

THE FINANCE (MISCELLANEOUS PROVISIONS) ACT 2023: IMPLEMENTATION OF BUDGETARY MEASURES

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INTRODUCTION

The Finance (Miscellaneous Provisions) Act 2023 (the “Finance Act 2023”) was enacted by the Mauritian Parliament and, on 20 July 2023, received presidential assent. It amends numerous primary enactments in Mauritius mainly in order to give effect to the budgetary measures announced by the Honourable Minister of Finance in his Budget Speech 2023-2024 delivered on 02 June 2023.

Reflecting the Budget Speech, the Finance Act 2023 gives a strong indication of the Government’s continued commitment to assist the population with the higher cost of living witnessed since last year. To name a few measures, the financial assistance for payment of salary compensation has been renewed for eligible employees for another year and child allowance is paid in respect of under 3 year olds. The combination of new grades of income tax and extension of personal reliefs and deductions will also result in more disposable income for working people. The repeal of solidarity levy on individuals is a welcome measure that removes an additional tax burden and will encourage the recruitment of highly-skilled employees by businesses.

The amendments to the Workers’ Rights Act demonstrate an ongoing willingness to improve conditions of employment, of which businesses will have to take good note and ensure compliance with.

The Finance Act 2023, like its predecessors also contains a number of business facilitation measures as well as tighter regulation in certain areas.

This publication provides an overview of some of the key measures passed in the Finance Act 2023.

TAXATION

Customs –

- *Imposition of penalty and interest* – a new provision is inserted in section 127A of the Customs Act to empower the Director-General of the Mauritius Revenue Authority to claim, in addition to the duty, excise duty or taxes that have been underpaid or not paid, penalty not exceeding 50 per cent of the amount of duty, excise duty or taxes underpaid or unpaid and interest at the rate of 0.5 per cent per month or part of the month from the date of the original validation of the bill of entry to the date of payment. The amount claimed must be paid not later than 28 days from the date of the notice issued by the Director-General.

Income Tax –

- *New rates of income tax* – The Income Tax Act is amended to abolish the single rate of 15% to replace it with different percentages depending on an individual's annual chargeable income, ranging from 0% on the first Rs 390,000 to a maximum of 20% on income over Rs 500,000. Income exemption thresholds have been repealed and there are increased possibilities of personal reliefs and deductions before arriving at chargeable income.
- *Solidarity levy* – The provisions on solidarity levy on individuals in the Income Tax Act have been repealed.
- *Tax Arrears Settlement Scheme* –

This scheme is extended for a further period of one year, with full waiver of penalties. A “tax arrear” is the tax, penalty and interest due under an assessment issued or a return submitted under the Gambling Regulatory Authority Act, the Income Tax Act or the Value Added Tax Act. Any person who has a tax dispute which is pending before the Assessment Review Committee, the Supreme Court or the Judicial Committee of the Privy Council on 2 June 2023 and wishes to join the scheme will need to withdraw the action and then make an application to the Director-General. The waiver shall not apply to any person (i) who has been convicted on or after 1 July 2012 of an offence relating to drug trafficking, firearms brokering, terrorism, money laundering or corruption (the “serious offences”), (ii) against whom any civil or criminal proceedings are pending or contemplated in relation to any serious offence or (iii) in relation to whom an enquiry is being conducted into a serious offence.

- *Deduction for dependent child* – If a person claims a deduction in respect of a dependent child, the spouse of that person cannot claim in that income year any deduction in respect of that dependent child.
- *Deductions on emoluments of certain employees* – An employer may now deduct 200% of the expenditure on emoluments payable in an income year in respect of full-time employment of a woman (other than a disabled woman) approved under the *Prime à l'Emploi*

Scheme, and 300% of the expenditure incurred in an income year on emoluments in respect of a disabled person.

