

Key highlights of the amendments to the Finance (Miscellaneous Provisions) Act 2021 (Finance Act)

August 24, 2021

Banking sector

The Bank of Mauritius Act 2004 (**BOMA**)

Digital currency

The amendment to the BOMA allows the Bank of Mauritius (**BOM**) to establish the framework under which digital currency may be issued by the BOM and may be held or used by the public.

The BOM may now accept deposits and open accounts from such persons for the purposes of issuing digital currency.

The BOMA now provides that any person who makes or uses a counterfeit digital currency for any purpose shall commit an offence and may be subject to a fine not exceeding one million rupees and to penal servitude.

The abovementioned amendments are in line with the proposals set out in the 2021/2022 National Budget by the Minister of Finance. It is envisaged that forthcoming rules will be issued so as to provide further clarity as to the mechanism regarding the use of digital currency in Mauritius.

The amendment to the BOMA also empowers the BOM, where necessary for the prevention, detection, investigation or prosecution of money laundering, terrorism financing or a financial crime offence, (subject to conditions of confidentiality or by an order of a judge in chambers or any court), to disclose or allow access to account information collected on the Registry to a supervisory authority or law enforcement agency.

This amendment further empowers the BOM to investigate in cases of terrorism financing, financial crimes and money laundering inasmuch as it fosters the cooperation between the Bank of Mauritius and other law enforcement agencies. This amendment also allows the BOM, under certain conditions, to disclose information regarding the accounts of customers to a supervisory authority or a law enforcement authority.

Central KYC and Accounts Registry

The Central KYC Registry will now be known as the Central KYC and Accounts Registry. Its functions will include the collection of KYC records and information on accounts maintained by customers. Such information will not include the balance and amount held in such accounts.

The aim of this amendment is to facilitate the reporting of alleged or suspected money laundering offences. To that effect, licensees of the BOM and the Financial Services Commission (**FSC**) must inform their customers that their account information (other than the balance and amount held therein) will be submitted to the Central KYC and

Banking Act 2004

Regulatory sandbox authorisation

The BOM will screen and assess an applicant's request to obtain a regulatory sandbox licence. It is noted that any financial institution, licensee under the National Payment Systems Act or a body corporate will be eligible to apply for a regulatory sandbox licence.

The main purpose of a regulatory sandbox is to create a controlled "safe space" where innovative products and business models can be tested without immediately being subject to all of the regulatory requirements. This is a welcome initiative as it will enable applicants to enter a regulatory sandbox to experiment with FinTech, RegTech or other innovation-driven financial services.

Money market instrument

Eligibility criteria for issuing a money market instrument have been amended. There is no longer a requirement for an eligible institution to have operating cash flows at least equal to the size of the issue of the money market instrument.

This amendment is aimed at promoting and further enhancing the Mauritian market in relation to money market instruments.

Appointment of auditors

Auditors providing services to a financial institution for a continuous period (not aggregated) of five years or less, may not provide audit services to the same financial institution for a period of three years (instead of five years). An extension of appointment of the audit firm for two years, or in the case of a subsidiary of a foreign bank for another additional five years, is possible, subject to certain conditions being satisfied.

This is a welcome amendment as it will align our laws with international best practice.

Confidentiality

A new exception has been brought to banking confidentiality. Section 64 of the Banking Act 2004 will not apply in cases where disclosure is required for reporting any offence under any enactment or to a court of law.

This amendment should be seen as part of the new initiative of transparency taken by the authorities in their combat against money-laundering and terrorist financing and as part of the combined efforts to exit the Financial Action Task Force (FATF) grey list and the European Union (EU) list of high-risk third countries.

Financial services

Financial Services Act 2007

Regulatory sandbox authorisation

All applications regarding the regulatory sandbox authorisation shall henceforth be made with the FSC.

The recently added section provides a detailed explanation of the application, approval, monitoring and renewal process of a regulatory sandbox authorisation.

The FSC reserves the right to revoke or renew an authorisation, and will issue a licence to the holder of authorisation

who satisfies the conditions for holding such licence.

