

Main Amendments brought by the

FINANCE (MISCELLANEOUS PROVISIONS) ACT 2020

The Finance (Miscellaneous Provisions) Act 2020 (the “Act”) was approved by the Mauritian Parliament on 4th August 2020 and received the President's assent on 7th August 2020.

We have compiled for your convenience the major amendments brought by the Act to the main legislations governing the Mauritian Business and Financial Sectors. We hope that you will find our brief most insightful.

FINANCIAL SERVICES ACT

- The following new definitions have been added:
 - A “money lender”- a person, other than a bank or a non-bank deposit taking institution, whose business is that of moneylending or who provides, advertises or holds himself out in any way as providing that business, whether or not he possesses or owns property or money derived from sources other than the lending of money, and whether or not he carries on the business as a principal or as an agent.
 - “Peer to Peer Lending” - a financial business activity enabling a person to lend funds through an online portal or electronic platform which matches lenders and borrowers.
- Money lending activities now require a license from the FSC.
- The FSC has been given increased powers to request further information from the competent authorities or any other entity.
- Auditors now have a duty to notify the FSC if they have reasonable grounds to believe that there is a material adverse change, contravention of the Financial Services Act/Rules, financial crime has been or will be committed or if there are serious irregularities.

COMPANIES ACT

- An independent director is now defined as a director who is a non- executive director and who –
 - is not an employee;
 - does not have material business relationship with the company either directly or as a partner, shareholder, director or senior employee of an organisation that has such relationship with the company;
 - does not receive remuneration from the company except remuneration or any other benefit given to him as a director;

- is not a nominated director representing a substantial shareholder;
 - does not have close family ties with any of the advisers, directors or senior employees of the company;
 - does not have cross directorships or significant link with other directors through involvement in other companies or other organisations; or
 - has not served on the Board for more than 9 continuous years from the date of his first election.
- The Board of Directors of a public company must now include at least 2 independent directors.
 - Directors shall at all times act in a manner which is not oppressive, unfairly discriminatory, or unfairly prejudicial to shareholders.
 - If a director breaches his/her fiduciary duty, s/he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 12 months.

INSOLVENCY ACT

- The amendments previously brought about by the Covid-19 Act have been repealed and replaced by the following:
 - Timeframe to pay debt under a statutory demand has reverted to 1 month (deemed to have come into operation on 2nd September 2020).
 - Timeframe to serve an application on a creditor to set aside a statutory demand has reverted to 14 days.
 - Timeframe to comply with a bankruptcy notice has reverted to 14 days.
 - A secured creditor can now appoint a receiver to enforce its rights.
 - A special resolution can now be passed to wind up a company (deemed to come into operation on 2nd September 2020).
- The Bankruptcy Court has been given powers to cram down.

NATIONAL PENSIONS ACT

- Payment of contribution has been replaced by the concept of Contribution Sociale Généralisée (the “CSG”).
- The modalities of the CSG are yet to be prescribed by further regulations.
- No person shall be an insured person under the National Pensions Act (the “NPA”) after 31st August 2020.

- An insured person prior to 1st September 2020 will remain such until he elects to receive his retirement pension. However, no contribution will be payable by him or by his employer for any period following the end of the month of August 2020.
- Any benefit under the NPA, other than the benefit under the CSG, will be calculated in accordance with the provisions of the NPA on the amount of the contribution paid by him.
- Every individual liable to pay (“Participant”) and every employer of a participant will have to pay the CSG to the Director-General at such rate in respect of such remuneration as may be prescribed.
- The employer of the participant shall, at the time of paying the participant his remuneration for any period, deduct the CSG from the remuneration and remit that CSG to the Director-General.
- The CSG will be payable as from September 2020.
- An employer who fails to pay the CSG will be required to pay a penalty of 10 % of any CSG remaining unpaid as well as interest at the rate of 1% per month or part of the month during which the CSG remains unpaid. No such penalty or interest would, however, be recoverable by an employer from an employee.