- *Separate financial statements for each cell of a protected cell company (PCC)* – If a PCC has elected to present separate financial statements in respect of each of its cells, the Director-General must not recover income tax due by a cell from (i) the cellular assets of another cell of the PCC, or (ii) the non-cellular assets of the PCC except where such assets are directly attributable to that cell of the PCC.
- *Separate financial statements for each sub-fund or special purpose vehicle of a Variable Capital Company (VCC)* – If a VCC has elected to present separate financial statements for each of its sub-funds or special purpose vehicles, the Director-General must not recover income tax due by a sub-fund or special purpose vehicle from the assets of (i) another sub-fund or special purpose vehicle, or (ii) the assets of the VCC where such assets are directly attributable to another sub-fund or special purpose vehicle of the VCC.
- *Donation to charitable institutions* – A company which has made a donation through electronic means to a charitable institution which is involved in supporting persons with health issues and disabilities, or in the protection or rehabilitation of street children, or animal welfare and protection, is allowed, in that income year, a deduction from its gross income of an amount representing three times the amount of the donation, provided that the amount of deduction from its gross income does not exceed one million rupees in an income year.
- *Deductions for joint tertiary education with African universities* – Where a higher education institution registered under the Higher Education Act enters into a contract with an African University to provide joint tertiary education for the final year of a course in Mauritius, it may deduct from its gross income twice the amount of any expenditure incurred in that income year on costs incurred in connection for the conclusion of the contract with the African University. “Costs” includes marketing cost, cost of hiring consultants and such other costs as the Economic Development Board may approve but does not include any cost of a capital nature.
- *Deductions for participation in approved films* – A company may deduct from its gross income twice the amount of any expenditure incurred in the financing, sponsorship, marketing or distribution of a film provided that the film has been approved under the Film Rebate Scheme and after post-production, is made up of at least 90% of the principal photography of Mauritius as certified by the Economic Development Board.
- *Tax to be withheld* – The Income Tax Act is amended to give an employee who submits an Employee Declaration Form to his/her

employer the option to request that the employer withholds 20 per cent of his/her emoluments – this is at the employee’s option, else the withholding tax rate remains 15 per cent. The same option is given to fees payable to a director or a member of a Board, Council, Commission, Committee or any statutory body by whatever name called.

- *Tax deduction at source* - The Income Tax Act is amended so as to exempt from TDS payments to a company holding a management licence issued by the Financial Services Commission (“FSC”) or to an investment adviser holding a licence issued by the FSC.
- *Power to require information by the Director-General* – Section 123 of the Income Tax Act is amended to displace any confidentiality obligations which a person may have under an enactment such that, notwithstanding such enactment, if a person is required by the Director-General to furnish information relating to e.g., contracts for the provision of goods and services, rent or premium on property, dividends and interest paid, emoluments payable or such other transactions, that person must provide the information. The provisions of the Data Protection Act and the Information and Communication Technologies Act are also displaced.
- *Obligation to submit information by virtual asset service provider and issuer of initial token offerings* – An obligation is imposed on the virtual asset service provider and issuer of

initial token offerings to submit to the Director-General, on or before 15 August in every year, a statement of financial transactions made by (a) an individual, a *société* or a succession that made a transaction exceeding Rs 250,000 or transactions exceeding Rs 2 million in the aggregate in the preceding year; or (b) a person, other than an individual, a *société* or a succession, who made a transaction exceeding Rs 500,000 or transactions exceeding Rs 4 million in the aggregate in the preceding year. However, this reporting obligation does not apply to an individual who is a non-resident, or an entity that holds a Global Business Licence issued by the FSC, or a public listed company, its subsidiaries and associates.

- *Financial assistance for payment of salary compensation 2023* – Financial assistance for payment of salary compensation 2023 is renewed for eligible employees. Subject to satisfying certain conditions, the Director-General will, for each of the months of year 2023, pay to the employer, in respect of each eligible employee of a small and medium enterprise, an allowance. For the purposes of the financial assistance, a small and medium enterprise is one whose turnover for the year of assessment 2021-2022 did not exceed 100 million rupees.
- *Housing loan scheme* – An allowance of 1,000 rupees is paid to an individual who has contracted a secured housing loan – a housing loan which is secured by mortgage

or fixed charge on an immoveable property and used exclusively for the purchase, construction or extension of a house. This relief is obtained even whether the individual has taken the secured housing loan in his/her own name or jointly with (i) his/her spouse, (ii) an ascendant, (iii) a descendant or the descendant's spouse, or (iv) his/her brother or sister. The secured housing loan must not exceed Rs 5 million. If the individual has contracted several loans, the amount payable will not exceed Rs 1,000 in a month. A non-citizen of Mauritius will not benefit from this scheme. Other conditions are imposed and these include: the secured housing loan must have been contracted from a bank or a non-bank deposit taking institution under the Banking Act; or an insurance company under the Insurance Act; or the Sugar Industry Pension Fund; or the Development Bank of Mauritius; or the Statutory Bodies Family Protection Fund. These institutions must submit to the Director-General, on or before the fifteenth day in every month, a statement of financial transactions of the individual who has contracted the secured housing loan, giving the following information:

- the full name of the borrower;
- the amount of loan contracted and disbursed;
- the amount of loan repaid in the previous month; and
- such other particulars as may be required by the Director-

General.