An investor who wishes to conduct a business activity for which there exists no legal framework, or adequate provisions under existing local legislation, within an enabling environment in Mauritius, must now apply to the FSC for an authorisation. The issuance of a Regulatory Sandbox Licence was under the aegis of the Economic Development Board (**EDB**), but remained under the purview of the FSC. This is deemed to be a beneficial amendment for it allows for better and stricter monitoring by the FSC as the competent authority. Furthermore, it is more practical for the issuance of the licence by the same body that evaluates a file and issues an authorisation in the first place.

Establishment of FinTech innovation hub and digital lab

The addition to the Financial Services Act 2007 relates to the establishment of a FinTech innovation hub and digital lab to foster and assist technological advances in the financial services sector. The platform will provide a testing environment for FinTech products.

FinTech has been identified as a targeted area of growth in Mauritius, and the establishment of a FinTech innovation hub and digital lab is a welcome initiative as it shall encourage and assist FinTech start-ups to scale their businesses in what is fast becoming a competitive market. Furthermore, having a regulated platform will facilitate the development of FinTech products and serve as a welcome boost to the sector.

The Foundations Act 2012 (FA)

Authorised officer

The amendment to section 36 of the FA provides that foundations are now required to authorise an officer resident in Mauritius to provide upon request from a competent authority, all basic information on, including information on beneficial ownership of, the Foundation.

The foundation has 14 days to notify the Registrar of Foundation of the date authorisation is granted to the officer or of the date of change of the officer.

Records of a charitable foundation

The amendment to section 36A of the FA now imposes a duty on foundations to keep a record containing all details of transactions, both domestic and international, for at least seven years to enable verification as to whether the funds received are spent in accordance with the objects of the foundation.

Payments made by a charitable foundation shall be by cheque or such other electronics means and for such amount, as the Registrar may authorise.

A charitable foundation shall additionally take appropriate measures to:

- confirm the identity, credentials, and good standing of its beneficiaries and beneficial owners (if any);
- verify whether its beneficiaries and beneficial owners, if any, are involved with, or using the funds of the charitable foundation to support terrorist or terrorist organisations; and
- verify the identity of its significant donors.

Removal from the register

The amendment to the FA now provides that where a foundation, council member, former council member, secretary

or former secretary, fails to comply with section 36(1)(d) or (e) or (5) of the FA, the Registrar shall, by notice in writing, inform the foundation that its name shall be removed from the register if it fails to comply with the relevant section within 30 days from the date of the notice.

The Registrar shall now inform the foundation in the event its purpose or objects no longer satisfy the FA where:

1. there is evidence that the foundation has engaged or is likely to engage in activities likely to cause a serious threat to public safety or public order; or
2. it has made or is making or likely to make, available any resources, directly or indirectly, to a terrorist or terrorist organisation or for the purpose of terrorism.

Unless the foundation makes satisfactory representation within 21 days from the date of notice, the Registrar shall remove the foundation from the register.

The abovementioned amendments enable the relevant authorities to have a clearer oversight of charitable organisations making use of foundations in respect of, inter alia:

1. information regarding foundations (especially beneficial ownership and donors);
2. transactions and expenses undertaken by foundations.

Furthermore, the abovementioned amendments to the FA are in line with, and for the purposes of implementing within our legislation, the commitment by Mauritius vis-à-vis the FATF to enhance its anti-money laundering and countering the financing of terrorism (AML/CFT) framework. Such amendments (ahead of the FATF's planned on-site inspection in September 2021) substantiate the determination of FATF (during its June 2021 Plenary) that Mauritius would have substantially completed the following actions points:

- demonstrating that the supervisors of its global business sector and Designated Non-Financial Business and Professions implement risk-based supervision;
- ensuring access to accurate basic and beneficial ownership information by competent authorities in a timely manner;
- demonstrating that law enforcement agencies have capacity to conduct money laundering investigations, including parallel financial investigations and complex cases; and
- implementing a risk-based approach for supervision of its non-profit organisation sector to prevent abuse for terrorism financing purposes.

