

Mauritius Finance Act 2020

Factsheet

Introduction

On 4 June 2020, Dr. Honorable Renganaden Padayachy, Minister of Finance, Economic Planning and Development of Mauritius (the “Minister”) presented the Budget 2020–2021, which was largely moulded by the earlier measures introduced by the Government of Mauritius in view of addressing the adverse impact of the coronavirus pandemic. In this respect, the Minister announced that the Budget 2020–2021 was seeking to principally revitalise investment and the economy, engage in major structural reform and secure sustainable and inclusive development. The Finance (Miscellaneous Provisions) Act 2020, which was enacted on 7 August 2020, provides for the implementation of measures announced as part of the 2020–2021 Budget.

The main changes impacting the global business sector are set out in the following sections.

Financial Services Act (FSA)

Moneylending activity

The FSA now provides for regulation of the activity of moneylending by the Financial Services Commission (FSC) for persons other than banks and non-bank deposit-taking institutions. Any person carrying out such activity will need to apply for a licence from the FSC.

The definitions of ‘moneylender’ and ‘peer-to-peer lending’ have been inserted in Section 2 of the FSA:

- **Moneylender** – A person, other than a bank or a non-bank deposit-taking institution, whose business is that of moneylending for consistency 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
- **Peer-to-peer lending** – A financial business activity which enables a person to lend funds through an online portal or electronic platform which matches lenders and borrowers

Comment: Moneylending activities that were previously regulated by the Bank of Mauritius will now fall under the purview by the FSC. Certain classes of persons are exempted from seeking a moneylending licence and these are set out in the fifth schedule of the FSA⁰⁷. It is to be noted that any bona fide person carrying on any business not having as its primary object the lending of money but which lends money in the course of doing such business may do so without having to seek a moneylending licence.

Duties of auditors

An auditor, in the course of his audit, has the duty to report in writing to the FSC if he believes upon reasonable grounds that:

- 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
- The licensee may be in contravention of the FSA, any regulations made under the FSA, any FSC Rules or any directions issued by the GDC
- A financial crime has been, is being, or is likely to be committed
- Serious irregularities have occurred, or
- There has been non-compliance with the laws of Mauritius

Comment: It must be pointed out that the FSA clearly states that any duty imposed by the FSC on an auditor shall not be breached by reason of his communicating in good faith to the FSC any of the information listed above.

Surrendering of licence

The following new procedure applies to a licensee wishing to surrender its licence:

1. Make arrangements for the transfer of its business to another licensee
2. Give notice of the proposed surrender and of its date to the FSC not less than 30 days before the date of the proposed surrender
3. After the date of surrender, certify to the FSC that all client accounts have been transferred
4. Provide to the FSC an undertaking, in writing, by the transferee that the business has been transferred to it
5. Specify the measures taken by the licensee for the discharge of his liabilities
6. Specify the date on which the termination is to be effective
7. Comply with such other matters as may be specified in any guidelines

Comment: The process for surrendering a licence is more cumbersome as a licensee must, prior to giving notice, make arrangements for the transfer of its business to another licensee and must provide a signed undertaking to the FSC by the transferee that the business has been transferred to it.

Securities Act 2005

The definition of ‘corporate finance advisory’ has been broadened to capture providing advisory services on keeping the investor order book and determining the final assignment to each investor, and keeping all documentation relating to debts raised on behalf of issuers.

Comment: Anyone seeking to provide the aforementioned service will require a corporate finance advisory licence issued by the FSC.

Companies Act 2001 (CA01)

Independent directors

The board of directors of a public company now must include at least two independent directors.

Comment: Although the appointment of independent directors on the board of directors of public companies is a new statutory requirement for public companies, the National Code of Corporate Governance for Mauritius already recommends that all boards of directors of public interest entities include a combination of executive directors, independent directors and non-independent non-executive directors.

This amendment shall come into operation on 1 January 2021.

A definition of ‘independent director’ has been added, and it shall mean a director who is a non-executive director and who:

- Is not an employee
- Does not have a 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 a 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 first election

Duties of directors

An additional fiduciary duty of directors has been added under section 143 of CA01, to the effect that directors shall at all times act in a manner that is not oppressive, unfairly discriminatory or unfairly prejudicial to shareholders.