The individual must have, in Mauritius, purchased, built or extended the house for which the housing loan has been taken and has already made a repayment exceeding 1,000 rupees in respect of the loan in the month preceding the month in which the relief is payable.

- *Payment of child allowance* – a child allowance is paid to every child who is a citizen, and is a resident, of Mauritius and is under the age of 3 years on the first day of the month in respect of which the allowance is payable. To obtain the child allowance, a parent (i.e., the mother or father, or the person to whom a Court of competent jurisdiction has entrusted the guardianship, of the child) must make an electronic application to the Director-General.
- *Independence allowance* – a young person who is a citizen, and is a resident, of Mauritius and has attained the age of 18 years on or after 1 January 2023 will be paid a one-off independence allowance of Rs. 20,000.

Value Added Tax –

- *Banks to pay special levy at the rate of 5.5 per cent* – Every bank (but excluding the Development Bank of Mauritius Ltd.) must pay a special levy on its leviable income (i.e., the sum of the net interest income, and other income before deduction of expenses) derived in every accounting period at the rate of 5.5 per cent.

- *Exempt bodies or persons* – An operator of a lounge at the Sir Seewoosagur Ramgoolam International Airport is exempted from the payment of VAT in respect of: spirits, wine, ale or beer sold, transferred or removed, from a bonded warehouse, a Customs-approved storeroom, a duty-free shop, a shop operating under the Deferred Duty and Tax Scheme, by a manufacturer of excisable goods or a freeport operator, provided that the spirits, wine, ale or beer are served to passengers in the lounge. Such exemption may be subject to terms and conditions which the Director-General may determine.
- A person who is approved by the Minister of Finance and is engaged in the construction of social housing units under an agreement with the New Social Living Development Ltd is exempted from the payment of VAT in respect of the procurement of goods (excluding vehicles), works, consultancy services or other related services pertaining to the construction of social housing units under an agreement with the New Social Living Development Ltd.
- As from 01 October 2023, an event organiser approved by the Economic Development Board in respect of a qualifying event is exempted from the payment of VAT on accommodation costs for visitors during a qualifying event. A 'qualifying event' is a business meeting, conference or wedding attended by 50 or more visitors staying for a minimum of 3 nights in a hotel in Mauritius.

COMPANY AND SECURITIES LAW

Companies Act

The Act has been amended to provide for at least 25% of women to be on the board of a public listed company as from 01 January 2024.

The Act has added a further requirement regarding the resignation or death of last remaining director of a company. A shareholders' meeting in view of considering the resignation of the last remaining director and the appointment of one or more new directors shall now be held within one month of the intention to resign or from the date of the death of the last remaining director, or within one month of the appointment of one or more new directors, as the case may be. If such requirement is not strictly complied with, the Registrar of Companies may remove the company in question from the register of companies.

The Act has been amended to require a company to send its annual report, in such form as may be approved by the Registrar of Companies, to every shareholder of the company at least 21 days (instead of 14 days) before the date fixed for the annual meeting of the shareholders. The copy of the annual report may be sent in such form as the Registrar may approve, but every shareholder of the company shall retain the right to receive a hard copy of the annual report within a reasonable time.

The Act has further been amended to require a company to send its financial statements, in such form as may be approved by the Registrar of Companies, to every shareholder of the company, who has elected to not receive the annual report, at least 21 days before the annual meeting.

The copy of the financial statements may be sent in such form as the Registrar may approve, but every shareholder shall retain the right to receive a hard copy of the financial statements within a reasonable time.

Securities Act:

The definitions of 'collective investment schemes' and 'closed-end funds' in the Securities Act 2005 have been amended to enable collective investment schemes and closed-end funds to invest in money market instruments and debt instruments, including loans, debt obligations, or similar instruments. This expansion of eligible investment instruments provides much needed certainty in this area for fund managers and investors alike.

Variable Capital Companies Act:

The Variable Capital Companies Act (the “VCC Act”) introduced the variable capital company (“VCC”) in 2020 with the aim of providing to the investment fund market space a specialist and flexible vehicle which allows ring-fencing of assets and liabilities through the use of sub-funds and special purpose vehicles. The amendments broadens the scope of VCCs to operate family office activities and other activities that may be specified in FSC’s Rules. Further, the FSC has the power to issue such FSC Rules to ensure the effective implementation of the VCC Act, particularly FSC Rules (a) to provide for the criteria, requirements and obligations which apply to a variable capital company, sub-fund or special purpose vehicle; and (b) the taking of fees and the imposition of charges.

Virtual Asset and Initial Token Offering Services Act

The Act has been amended so that a virtual asset custodian which holds a class ‘R’ licence is allowed to hold custody of securities tokens or such other instruments which the FSC may approve.