The amendments to the FA thus demonstrate the progress made by Mauritius from a legal, compliance and regulatory perspective for the purposes of addressing issues relating to the level of effectiveness of its AML/CFT system in place. In the event of a positive on-site assessment, Mauritius will be removed from the FATF grey list (potentially in October 2021), which in turn would lead to its removal from the EU list of high-risk third countries.

Taxation

Income Tax Act 1995

Biotechnology, medical and pharmaceutical

Manufacturing companies engaged in biotechnology, in the medical and pharmaceutical sectors, will be subject to tax at the rate of 3% and will benefit from a tax credit equal to 100% of capital expenditure for the acquisition of patents.

The 3% tax rate shall be subject to the manufacturing company having satisfied the prescribed substance

requirements and not having claimed partial exemption.

Any excess in relation to the tax credit can be carried forward for a period of five consecutive years from the income year in which the expenditure was made.

The purpose of this amendment is to incentivise the implementation of biotechnological, medical and pharmaceutical activities in Mauritius.

It should be read together with the removal of Value Added Tax (VAT) on medical, clinical, laboratory and other similar services, another measure of this year's Finance Act (please see a full description of these amendments below).

Specialised software and R&D

Double tax deduction on the acquisition of specialised software and systems and expenditure incurred in relation to market research and product development for the African market.

A company that claims a deduction in respect of specialised software and systems or expenditure on research and development targeting the African market will not be entitled to an annual allowance deduction for that income year.

The purpose of this measure is to incentivise businesses to acquire new software and systems, with the indirect effect of improving the business climate in Mauritius.

Foreign dividends

Derivation of income in a non-resident company will not be deemed as income derived from Mauritius.

This measure is targeted at the financial services sector, to clarify that dividends payable by an authorised company will not be considered as income derived from Mauritius.

Arm's length principle

The "arm's length principle" has been extended to apply to all businesses or income earning activities carried out in Mauritius or from Mauritius

It was envisaged that more clarity would be brought on the application of the arm's length principle other than the clarification provided.

The amendments apply retroactively i.e. since the commencement of the Income Tax Act 1995, to all business carrying out activities from Mauritius. To that effect, this section may now be applicable in situations where a business or income earning activity is carried out wholly outside Mauritius and yet is subject to an adjustment from the Director General because the company conducting such activities is "from" Mauritius.

New rules for trusts and foundations

Trusts and foundations will no longer be able to apply for non-residence and be exempt from income tax.

Trusts and foundations set up before 30 June 2021 shall benefit from a grandfathering period up to the year of assessment 2024-2025. However, this period shall not apply to certain assets/income such as intellectual property assets and income from specific assets or projects.

The purpose of this measure is to promote the use of trusts and foundations for the carriage of activities of substance, as opposed to vehicles in financial structures created for tax purposes.

Premium visa

Where an individual holding a premium visa derives income for work performed remotely from Mauritius, that income shall be deemed to be derived by him in Mauritius when it is remitted in Mauritius.

This is another step to encourage people to move to Mauritius and work under the "Premium Visa" scheme. However, individuals should first ensure that they do not inadvertently create a taxable presence of their employer in Mauritius, as per the law of their country of origin.

VAT rulings

The Mauritius Revenue Authority may not request information or make a VAT assessment for any relevant period.

The Director General no longer needs to seek approval from the Independent Tax Panel if it wishes to raise an assessment where inter alia it considers that a return has not been submitted or where there is fraud.

This measure could give the Director General unfettered discretion to raise assessments on periods which would have otherwise been time barred.

Donations

Individuals will be entitled to deduct from their net income the amount donated or MUR 30,000, whichever is lower, to charitable institutions or approved pension schemes.

Individuals will also be entitled to relief by way of a full deduction from their net income for any contribution to the National COVID-19 Vaccination Programme Fund.

The COVID-19 Vaccination Programme Fund was created to finance the implementation of the National COVID-19 Vaccination Programme. The aforementioned tax relief is a welcome initiative to encourage the public and enterprises to contribute to the Fund, or to other charitable institutions.