Comment: Whereas the shareholders of a company could previously only seek a remedy against the company for unfair prejudice under section 178 of CA01 (except in relation to a company holding a Global Business Licence or an Authorised Company), the shareholders of any company (including a GBC and an Authorised Company) are now able to apply to the court for certain remedies against directors conducting the affairs of the company in a manner that is unfairly prejudicial to them. This provides additional protection to shareholders in line with international best practices.

A director's failure to perform his fiduciary duties to the company under section 143 of CA01 now specifically amounts to an offence and he shall, on conviction, be liable to a fine not exceeding Rs100,000 and to imprisonment for a term not exceeding 12 months.

Insolvency Act 2009 (IA09)

Power to cram down

A new section, 237A, has been added in the IA09 relating to the powers of the court to cram down. Where two or more classes of creditors are required to resolve to enter into a deed of company arrangement with a company (DOCA) and there is no unanimity among these classes of creditors (i.e. at least one class votes for and one class votes against), the court may approve the DOCA and order that it be binding on the company and all classes of creditors intended to be bound by it, so long as 75% in value of all creditors voting on the resolution have voted in favour of 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.

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 directors, or contrary to the interests of the company as a whole.

Notification of appointment

An administrator, executor, receiver or liquidator must give notice of his appointment to the Mauritius Revenue Authority (MRA) within 15 days of the appointment.

Bank of Mauritius Act (BOM Act)

Definitions

The definitions section has been amended to include 'digital currency', which may be issued by the Bank of Mauritius in the form, denomination, design and manner as it may determine with the concurrence of the Minister of Finance.

Section 6 relating to bank powers

This has been amended to broaden the scope of the Bank of Mauritius in raising loans for monetary policy purposes. The Bank of Mauritius may raise loans 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.

Section 46(5) relating to official foreign reserves

This has been amended to provide clarity on treatment of official foreign reserves that are invested for the purpose of facilitating economic development. Any amount of the official foreign reserves that the Bank of Mauritius invests, with the approval of the board, in any corporation set up for the purpose of facilitating economic development, will not be included in the computation of the official foreign reserves of Mauritius.

Section 52(2A) relating to establishment of a Credit Information Bureau

This has been amended to include the establishment of a Credit Scoring Services Agency:

- Establishment of a Credit Scoring Services Agency for the purpose of providing credit scores on an applicant for credit
- ‘Credit score’ is defined as an assessment of the creditworthiness of an applicant for credit
- The Bank of Mauritius may make use of information available in the Credit Information Bureau
- The Bank of Mauritius may request any person to provide it with such information as it may consider necessary for the establishment of the Credit Scoring Services Agency
- Obligations of all persons to assist and comply with requests of the Credit Scoring Services Agency, notwithstanding any confidentiality provisions under any other law
- The Bank of Mauritius may impart information maintained in the Credit Scoring Services Agency to any public sector or law enforcement agency as required
- Any Applicants for credit who is not satisfied with the credit score may consult the Credit Scoring Services Agency

Section 52(A) relating to establishment of a Central KYC Registry

This has been amended to allow disclosure by the Bank of Mauritius of information collected on the registry to any person it approves in order to enable or assist the latter in discharging any of its functions.

Comment: The changes made to the BOM Act greatly improve the competitiveness of Mauritius with the advent of the central bank digital currency and the Green and Blue Bond frameworks by the Bank of Mauritius. The digital currency framework however needs to be complemented by practical rules, instructions or guidelines issued by the bank.

Immigration Act

The schemes under which a non-citizen can purchase an immoveable property and have the status of resident of Mauritius have been extended such that the list now includes the following:

- The Integrated Resort Scheme
- The Real Estate Scheme
- The Invest Hotel Scheme
- The Property Development Scheme or Smart City Scheme

Comment: It should be highlighted that the purchase price of the immovable property has been revised downward from US\$500,000 to US\$375,000 or its equivalent in any other foreign currency. The exchange rate used to calculate the USD equivalent shall be the selling rate in force at the time of signature of the title deed to the immovable property.

The parents of non-citizens with Mauritius resident status shall also have this status by (a) being the owners of specific immovable properties, (b) being the holders of the relevant permit under the investor, self-employed, professional or retired category, or (c) coming to Mauritius to serve in the public sector under the Service to Mauritius Programme.