WORKERS’ RIGHTS ACT

- Amendment to the definitions of “earnings” and “worker”.
- The definition of “discrimination” now includes the word “gender”.
- Numerous amendments have been made in relation to full time employees who switch to part time work.
- An employer may deduct contributions made to PRGF in the event that a compromise agreement is entered into concerning the termination of employment.
- Extension of protection to workers from the private sector during periods of extreme weather conditions, not limited to heavy rainfall.
- A worker (earning less than Rs. 600,000 per year) receiving a special allowance, will not be entitled to negative income tax (deemed to have come into operation on 1st January 2020)
- End of year bonus, computed on an employee’s earnings, will be payable to employees earning up to Rs 100,000 monthly.
- An employer who has received financial assistance shall not terminate the employment of any of his workers as from 1st June 2020, unless the employer has applied for the financial assistance schemes and the assistance has not been approved.
- Where an employer makes an employee redundant, the worker may apply to the redundancy board to request that he is reinstated or to pay him severance allowance.
- An unemployment transition benefit corresponding to Rs 5,100 will be paid for the period July to December 2020 if after the COVID-19 period, the employment of a worker is terminated for any

reason (the worker must have at least 30 days' and less than 180 days' continuous employment with the same employer).

- Protection against violence at work has been extended to persons who are undergoing training under any training scheme.
- Contributions to be made by the employer to the PRGF in respect of past services will be computed based on "remuneration" of a worker instead of "basic salary".
- An employer is required to act against any complaint of violence at work within 15 days of notification by the worker, failing which the employer will be liable and shall be deemed as having committed an offence (a fine not exceeding 100,000 and to imprisonment not exceeding 5 years).

THE INCOME TAX ACT

- The term "manufacture" is now defined as the transformation of materials or semi-processed materials into finished or semi-finished goods. The term now includes retreading of used tyres and recycling of waste.
- Any income specified in Part II of the Second Schedule is exempt from income tax.
- Solidarity levy on an individual whose leviable income exceeds 3 million rupees in an income year, calculated at 25% of the leviable income in excess of the 3 million rupees.
- The solidarity levy payable in an income year shall not exceed 10% of the sum of the individual's net income (excluding a lump sum under the ITA) and 10% of dividends of the leviable income under the ITA .
- Where in an income year, a person engaged in medical research and development incurs expenditure on medical research and development, he will be allowed to deduct from his gross income twice the amount of that expenditure in that income year, provided the research and development is carried out in Mauritius.
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- Where in an income year, a company incurs expenditure for the acquisition of patents and franchises and costs to comply with international quality standards and norms, it may deduct, from its gross income, twice the amount of such expenditure incurred in that income year.
- The tax payable by a company deriving income from life insurance business has been described as the normal tax payable; or 10% of the relevant profit, whichever is the higher. The term "normal tax payable" means the tax payable on the net income calculated under the Income Tax Regulations 1996 and th term "relevant profit" means profit attributable to shareholders in respect of an income year
 - As reduced by capital gain attributable to shareholders where such gain has been credited to the income statement of the company;

- As increased by any capital loss attributable to shareholders where such loss has been debited to the income statement of the company for that income year.
- The exempt income of a company is now treated ad part of its chargeable income for the purposes of Corporate Social Responsibility charges.
- Every employer must, at the time the emoluments are received by or made available to an employee, to withhold income tax from emoluments of his employee.
- An additional investment allowance is being granted to companies affected by Covid-19.
- Activities exempt from income tax for a period of 8 years:
 - manufacturing of pharmaceutical products;
 - inland aquaculture;
 - a branch campus of an institution ranking among the first 500 tertiary institutions worldwide.

VALUE ADDED TAX ACT

- The reverse charge provision now applies to a person who does not belong in Mauritius (i.e., has no permanent establishment in Mauritius or has his place of abode outside Mauritius), is not VAT registered, and who makes a taxable supply of services which are performed or utilised in Mauritius, to a registered person.
- VAT is now applicable to digital/electronic services supplied by foreign suppliers over the internet or an internet based electronic network.
 - “Foreign supplier” means a person who: –
 - has no permanent establishment in Mauritius;
 - has his place of abode outside Mauritius; and
 - supplies, in the course of his business, digital or electronic services to a person in Mauritius.