Higher education institutions

A higher education institution set up in Mauritius and registered under the Higher Education Act will benefit from a concessionary tax rate of 3%.

This initiative seeks to encourage international higher education institutions to set up in Mauritius further expanding the tertiary education sector.

Boost to local Small and Medium Enterprises (SMEs)

Manufacturing companies (whose annual turnover exceeds MUR 100 million in an income year), which incurs any expenditure on the direct purchase of products manufactured locally by small and medium enterprises (whose turnover does not exceed 50 million rupees), shall be allowed, in that income year, an additional deduction of 10 per cent of the amount of expenditure so incurred.

This is a welcome initiative to encourage and boost local production in light of recourse to SMEs.

Zero rating

Medical, hospital and dental services, including clinical laboratory services and services in a health institution, nursing care services and residential care services are now zero-rated for VAT purposes.

It is further noted that live animals for training or breeding purposes and dumplings prepared and supplied to final consumers are also zero-rated for VAT purposes.

The purpose of these measures is to boost and promote growth in these specific industries. The removal of VAT for medical, hospital, dental and similar services should be read in conjunction with the reduced tax rate of 3% and other incentives, introduced in this year's Finance Act (please see above).

Tax holidays

There is an extension of tax holidays from five to ten years to family offices (single and multiple licences) subject to satisfying prescribed substance conditions.

An eight-year tax holiday will be available to companies incorporated on or after 1 July 2021 and holding an investment certificate issued by the EDB.

A ten-year tax holiday is provided in respect of the emoluments derived by an employee from his employment with a licensee of the FSC, provided that the employee manages an asset base of not less than USD 50 million and the employee has been issued with an Asset Manager Certificate, Fund Manager Certificate, or Asset and Fund Manager Certificate on or after 1 September 2016.

The abovementioned measures seek to incentivise foreign investors by enhancing the Mauritian investment climate.

It is further noted that the measure in relation to family offices seeks to promote this new vehicle as a favoured investment tool.

Real estate/living in Mauritius

Registration Duty Act 1804

Home Ownership Scheme

A refund of 5% on the declared value of a qualified property will apply on

- a freehold bare land for the sole purpose of construction of a residential building;
- a portion of freehold land with residential building thereon;
- a right to construct a residential building on top of an existing building together with its quote-part on a freehold land; and
- such other property as may be prescribed.

Loan Payment Scheme

A refund of 5% of the amount disbursed under the Home Loan Payment Scheme.

It should be noted that the abovementioned schemes will not be available to non-Mauritius citizens and the refunds shall not exceed a maximum of MUR 500,000. Furthermore, the loan payment scheme refund will only be applicable to eligible borrowers where the deed witnessing the loan has been signed and registered during the period starting on 1 July 2021 and ending on 30 June 2022.

Landlord and Tenant Act 1999

Non-payment of rent

Non-payment of rent for the period March 2021 to August 2021 shall not be considered as a breach of the lease agreement.

The amendment will apply irrespective of whether it is a commercial or residential lease and enables a lessee to pay half their rent due for the applicable period and the remaining amount to be paid in 12 equal instalments as from January 2022 to December 2022.

Economic Development Board Act 2017

Premium Investor Certificate

The Premium Investor Certificate will be eligible for entities:

- investing at least MUR 500 million in emerging sectors, pioneering industries and innovative technologies and industries; or
- engaged in the manufacture of pharmaceuticals or medical devices; or
- which comply with guidelines as the EDB may issue.

We expect that the EDB will issue further guidelines concerning exemptions and preferential rates in relation to duties, taxes, fee charges and levies granted under the Premium Investor Scheme.

Business Regulatory Review Council & Trusted Trader Committee

The amendment to the Economic Development Board Act 2017 provides that a “Business Regulatory Review Council” shall be established which shall amongst others (1) develop a national, business- related regulatory reform policy on the licensing, permits and authorisation system in Mauritius; (2) review the existing licensing permits and authorisation system in Mauritius; (3) make recommendations to the Ministry for any reform to be brought to the licensing, permits and authorising systems in Mauritius; and generally advise the Ministry on business regulation.