FINANCIAL SERVICES

Financial Services Act

Amendments have been made to the Financial Services Act 2007 (the “FSA”) to increase the scope and power of the FSC to tackle violations of AML/CFT related legislation and in that respect a new definition of ‘AML/CFT Legislation’ has been included in the FSA to provide for the Financial Intelligence and Anti-Money Laundering Act and the United Nations (Financial Prohibitions Arms Embargo Travel Ban) Sanctions Act.

The amendments empower the FSC to request information, conduct investigations and give directions in case of non-compliance of AML/CFT Legislations. The Enforcement Committee is now entitled to initiate disciplinary proceedings against a licensee for breach of AML/CFT Legislations.

Amendments have been brought to widen the FSC’s powers to assist foreign supervisory institutions. The FSC may, at the request of a foreign supervisory institution where it considers appropriate exercise powers such as requesting for information, initiating investigations or inquiries, and giving directions to the licensee, in order to assist the foreign supervisory institutions in its regulatory functions provided confidentiality requirements are met.

The licensees of the FSC will now be required to submit independent compliance reports in accordance with the requirements set out by the FSC.

The recovery of annual fees and late charges due to the FSC will not be time barred to enhance recovery capacity of the FSC.

Where a licensee fails to pay administrative penalties, the Chief Executive may, after giving notice of not less than 90 days to the licensee, terminate its licence subject to such terms and conditions as he deems appropriate in the circumstances.

Ombudsperson for Financial Services Act

The Act has been amended so as to remove from the definition of “financial services” (and therefore the jurisdiction of the Office of the Ombudsperson) those services that are not licensed or regulated by the Bank of Mauritius (the “BOM”) or the FSC.

BANKING

Bank of Mauritius Act

The Bank of Mauritius Act has been amended to bring an end to a number of COVID-related amendments. These had been put in place in 2020 when the Government took the view that certain protective economic measures were warranted. The BOM was one of the authorities that intervened to safeguard such interests and was, *inter alia*, been given the power to allocate some of its foreign reserves for investment in any corporation or company to boost the Mauritian economy. Similar discretion had also been given to the BOM in relation to its special reserve fund; it had been given the power to use part of the special reserve fund to assist the Government in its efforts to fend off the adverse economic impact of COVID. The economic priorities having now shifted, it is only natural that these

provisions are now being repealed.

EMPLOYMENT AND PENSIONS

Workers Rights’ Act

Part-time Worker

The definition of “part-time worker” has been amended to now mean that a part-time worker is a worker whose normal hours of work are less than the stipulated hours.

4 days’ week basis

The legislator now allows a worker to complete his stipulated hours (45 hours or lesser number of hours if contractually agreed) over four days, rather than over five or six days.

An employer who requests that a worker complete his stipulated hours over four days must obtain the consent of the worker who must also be given 48 hours’ prior notice.

A worker can likewise make such a request and the employer shall grant such a request, subject to its operational requirements.

A worker who works more than 45 hours’ work in any week shall be remunerated at one and half times the basic rate for every additional hour.

A worker who completes his stipulated hours over 4 days and has to work on a public holiday, shall be remunerated for work done during the first 8 hours at twice the basic rate and 3 times the basic rate for every subsequent hour. Any authorised leave, whether with or without pay and injury leave shall constitute attendance at work for the computation of the number of hours of extra work performed.

Flexitime

An employer can now employ a part-time worker on flexible arrangements for such number of hours as the employer and worker may agree.

Computation of the number of extra hours (overtime)

Any authorised leave, with or without pay and injury leave constitute attendance at work and is to be computed in the number of extra work performed.

Notional calculation of hourly rate

The mode of calculation of the notional calculation of hourly rate has been revised.

A full-time worker shall be deemed to have 195 hours of work per month. A full-time *garde malade* shall be deemed to have 312 hours of work.

The notional hourly rate of a full-time worker shall be calculated by dividing his monthly wage, whether prescribed or agreed, by his hours of work.

Where the monthly wages of a part-time worker are prescribed, his hourly rate is to be calculated as for a full-time worker, namely by dividing his monthly wage by his hours of work.

Where the monthly wages of a part-time worker are agreed, his notional hourly rate shall be calculated by dividing his agreed monthly wage over a period of 12 months by his number of working hours over a period of 52 weeks.

Payment of remuneration to a part-time worker

The basic wage of salary of a part-time

worker shall be calculated proportionately on the notional hourly rate of a full-time worker, increased by not less than 10%, instead of the current 5%.

