the enactment of The COVID-19 (Miscellaneous Provisions) Act 2020 on 12th May 2020. The aforesaid sections basically allowed the Registrar of Companies to issue practice directions, guidelines or such necessary instructions for the proper administration of certain legislations during the COVID-19 period and such other period after the pandemic period lapses.

## 15 Mauritius Deposit Insurance Scheme Act 2019 amended

The amendments made to the Mauritius Deposit Insurance Scheme Act 2019 (the “**Deposit Insurance Act**”) by The Finance (Miscellaneous Provisions) Act 2020 fall into three categories:

Firstly, the Deposit Insurance Act has been amended to allow the board of the Mauritius Deposit Insurance Corporation Ltd to outsource the investment of the Mauritius Deposit Insurance Fund to the Bank of Mauritius.

Secondly, the Deposit Insurance Act has been amended to provide that compensation by the Mauritius Deposit Insurance Corporation Ltd shall also be paid where conservatorship fails and the member institution is in

compulsory liquidation. The trigger for payment of compensation has therefore been widened under the Deposit Insurance Act, which previously provided that compensation would be paid by the Mauritius Deposit Insurance Corporation Ltd upon (i) a liquidator, conservator or receiver of a member institution being appointed or (ii) a member institution being resolved through a purchase and assumption transaction.

Thirdly, the Deposit Insurance Act now provides an indemnity to be paid to the officers, consultants and agents of the Mauritius Deposit Insurance Corporation Ltd for various liabilities arising from the performance of their functions.

## 16 Mauritius Revenue Authority Act amended

The Mauritius Revenue Authority Act (the “**MRA Act**”) has been amended to provide that any failure by an aggrieved person or his representative to attend 2 consecutive sittings before the Assessment Review Committee will result in the case being struck out, unless such absence is due to illness or any other reasonable cause.

Furthermore, the Director-General of the Mauritius Revenue Authority (the “**Director-General**”) is now allowed to serve any notice or document required to be served on a person, either electronically on such device that the Director-General may approve, or by sending it by

post to that person’s usual or last known place of business or residence, or by personally delivering it to the person.

Additionally, the MRA Act has introduced the concept of an e-tax account which will be allocated to any person who is required to submit a return or statement or his representative, to the Director-General. The e-tax account must be used for filing a return, a statement of income, other document or making a payment to the Director-General.

**17 National Pensions Act amended**

One of the main changes brought to the National Pensions Act is the abolition of the contributions to the National Pensions Fund and its replacement with a contributory, participative and collective system – the “*Contribution Sociale Généralisée*” (“**CSG**”).

Under the CSG, every participant (employee, self-employed or persons, of such category as may be prescribed) and every employer of a participant is liable to contribute to the CSG at such rate and in such manner as may be prescribed. The CSG shall be payable as from September 2020 and for every subsequent month and will be credited

to the Consolidated Fund. Thus, from 01 September 2020, the contributions to the National Pensions Fund will be abolished.

As compared to the National Pensions Fund, there is no prescribed threshold for the contribution to the CSG under the National Pensions Act. The regulations in respect of the contribution of the employer share and employee share has not yet been prescribed but the Minister of Finance, Economic Planning and Development has announced that the contribution to the CSG will be made as follows:

Employee Salary	Employer contribution	Employee contribution
Up to Mauritian Rupees 50,000/month	3%	1.5%
More than Mauritian Rupees 50,000/month	6%	3%

**The employer of a participant shall, at the time of paying to the participant his remuneration, deduct from his remuneration the CSG and remit that CSG to the Director-General.**

The Director-General may by written notice raise an assessment on an employer or a participant if it has reason to believe that such employer or participant has not paid the appropriate amount of CSG.

Failure by an employer to pay the whole or part of its contribution to the CSG shall render the employer liable in addition to the CSG, to a penalty of 10% on such unpaid contribution and interest at the rate of 1% per month or part of the month during which the CSG remains unpaid. Benefits shall be paid out of the Consolidated Fund in respect of CSG paid.

**18 National Savings Fund Act amended**

The National Savings Fund Act (“NSF Act”) has been amended as follows –

an “employee” under the NSF Act now includes a non-citizen but excludes a non-citizen employed by an export manufacturing enterprise who has resided in Mauritius for a continuous period of less than 2 years and a non-citizen holding 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 from a foreign state;

where a worker reckons at least 30 days’ but less than 180 days’ continuous employment with the same employer and whose employment is terminated following the expiry of the Covid-19 period, is now entitled to the payment of a transition unemployment benefit of 5,100 Mauritian Rupees per month for the period starting on 01 July and ending on 31 December 2020; and the Fourth Schedule

(Transition Unemployment Benefit) under the NSF Act has been repealed and replaced, and sets out the different applicable rates in that respect: For the period starting on 01 April 2020 and ending on 31 March 2021, the rate of benefit per month is 90% of basic wage or salary for the first 6 months after termination of employment or registration with supervising officer. From the 7th month to the end of the 12th month, the rate of benefit per month is 60% of basic wage or salary.