Furthermore, the Trusted Trader Committee will be responsible for the approval of trusted trader certificates to be issued under the Dangerous Chemicals Control Act, the Fisheries and Marine Resources Act, the National Agricultural Products Regulatory Office Act, the Pharmacy Act, the Plant Protection Act and such other enactment as may be prescribed.

In light of the abovementioned amendments, we can expect future changes/amendments to the existing licensing, permits or authorisation landscape in Mauritius.

Value Added Tax Act 1998

VAT refund for a residential apartment and building

The upper limit for the cost of construction has been reduced from MUR 5 million to MUR 3 million. It is further noted that the upper limit on the construction of a residential building or purchase of a residential apartment or house from a property developer has been reduced from MUR 500,000 to MUR 300,000.

We welcome the abovementioned amendments but it should be noted that the maximum amount of VAT refund is applicable on the construction or acquisition of a first residence only.

Land (Duties and Taxes) Act 1984

Land transfer tax

There is a reduction of tax applicable to transfer of leasehold rights in State land where there is a built-up hotel on that land.

It is noted that the applicable tax rate has been reduced from 20% to 10%, i.e. split in equally between the buyer and seller. The levy is computed on the value of the open market value of the leasehold rights exclusive of VAT.

New tax exemptions

The following activities will be exempted from tax:

- livestock production and animal breeding;
- manufacture of pharmaceutical products or medical devices;
- construction or expansion of a student campus; and
- the setting up of a company to conduct an activity authorised under the investment certificate issued by the EDB.

The abovementioned amendments are aimed at encouraging local and foreign investment and, at the same time, bringing foreign currency into Mauritius.

Protected Cell Companies Act 1999

Protected Cell Companies and real estate development activities

The amendment allows companies engaged in real estate development activities to structure as a Protected Cell Company (**PCC**) to undertake these activities.

A PCC is a company that is a single legal entity (otherwise referred to as a Special Purpose Vehicle) that may be segregated into cells, such that the assets and liabilities of each cell is separate from the assets and liabilities of any other cell. This is a welcome initiative as it provides greater flexibility and protection for real estate developers and investors to undertake real estate opportunities in Mauritius.

Non-citizens

The Non-Citizens (Property Restriction) Act 1975 introduced the Non-Citizens Property Register which will be implemented and maintained by the EDB to register the acquisition, holding or purchase of property by a non-citizen and the disposal and any security taken on property by a non-citizen.

This is a welcome initiative as it shall create a standalone database to monitor the acquisition and disposal of property of non-citizens in Mauritius.

Corporate

Companies Act 2001

Company service providers

Company service providers now have an obligation to report suspicious transactions to the Financial Intelligence Unit (**FIU**) as per the FIU guidelines, within five working days from the date on which they become aware of a transaction which is deemed to be suspicious.

It should be noted that this abovementioned obligation was previously restricted solely to FSC licence holders. This is a welcome requirement as there shall be increased scrutiny to monitor money laundering or terrorist financing activities.

It is further noted that a company service provider may, upon authorisation by the company for which it acts, provide to a competent authority all basic information and beneficial ownership information of the company.

Information regarding beneficial ownership of a company can now be filed by the company secretary upon authorisation, which allows the information to be more easily and promptly filed with the Registrar of Companies.

Group financial statements

A company that was required to include group financial statements in its annual report shall have less information to include in the said group financial statements. For example, the particulars of entries in the interests register and the amount payable by the company to the person or firm holding office as the auditor no longer needs to be stated. Furthermore, a company no longer needs to state the total of the remuneration and benefits received, or due and receivable, from directors, executive and non-executive directors of the company.

The abovementioned amendments with regards to the filing of group financial statements will be rendered less cumbersome as a result of the amendments however, such reduced disclosure obligations may limit a company's transparency towards regulatory authorities.