Payment of remuneration after a safety bulletin issued under the Mauritius Meteorological Services (Warnings) Regulations 2023

Where a safety bulletin under the Mauritius Meteorological Services (Warnings) Regulations 2023 has been issued, a worker may absent himself from work and he shall be paid at the normal rate in respect of the period of absence.

The period of absence following a bulletin issued under the Mauritius Meteorological Services (Warnings) Regulations 2023 shall be in place until the bulletin has been removed; and the employer provides a means of transport to the worker to attend his place of work or public transport is available.

An employer shall provide an insurance policy to cover injury, disease or death sustained by a worker during a period of extreme weather conditions, including, but not limited to heavy or torrential rainfall, during a period of cyclone warning class III or IV, during a period covered by an order issued by the National Crisis Committee requiring any person to remain indoors, or during a state of disaster issued under section 37 of the National Disaster Risk Reduction and Management Act.

In the case of death of a worker, the insurance policy shall provide for the payment of a compensation or a monthly pension to the heirs of the deceased worker.

Payment of special allowance

The payment of special allowance to a

worker for the period starting 1st of July 2023 and ending on such period as may be prescribed shall be inclusive of a public officer, a local government officer or a worker of a statutory body who is on terms and conditions specified in a report of the Pay Research Bureau.

Annual leave

A worker who has not requested for his annual leave or whose request for leave has not been granted can now, instead of being paid of a normal day's wage, opt in writing that his untaken leaves be accumulated.

A worker shall be paid a normal day's wage for any accumulated leave not taken or granted to a worker where he ceases to be in employment, whether on ground of termination of otherwise.

Leave to care for child, parents and grandparents with healthcare-related issues

The legislator has extended leave that was previously granted to care for a sick child. Henceforth, a worker can take 10 days' leave with pay to care for his child, parents and grandparents who are facing healthcare-related issues.

The leave granted to a worker is to be offset against his annual leave, sick leave or vacation leave entitlement under any other enactment.

A worker's entitlement to leave is to cater for his child, including his adopted child, his parents and those of his spouse and his grandparents and those of his spouse.

To be granted leave, a worker must notify his employer on the first day of absence, he must produce his birth and marriage certificate, those of his spouse and child or adopted child, parent or grandparent. The

court order for the adoption of the adopted child must also be produced.

A worker must produce a medical certificate if he absents himself for more than 3 consecutive working days.

Leave to participate in cultural events

In addition to international sports events, a worker is now also allowed to attend international cultural events on leave with pay, for the duration of the event or for such longer period as may be necessary.

Maternity leave and other benefits

Where a female worker suffers a miscarriage which is duly certified by a medical practitioner, she shall be entitled to 3 weeks' leave and an additional 5 days' leave, both on full pay immediately after the miscarriage.

Childcare facilities

An employer who employs more than 250 workers shall provide free of charge to children older than 3 years old of its workers, childcare facilities in the form of a *crèche* on the workplace premises or within one kilometre from the workplace.

Paternity leave

The Act has been amended to provide for paternity leave of 5 days where a worker and his spouse adopt a child of less than 12 months old.

An additional amendment is that paternity leave is to begin from the date of birth of a child or from the date of discharge after childbirth of the mother from hospital or other medical institution.

Petrol allowance

Any petrol allowance paid shall be at a rate of at least 10% higher than the allowance paid in December 2021, provided that the increase in allowance is not less than Rs 1,000 and not exceeding Rs 2,000.

Termination of employment

The legislator has removed the possibility for an employer to dismiss an employee for misconduct or poor performance solely on the basis of the latter's explanations in writing. The employer must have recourse to an oral hearing.

An employer must now make available for inspection information and documents which it intends to adduce as evidence during a disciplinary hearing prior to the hearing and to the employee or his representative.

An employee must refer a complaint for reinstatement 15 days after the termination of his employment, unless good cause is shown (i.e. illness or injury certified by a Government medical practitioner).

Proceedings before the Redundancy Board

In relation to the reduction of workforce in certain enterprises of the services sector, the Redundancy Board must complete its proceedings within 30 days of the notification of the employer. Previously the Board had 15 days to do so.

For other cases of redundancy, the Board must complete its proceedings 60 days from the referral of an employer.

Portable Retirement Gratuity Fund

An employer who makes a monthly contribution to a private pension scheme in the same amount as is required into the Portable Retirement Gratuity Fund (PRGF) is

not required to contribute to the PRGF.

The administrator of a private pension scheme, of the Statutory Bodies Pension Fund and of the Sugar Industry Pension Fund must ensure that the monthly contribution of an employer is not less than the amount that is needed to be contributed to the PRGF.