Non-Citizens (Employment Restriction) Act

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:

- The holder of an occupation permit issued under the Immigration Act
- The holder of a residence permit issued under the Immigration Act
- A non-citizen who has been granted a permanent residence permit under the Immigration Act
- A member of the Mauritian Diaspora under the Mauritian Diaspora Scheme

Workers' Rights Act (WRA)

Definitions

- The definition of 'basic wage or salary' has been amended to clearly exclude payment for overtime, any bonus or allowance by whatever name called
- Earnings are now defined as including "any sum of money, by whatever name called, including commission and any productivity payment, paid to a worker, in respect of any work performed by him, in addition to the basic wages agreed upon between him and the employer"
- The definition of 'worker' has been amended so that a person performing atypical work and earning more than Rs600,000 annually is no longer considered a worker

Comment: The limit of Rs600,000 previously only applied to a 'worker' and has now been applied to an 'atypical worker' as well.

Switching from full- to part-time work

- The consent of the supervising officer of the Ministry of Labour shall now be required for a full-time worker to switch to part-time position
- From 1 June 2020 to 31 December 2020, a written contract valid for a maximum period of three months shall be executed, permitting such worker to return to full-time employment at or before expiry
- After that period, a worker can be requested to switch to a part-time position following a written agreement valid for a specified time period, providing the option to switch back to full-time and with the approval of the supervising officer exists
- Any termination in breach of the above would be considered unjustified and the worker may be entitled to severance allowance

Comment: The addition of these new clauses seeks to obtain a balance between worker protection and the needs of enterprises, which must adapt in a time where COVID-19 is impacting on productivity.

Compromise

Where an employer enters into a compromise agreement with a worker, the employer may deduct the contributions payable to the Portable Retirement Gratuity Fund ("PRGF") from the amount payable under the compromise agreement.

Implementation of protocol on heavy rainfall

Provisions have been introduced relating to remuneration of workers where work has been stopped as a result of climatic conditions, facilitating the implementation of the protocol in the private sector. Where the National Crisis Committee declares a state of disaster or gives directions to remain indoors due to extreme weather conditions, an employer shall not require its employees to attend work or continue to work, and must pay the latter a full day's remuneration or a half day's remuneration depending on whether they have worked for two hours or more.

Comment: The protocol only aims at providing advice to ministries and private sector organisations in times of heavy rainfall/disasters. The introduction of hard law will now legally bind employers and improve the protection of such workers. This shall reduce discrimination between public and private sectors. With the increasing possibility of working from home in many sectors, the negative impact will be mitigated.

Redundancy

A worker shall not be made redundant unless the employer has been adversely affected and is exempted or has not benefited from financial assistance in existence following the consequences of COVID-19. In the contrary, the worker may apply to the redundancy board to be reinstated and paid severance allowance.

Subject to certain conditions, an unemployment transition benefit shall be paid to the worker for the period July 2020 to December 2020 if employment is terminated for any reason after the COVID-19 period.

Comment: The addition of the above clause reinforces protection for workers and provides better income security against redundancy in light of COVID-19 disruption.

End-of-year bonus

End-of-year bonuses under the WRA shall no longer be applicable to employees earning more than Rs100,000 monthly.

Comment: As regards employees whose basic wage of salary is more than Rs100,000 monthly, 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. For those entitled to a bonus under the WRA, the same will be computed in accordance with their earnings.

Economic Development Board Act 2017 (EDBA)

The EDBA now provides for the regulation of two new schemes under the aegis of the Economic Development Board (EDB): the Smart and Innovative Mauritius Development Scheme and the Yacht Promotion Scheme. 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 CEO of the EDB for a Smart and Innovative Mauritius Development certificate. The EDBA has set out a list of activities falling within the ambit of the aforementioned scheme, which include the following:

- Additive manufacturing
- Data economy
- High-tech farming and smart agriculture
- Life sciences and biotechnology
- Smart manufacturing and assembly of electric vehicles
- Virtual economy
- Technical education and training programmes in any of the above

A new mechanism called the Business Obstacle Alert Mechanism (BOAM) has been introduced under the EDBA in view of addressing any issues arising at the level of the EDB and smoothing the application processes. In this respect, the functions of the BOAM shall be to:

- Enable an enterprise to log any bottlenecks relating to delays in the determination of licences, permits or other clearances
- Make enquiries with respect to any issue
- Make recommendations to public sector agencies
- Report and publish remedial actions taken

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