Public companies

The number of members of a public company wishing to convert to a private company has changed from 25 to 50.

It was previously the case that a public company who did not have more than 25 members could convert to a private company, however, the number of members has now increased to 50 members. Therefore, a public company having less than 50 members can convert to a private company by carrying out the prescribed filings with the Registrar of Companies. This reduces burden for public companies wishing to go private.

Regulatory & Compliance

Financial Intelligence and Anti-Money Laundering Act 2002

Money laundering offences – procedure

In the event that different investigatory authorities have carried out an investigation into a money laundering offence and the offence generating the laundered proceeds, a single information may be lodged under the act.

This amendment indicates that the lodging of single information for a money laundering offence and the offence generating the proceeds is likely to be more common in the future.

Definition of Financial Institution

An entity that is registered as a reporting issuer under the Securities Act 2005 and that does not conduct any financial activities is now excluded within the ambit of a "Financial Institution".

The definition of "Financial Institution" has also been amended to include an institution or a person licenced, registered or authorised under: (a) the Trust Act as a qualified trustee and (b) an external pension scheme under the Private Pensions Act.

The amendment broadens the definition of reporting persons thus ensuring enhanced compliance with AML/CFT obligations at a national level.

Core group

A new committee will be set up and will ensure the effective implementation of the FATF international standards on AML/CFT, make recommendations to the Prime Minister on matters pertaining to AML/CFT and ensure effective coordination with the National Committee for AML/CFT and among competent authorities.

We welcome this initiative as it is a proactive step taken by the government to implement the measures recommended to remove Mauritius from the FAFT grey list, which in turn would lead to its removal from the EU list of high-risk third countries.

Financial Reporting Act 2004

Tougher sanctions

Harsher sanctions have been imposed on individuals who provide services as auditors without being duly licenced to do so. Audit firms are also subject to more stringent penalties in respect of their disclosure of information to the Financial Reporting Council.

The tougher sanctions will ensure that auditors and audit firms stringently comply with the law.

Rotation of audit firm

An audit firm is not allowed, within a period of ten years from its appointment as auditor of a listed company to audit the accounts of that company for an aggregate period of more than seven years.

This amendment will ensure that auditors demonstrate a greater degree of independence and objectivity.

Companies Act 2001

Educational programmes

The Registrar of Companies may carry out outreach and educational programmes to raise and deepen awareness among companies limited by guarantee and the donor community, on the potential vulnerabilities of the sector to terrorism financing abuse and terrorism financing risks and the measures that they can take to protect themselves against such abuse.

We welcome this initiative as the Registrar of Companies shall now provide training to companies limited by guarantee and the donor community on terrorism financing and the associated risks. This is a welcome move for company service providers who shall be just as vigilant with regards to the commission of money laundering and terrorist financing.

Collaboration with regulatory authorities

In an effort to aid in the combat against money laundering, terrorism financing and proliferation financing, the Registrar of Companies reserves the right to share with Mauritian and foreign law enforcement agencies and institutions involved in the fight against money laundering, terrorism financing and proliferation financing, statutory information obtained on companies limited by guarantee.

Employment

Worker's Rights Act 2019 (WRA 2019): Provisions applicable irrespective of the workers' basic salary

Atypical worker

The definition of an "atypical worker" has been amended to now include a person aged 16 years or more who:

1. is not employed under a standard agreement;
2. works for one or more employers concurrently and is remunerated, on a time-rate or piece-rate basis or otherwise, by the employer or employers, as the case may be, for the work performed and who:
 - undertakes to perform personally any work for, or who offers his services to, another party to the contract;
 - performs work through an online platform or such other similar services;
 - performs teleworking;
 - performs work through an IT system; or
 - uses his personal equipment and tools to perform work.

A person who does not classify as an "atypical worker" is as follows:

- a job contractor;
- a self-employed person who has a business registration number or who personally operates a business or trade on his own account or who employs another person to execute his work agreement; or
- a person whose business is his sole or main source of income.