An employer is henceforth required to pay contributions to the PRGF electronically to the Director-General of the Mauritius Revenue Authority through such computer system as the latter may approve.

Contributions for past services must be paid at such rate as may be prescribed on the basis of the monthly remuneration of the worker for the last completed month.

An employer who insures an employee under in a private pension scheme, in the Sugar Industry Pension Fund or in any other pension fund set up under the Sugar Industry Pension Fund Act must after the termination or resignation of the employee pay the retirement benefits not covered by any scheme of fund.

The formula for the calculation of the lump sum or gratuity payable to a part-time employee has been aligned with that of a full-time employee. The notional calculation of daily rate of pay shall be on the basis of 26 days for both a part-time and full-time employee.

An employer who fails to pay PRGF contributions shall be liable to a surcharge of 10% on unpaid contributions plus interest at the rate of 1% for the duration of the unpaid period.

An employer shall pay an employee a lump sum equivalent to 15 days' remuneration per year of service if the latter has not been

paid his retirement benefit under a private pension scheme sponsored by the employer.

Employment Relations Act

Reinstatement

Upon reinstatement, a worker shall occupy his former position on the same terms and conditions of employment before his suspension of work, on ground of alleged misconduct.

The Employment Relations Tribunal must hear and determine a claim for reinstatement within a period of 60 days from the date of referral, instead of the previous period of 90 days.

Private Pension Schemes Act

Under the current legislation, the approval of the FSC is required for any transfer of all or part of a private pension scheme to another person. The Act has been amended to specify that such transfer would be to another private pension scheme established under Mauritius law or to an insurance company through an annuity buyout.

This legislation was amended in respect of the abandoned funds by introducing a new scenario whereby the total accrued pension benefits of a beneficiary, who has passed away, have not been claimed by the beneficiary's assignee, legal heirs or legal representative, for 7 years or more. If, following the procedure laid down in the legislation the benefits have not been claimed, they will be deemed as having been abandoned.

Further, the amendments empower the Minister of Finance to make regulations to provide for a regulatory framework for the setting up of private pension schemes to

provide pension coverage to persons who work in the informal sector.

REAL ESTATE, PROJECTS AND INVESTMENT

Land (Duties and Taxes) Act

The Act has been amended to capture that where the value of the shares transferred exceeds Rs 200,000, the transferor shall now submit a certificate from a professional accountant as to the value of shares transferred and, in that respect, the land transfer tax shall be levied on the value declared in the deed of transfer or in the certificate from the professional accountant, whichever is higher.

A further notable amendment has been made in the Act whereby if the subject matter of an objection, raised by a person in relation to the value of a property, relates to a technical field, the Registrar-General may enlist the services of a suitable expert in the field, including a valuer to advise the objection unit.

The Act also provides for the re-introduction of the Arrears Payment Scheme, such that a debtor shall benefit from a waiver of unpaid penalty and interest as at 31 May 2023 if the duty and taxes are paid not later than 31 March 2024 and at the time of the payment, such debtor withdraws or undertakes to withdraw any objection or appeal. Such waiver shall not apply to any person (i) who has been convicted on or after 1 July 2013 of an offence relating to drug trafficking, firearms brokering, terrorism, money laundering or corruption (the "serious offences"), (ii) against whom any civil or criminal proceedings are pending or contemplated in relation to any serious offence or (iii) in relation to whom an

enquiry is being conducted into a serious offence.

Registration Duty Act

The definition of “duty” has been extended within the Act to include interest.

The levying of the additional duty of 10% pertaining to acquisition by non-citizens of a property outside the existing schemes shall now only apply if the acquisition value is at least USD 500,000 (previously USD 350,000).

The time period given to an aggrieved person to object to the Registrar-General’s assessment, in relation to the valuation of the moveable property, following a transfer of such moveable property has been increased from 15 to 28 days.

The home ownership scheme under the Act has been extended until 30 June 2024, provided that, *amongst others*, a notarial deed or a reservation or a document under private signature or transfer under condition precedent has been signed and registered during the period starting on 1 July 2023 and ending on 30 June 2024. Under the home ownership scheme, the Registrar-General pays to an eligible purchaser 5% of the declared value of the property.

Non-Citizens (Property Restrictions) Act

The Act now clarifies the conditions in respect of which a non-citizen who is a resident pursuant to the Immigration Act 2022 is not required to hold a certificate before acquiring a property. These conditions are as follows:

- the non-citizen has not acquired the

status of resident by virtue of him being the spouse, dependent child, parent or other dependent of the holder of a permit under the Immigration Act 2022;

- only one property is purchased or otherwise acquired by the non-citizen;
- the purchase price is not less than USD 500,000 or its equivalent in any other hard convertible foreign currency, or in such other amount as may be prescribed; and
- any additional duty leviable under the Registration Duty Act is paid.