Other than for the period commencing on 01 April 2020 and ending on 31 March 2021, the rate of benefit per month will be 90% of basic wage or salary for the first 3 months and from the 4th month to the end of the 6th month, the rate of benefit will be 60% of basic wage or salary. The rate of benefit will be 30% of basic wage or salary but not less than 3,000 Mauritian Rupees from the 7th month to end of the 12th month after termination of employment or registration with the supervising officer.

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

The Non-Citizens (Employment Restriction) Act (“NCA”) has been amended to extend the category of individuals who may engage in any occupation for reward or profit, or be employed, without a permit issued under the NCA. The categories are as below:

- (a) the holder of an occupation permit issued under the Immigration Act;
- (b) the holder of a residence permit issued under the Immigration Act;
- (c) a non-citizen who has been granted a permanent residence permit under the Immigration Act; and
- (d) a member of the Mauritian Diaspora under the Mauritian Diaspora Scheme.

## 20 Non-Citizens (Property Restriction) Act amended

The Non-Citizens (Property Restriction) Act (“**NCPA**”) has been amended to provide that where a non-citizen (“**Non-Citizen**”) makes a written application to the Prime Minister’s Office (“**PMO**”) for authorisation after the acquisition of the property has already been made on the basis that the omission to seek prior authorisation was due to a mistake or oversight, he shall provide the PMO with the following information-

- (a) the precise location of the property;
- (b) a site plan showing its extent and precise location;
- (c) the nature of the interest intended to be purchased or otherwise acquired or held;
- (d) the reasons for which the application is made; and
- (e) such other information as the PMO may require.

Where the PMO gives its approval in respect of an application made by a Non-Citizen after the acquisition of

the property has already been made, the Non-Citizen must henceforth file the document witnessing the approval with the Conservator of Mortgages for transcription.

Although an application can be made by a Non-Citizen for an authorisation from the PMO after the property has been acquired, the NCPA now provides for a further consequence for contravening section 3 of the NCPA which primarily deals with the requirement for a Non-Citizen to apply to the PMO for an approval prior to the acquisition of a property in Mauritius. A non-citizen shall henceforth, on conviction, be liable to a fine not exceeding 10,000 Mauritian Rupees and to imprisonment for a term not exceeding one year. As such, where no application has been made by a Non-Citizen before or after the property has been acquired, he shall be convicted on that basis.

## 21 Ombudsperson for Financial Services Act 2018 amended

The Finance (Miscellaneous Provisions) Act 2020 has amended the Ombudsperson for Financial Services Act 2018 to grant additional powers to the Ombudsperson. Where the Ombudsperson previously had the power to issue guidelines to financial institutions in connection with their relationship with their customers, the amendments

brought by the Finance (Miscellaneous Provisions) Act 2020 now allow the Ombudsperson or any officer designated by him to enter the premises of a financial institution to ensure compliance with such instructions, guidelines or requirements issued by him.

## 22 Private Pension Schemes Act amended

The amendment provides for the addition of section 48A which concerns abandoned funds. In accordance with this amendment, when the pension benefits of a beneficiary have not been claimed in 7 years or, if at the time of winding up of a scheme the benefits of a beneficiary remain unclaimed, the governing body shall send a notice to the beneficiary and publish the notice in a newspaper and the Government Gazette.

If the beneficiary fails to respond within 60 days of the publication of the notice, the benefits will be deemed to be abandoned and will be transferred to a fund established by the FSC. Records of the abandoned funds will still be kept for refunds to people having a rightful claim to the benefits, to the satisfaction of the FSC.

**23 Registration Duty Act amended**

The Registration Duty Act 1804 (“RDA”) has been amended to provide the manner in which electronic documents should be submitted to the Receiver of Registration Dues. The Finance (Miscellaneous Provisions) Act 2020 has also amended the RDA to include any subsidiaries of the Bank of Mauritius within the list of Ministries, Governmental departments, local authorities and statutory bodies exempt from the registration fee in relation to documents within the scope of the Tenth Schedule to the RDA.

The RDA has also been amended to extend the exemption from registration duty to deeds witnessing the purchase of a portion of freehold land by companies registered

under the Income Tax Act 1995 for the construction of housing estates. This exemption will apply if the project is registered during the period 1 July 2020 to 31 December 2020, relates to at least 5 residential units and is completed by December 2021.

The First Schedule of the RDA, which sets out a list of documents that are registered for free, has also been amended by the Finance (Miscellaneous Provisions) Act 2020. The list of documents now includes deeds witnessing the purchase of immovable property or lease of land to be used to a life science research centre as certified by the Economic Development Board.