We welcome the abovementioned amendments as more precision has been brought to the definition of an "Atypical worker" and a distinction is now made between a worker who works from home and an atypical worker.

Remuneration and leave related to COVID-19 vaccination or RT-PCR test

Any conditions relating to the payment of remuneration or grant of leave for a worker employed in the following institutions, in cases where the worker cannot have access to his place of work pursuant to the Quarantine Act 2020 or any regulations made thereunder, shall be such conditions as may be prescribed:

- crèche, day-care centre, kindergarten;
- pre-primary school, primary school, special needs institution, private secondary school, tertiary institution;
- -vocational training centre and any other training institution; and
- such institutions as may be prescribed.

Since workers have been denied access to the stipulated institutions unless they are vaccinated or upon production of a weekly negative RT-PCR test result slip since 21 June 2021, amendments have been brought to regulate the remuneration to be paid (which may include the expenses incurred for the test or vaccination) by the employer and the grant of leave.

Procedural amendments concerning termination of employment and disciplinary hearings

In cases of termination for reasons of alleged misconduct which is the subject of criminal proceedings, or for reasons of poor performance, the procedural requirement has been changed from "within seven days of" the completion of the disciplinary hearing to "not later than seven days after" the completion of the disciplinary hearing.

We welcome this amendment as it clears the confusion on when the delay starts running.

Minutes of a disciplinary hearing

A written request for a copy of the minutes of a disciplinary hearing can be either from the worker himself or on behalf of the worker. Whilst this has always been the practice, it has now been clearly stated that legal representatives or any party acting on behalf of the worker may now request a copy of the minutes.

It is further noted that a failure to provide a copy of the minutes of proceedings is now an offence with a liability not exceeding MUR 25,000 and imprisonment for a term not exceeding two years. The law has been reinforced concerning the provisions of minutes of a disciplinary hearing, which is meant to be a less regulated and more informal process than the court process.

Furthermore, any disciplinary hearing must be completed not later than 60 days after the date of the first oral hearing. Whilst the delay provided for the completion of a disciplinary hearing is within 30 days of the first oral hearing, the WRA 2019 provided that the delay could be extended by the agreement of both parties which has now been capped to a maximum of 60 days after the first hearing.

The Finance Act has further amended the WRA 2019 by stating that a worker can be suspended pending the outcome of an investigation into circumstances of alleged misconduct. Whilst this was already the practice, it has now been clarified and inserted in the legislation.

Finally, it should be noted that only the basic salary is payable to a worker during suspension. Suspension is no longer on "full pay"; for instance, travel allowance is no longer payable to a worker who is suspended.

Severance allowance

Whilst initially the position was that no severance allowance is payable to a migrant worker or non-citizen where he has worked under a determinate agreement(s), and his employment is terminated, it has now been amended to state that no severance allowance is payable where the determinate agreement terminates on the last day of the period as agreed.

This is a welcome change. Many employers abusively dismissed non-citizen workers employed on a fixed-term contract since severance allowance was not payable. The amendment now brings a citizen and a non-citizen to the same level when it concerns the payment of severance allowance.

Reduction of workforce or closing down of an enterprise

The ban is not only applicable for the reduction of workers, but also for the closing down of their enterprises. Please note that there are certain exceptions to the ban. The ban is prescribed until 31 December 2021 (or as further prescribed).

An employer who intends to make a number of workers redundant on the grounds of restructuring for financial reasons may, instead of applying for financial assistance, give written notice to the Redundancy Board (**Board**) at least 30 days before the intended reduction.

It is noted that a new type of redundancy has been added. The Board will only consider such a notification where the enterprise is over-indebted and not economically viable, and where the restructuring will prevent the enterprise from becoming insolvent. Failure to provide the stipulated documents may lead to the reduction as being unjustified.

Where the Board is satisfied that the procedure adopted for the reduction of the exempted employer company is in the best interest of the business, the Board shall not order the payment of severance allowance. The WRA 2019 has been further amended to provide that the 15-day delay to complete proceedings before the Board can now be extended for a longer period subject to the agreement of the parties.