State Lands Act

The Act has been amended, with effect from 01 June 2022, so that where a portion of land is leased to a statutory body or Government-owned company and the State Land is used for a project deemed to be in the economic interest of a region of Mauritius, the annual rental determined for the lease of such land may be reduced by such amount as may be determined by the Minister of Housing and Lands, subject to the approval of Cabinet. However, such reduction in rental shall no longer apply where there is a change in shareholding of the Government-owned company, after the lease has been granted, which results in less than 90 % of the share capital being directly or indirectly held by Government.

The Act has further been amended to reflect that, where a lessee is facing financial difficulty in respect of a lease granted for industrial or commercial purposes, the lessee may apply to the Minister to pay annual rental for any particular year in not more than 3 consecutive equal yearly instalments

without interest. Where the lessee is a company, it shall be required to provide an undertaking that it will not declare dividends during the period for which a payment facility has been granted.

The Act also captures that, subject to the approval of Cabinet, the Minister may grant a reduction in annual rental in respect of lease granted for any particular business activity on such conditions as may be prescribed.

Sale of Immovable Property Act

The Act has been amended to reflect that the *mise à prix* on the part of the seizing creditor which is found in the memorandum of charges (*cahiers des charges*) shall not be less than 90 % of the open market value of the property where the property is the sole residence of the debtor. The open market value shall be determined at the time of the transcription of the memorandum of seizure by an independent qualified valuer appointed by the seizing creditor.

The Act has also been amended to explain that in cases where there is no higher bid than the *mise à prix* of the execution creditor (in which case the property shall be adjudicated to the execution creditor), the *mise à prix* shall be:

- 90 % of the open market value of the property where the seized property is the sole residence of the debtor or
- 80 % of the open market value of the seized property, determined at the time of the transcription of the memorandum of seizure by an independent valuer appointed by the creditor, where the seized property is not the sole residence of the debtor.

A further amendment to the Act provides that on the day fixed for the resale of the property by *folle-enchère*, the *mise à prix* shall be the purchase price at which the property was adjudicated to the adjudicatee against whom the sale by *folle-enchère* is being prosecuted and where there is no bid during the *folle-enchère*, the *mise à prix* may be reduced. Where no bid is made despite the reduction in the *mise à prix*, the party prosecuting the *folle-enchère* shall be adjudicated the property at that reduced *mise à prix*.

Morcellement Act

The Act has been amended so as to exempt Mauritius Investment Corporation Ltd from the payment of the processing fee.

Economic Development Board Act

The Act has been amended to enlarge the objects of the premium investor scheme with a view of facilitating the acquisition of non-strategic assets of the Government of Mauritius.

The eligibility for premium investor certificate has been broadened under the Act whereby a project relating to the manufacture of “*materials for renewable energy technologies*” shall also be considered under the premium investor scheme.

Moreover, the Act has made the eligibility for premium investor certificate more specific for the following listed projects involving a minimum investment of Rs 500 million in the innovative technologies and industries –

- the acquisition or taking over of the whole or part of a Government undertaking;

- the acquisition of more than 50% of the shareholding held by the Government in a company; or
- a project implemented under an appropriate Environmental, Social and Governance (ESG) framework and having met a minimum ESG score as certified by a recognized rating agency.

The criteria for occupation permit applicable to investors have been modified for an investor making an initial investment of USD 50,000 in high technology machines and equipment, by giving 60 days from the issuance of the occupation permit to make a minimum transfer of USD 25,000 and requiring the investor to submit (i) a certified bank statement from his country of origin or residence showing proof of funds and (ii) a written undertaking to transfer the USD 25,000 from abroad into his bank account in Mauritius within 60 days from the issuance of the occupation permit.

The Act has been amended to allow all professionals working in all sectors to be eligible for an occupation permit, provided that they earn at least a salary of Rs 30,000 now. In the same vein, the Act shall now also include professionals in the public sector under the Service to Mauritius Programme, whose employment period shall not exceed 3 years, to be eligible for an occupation permit.

Further, the criteria for occupation permit applicable to self-employed have now been enlarged, requiring only an initial investment of USD 35,000 provided that the investor provides: (i) a certified bank statement from his country of origin or residence showing proof of funds and (ii) a written undertaking to transfer the USD 35,000 from abroad into a bank account in

Mauritius within 60 days from the issuance of his occupation permit.