**24 Securities Act amended (“SA”)**

Under Section 2 of the SA, the definition of **corporate finance advisory** services has been expanded to now include the keeping of the **investor order book** and determining the final assignment to each investor, and keeping all documentation related to debts raised on behalf of issuers.

**25 Value Added Tax Act amended (“VATA”)**

Section 2 of the VATA has been amended to include the new definition of CBRIS to have the same meaning as in the Companies Act. New subsections have been inserted in Section 5 where it is now mentioned that supply shall be deemed to take place at the time payment for that supply is received by the supplier.

Construction works have also been defined as civil construction, including construction or repair of any building, road or other structure or execution of any works contract. Subsection 2 has been repealed to include the following subsection “Where a supply of services is

treated as made by a registered person under subsection (1), section 21 shall apply and the registered person may claim the tax on the supply of those services as input tax”.

VATA shall also be charged in accordance with sections 10 and 12 on any digital or electronic service supplied by a foreign supplier to a person in Mauritius, subject to such conditions as may be prescribed.

The First, Fifth and Ninth Schedules have been amended by deleting and replacing new subsections and wordings.

**26 Workers' Rights Act 2019 amended ("WRA")**

For the avoidance of doubt, an "employee" refers to any person to whom the WRA applies to, irrespective of basic salary and a "worker" refers to any person whose basic salary is Mauritian Rupees 50,000 or less in a particular month.

**(a) Agreement to perform part-time or full-time work**

Prior to the Finance (Miscellaneous Provisions) Act 2020, the WRA provided that a full-time worker may enter into an agreement for a specified time period with an employer to perform part-time work. The agreement would provide the option to revert to the full-time employment after the specified time period has elapsed. The Finance (Miscellaneous Provisions) Act 2020 now requires that such arrangement requires the approval of the supervising officer of the Ministry of labour.

The Finance (Miscellaneous Provisions) Act 2020 further provides that notwithstanding the existing provision, if such an agreement is made during the period starting on 01 June 2020 and ending on 31 December 2020 or such other period as may be prescribed, the part-time agreement must be for a maximum period of 3 months and shall provide the option for the worker to revert to his full-time employment upon expiry of the 3 months' period or before the expiry of the 3 months' period with the consent of the employer. It would deem to be an unjustified termination for failure to comply with this section.

**(b) Payment of remuneration in specific circumstances**

The Finance (Miscellaneous Provisions) Act 2020 now provides that, during extreme weather conditions, including heavy or torrential rainfall, or when a state of disaster is declared to protect the public in accordance with the National Disaster Risk Reduction and Management Act, an employer shall not require an employee to attend or continue work if he is exposed to the weather conditions. The employer must pay a day's remuneration if no work can be performed or if the employee resumes work for a minimum of 2 hours. On the other hand, the employer shall pay a half day's remuneration if work has stopped before

the employee completed 2 hours of work or the employee resumes work for not more than 2 hours.

**(c) End of year bonus**

The end of year bonus equivalent to one twelfth of the earnings of employee for the year or only part of the year is now only applicable to employees earning a monthly basic wage of Mauritian Rupees 100,000 or less. For employees whose basic wage of salary is more than Mauritian Rupees 100 000 per month, the end of year bonus will be paid in accordance with the End of year Gratuity Act 2001 which provides that an employee in employment as at 31 December will be entitled to one twelfth of his December basic salary multiplied by the number of months of continuous employment in that year.

**(d) Reduction of workforce**

An employer cannot reduce the number of employees either temporarily or permanently or terminate their employment as from 01 June 2020 unless the employer has applied for financial assistance schemes set up by the Development Bank of Mauritius Ltd, the Mauritius Investment Corporation Ltd or the State Investment Corporation Limited and the said financial assistance has not been approved. A failure to comply with this section will make the termination unjustified and the employee will be entitled to severance allowance. This section is only applicable if a company employs not less than 15 employees or has an annual turnover of at least 25 million Mauritian Rupees.

There is also no requirement to seek financial assistance prior to a termination if a company provides services relating to air traffic control, air transport services, or any airline and aviation related services, civil aviation and airport (including ground handling and ancillary services), port and other related activities in the ports (including loading, unloading, shifting, storage, receipt and delivery, transportation and distribution as specified in section 36 of the Ports Act) and the Minister of Labour, Human Resource Development & Training has by way of regulations granted an exemption to the company.



## **27** Conclusion

The Finance (Miscellaneous Provisions) Act 2020 budgetary measures which are given effect through the different legislative amendments come into effect on different dates. Some of these legislative reforms are deemed to come into operation on 1 January 2020 whilst others on 1 July 2020 or on dates to be proclaimed.

Should you require more information on the impact of the amendments in your day-to-day dealings, feel free to contact us.