It should however, be noted that the three exempted employers as at date are Air Mauritius Limited, Airmate Ltd and Emirates.

The WRA 2019 has been further amended to provide that the Board has the legal discretion to provide for a conciliation or mediation service to the parties to explore the possibility of a compensation payment of not less than 15 days per year of service where the reduction is justified, amongst other possibilities.

This is a welcome change in light of the numerous redundancy matters before the Board. It brings back the calculation of payment on the basis of 15 days per year of service which lessens the burden on the employer whilst giving compensation to the workers.

Worker's Rights Act 2019: Provisions applicable only to workers whose basic salary is not more than MUR 50,000 per month

Atypical workers and workers working from home

The WRA 2019 has amended the definition of "worker" to include atypical workers and workers who worked from home earning less than MUR 50,000/month.

It was previously the case that the WRA 2019 did not apply to atypical workers and workers who worked from home, except for certain provisions. The amendment has now extended the rights under the WRA 2019 to those workers.

Compromise agreement

Amendments have been introduced specifically stating that a compromise agreement reached between a worker and an employer in resolution of a dispute concerning termination of employment or underpayment or non-payment of wages will be valid "notwithstanding any provision to the contrary in the Mauritian Code Civil and any other enactment".

It is now compulsory to enter into a compromise agreement if there is a settlement reached in relation to termination or non-payment or short payment of remuneration.

The abovementioned amendments will ensure that all the particulars of the settlement are recorded in a legally valid and binding agreement.

Protective order

The supervising officer's jurisdiction to apply to the Judge in Chambers for a protective order has been extended to not only the employer's failure to pay any remuneration, but also the employer's failure to pay in lieu of notice, severance allowance or gratuity.

This amendment will force employers to be mindful of the payments they make or owe in cases of dismissal.

Transport allowance

A new provision states that the equivalent to the light rail fare (if this is the case) is payable to a worker whose residence is more than three kilometres from his place of work.

With the introduction of the light rail by the Metro Express Ltd, a worker traveling by light rail can now claim the equivalent fare in light of this amendment to the WRA.

Retirement

A new subsection has been added under the provision providing for "Gratuity on retirement" stating that an employer cannot require a worker to retire before the retirement age of 65 years and this is notwithstanding any agreement, or any provision to the contrary in any other enactment. This is irrespective of the worker's basic salary.

Worker's Rights Act 2019: Provisions applicable only to workers whose basic salary exceeds MUR 50,000 per month

Additional remuneration

Workers including atypical workers whose basic salary exceeds MUR 50,000/month are no longer eligible for the payment of additional remuneration to compensate for the increase in the cost of living as provided by the WRA 2019.

It was previously the case that workers were paid an additional remuneration to compensate for a rise in the cost of living annually irrespective of their basic salary.

Severance allowance

No severance allowance is payable at the expiry of a determinate contract where a compensation payment, gratuity or such other payment, however referred to, is paid to the employee in lieu of pension or in respect of his length of service at the end of every period of 12 months or at the end of each determinate contract.

It should be noted that where an employee's basic salary exceeds MUR 50,000 per month, the employee will not be considered to be in continuous employment even if he is employed successively under one or more determinate contracts.

Worker's Rights Act 2019: Provision applicable only to workers whose basic salary is not more than MUR 100,000 per month

End-of-year bonus

A prorated end-of-year bonus is now also payable to a worker employed on a determinate contract where the contract of employment comes to an end during the year

Non-Citizens (Employment Restriction) Act 1970

Non-citizens employment restrictions

The liability on conviction for the offence of a non-citizen being employed in Mauritius without a valid permit or for an employer who has in his employment a non-citizen without a valid permit, has been increased to not less than MUR 100,000 but not more than MUR 500,000 and to imprisonment for a term not exceeding five years.

Both the fine and the term of imprisonment have been significantly increased with the minimum fine being MUR 100,000 as opposed to MUR 25,000 and the term of imprisonment being increased from not exceeding two years to

not exceeding five years.

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