The Act has partly relaxed the criteria for residence permit applicable to retired non-citizens, requiring only a certified bank statement from their country of origin or residence showing a minimum amount of USD 18,000 or a guarantee minimum income of USD 1,500 per month.

The eligibility criteria of the Young Professional Occupation Permit have become applicable to all fields of study.

Local Government Act

The Act has been amended to reflect that the *permits and business monitoring committee*, which processes every application for an Outline Planning Permission or a Building and Land Use Permit, shall comprise of two additional members who shall be independent and qualified in the field of architecture, civil engineering, land use planning, surveying or such other field as may be prescribed.

Construction and public procurement

Both the Build Operate Transfer Projects Act and the Public-Private Partnership Act have been amended to allow the BOT Projects Unit within the Procurement Policy Office to engage consultants other than short-term consultants.

The Construction Industry Development Board Act has been amended in respect of the requirements for foreign contractors or consultants to collaborate with local counterparts as follows:

- where a local consultant or local contractor does not have the necessary experience or expertise in a field of specialisation or class of works

for the implementation of a project, the requirement for collaboration by the local consultant or local contractor shall (with the approval of the Construction Industry Development Council) not be applicable; and

- where a foreign contractor has been awarded a contract for a utility scale renewable energy for an installed capacity exceeding 2 megawatts in Mauritius, that contractor shall subcontract at least 25% of the contract value, excluding procurement of equipment, to a local contractor which has carried out construction works in the construction industry for at least 10 years.

A number of amendments have also been brought to the Public Procurement Act:

- the definitions of “local authority”, “prescribed amount” and “public body” are to be changed.
- The definition of “public body” is to be enlarged to include the National Assembly, the Rodrigues Regional Assembly, a Department of the Rodrigues Regional Assembly, a statutory body, and a Government company as may be prescribed.
- The definition of “public official” is to be amended to exclude a supplier, contractor or consultant or any of their agents.
- All references to “exempt organization” are to be removed.
- The Act shall not apply to (i) the procurement of such goods, works, consultancy or other services as may be prescribed or (ii) such public body, with regard to the procurement of

such goods, works, consultancy or other services, as may be prescribed.

The above changes to the Public Procurement Act shall come into effect by Proclamation. In addition:

- Individuals recruited to the Procurement Policy Office shall be persons of high integrity, with substantial experience in the field of procurement, including legal, financial, engineering, information technology or administrative matters.
- For the procurement of goods, services and works, “low-value procurement” is now included as a procurement method. It can be used if: (i) it is procuring low value items which are not procured on a regular or frequent basis and are not covered in any framework agreement; (ii) no benefit would accrue to the public body in respect of time or cost implications where it uses requests for sealed quotations or any other procurement method; and (iii) the value of goods, works, consultancy or other services does not exceed the prescribed threshold. In addition, the public body shall, as far as possible, invite quotations from at least 3 suppliers (through the electronic procurement system or, if there is no registered supplier for such specific type of procurement, by fax, email or paper-based).
- The criteria for direct procurement have been amended: in addition to it being used where the value of the procurement does not exceed a prescribed threshold, the procurement must also be in respect of: (i) small amounts of consumable

- goods; (ii) small consultancy services; or small works, repairs and maintenance services.
- The electronic bidding system may now include the planning, pre-bidding and post-award activities and tasks.
- For procurements of a significant value, the bidding documents shall provide for the preferred bidder, in the case of a company, to disclose the ultimate owner or main shareholders of the company for the purpose of carrying out a due diligence exercise.
- It is clarified that a bidder who has not participated in a bidding exercised shall not be entitled to submit a challenge or an application for review.
- The Director of the Procurement Policy Office may now only disqualify a bidder and not a “potential” bidder.
- The First and Second Schedules, which set out the types of contract and prescribed amounts, are repealed, as is the provision enabling the Minister

of Finance to amend schedules to the Act by way of regulations. The immediate repeal of the Schedules may however cast doubt on the application of the criterion of “prescribed amount”, given that the current definition of “prescribed amount” still cross-refers to the First Schedule and the new definition of “prescribed amount” only come into effect on an unknown date to be fixed by Proclamation.

CONCLUSION

In a climate of post-COVID economic recovery but also high inflation, the measures adopted in the Finance Act 2023 provide encouraging signs for boosting economic activity whilst at the same time improving the conditions of the Mauritian population. Mauritius, meanwhile, will have to spare no effort to remain attractive as a tourist and investment destination and to remain competitive in its exports.

BLC Robert & Associates

03 August 2023

*The contents of this bulletin are not intended to be legal advice.
Should you require specific advice on the matters mentioned above, please contact chambers@blc.mu*