

Finance (Miscellaneous Provisions) Act 2022

(Key legislative amendments)

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Table of Contents

- A** INTRODUCTION
- B** TAXATION
- C** EMPLOYMENT
- D** CONDUCT OF BUSINESS
- E** REGULATORY ENVIRONMENT
- F** BANKING
- G** REAL ESTATE

A Introduction



On 29 July 2022, the Mauritian Parliament passed the Finance (Miscellaneous) Provisions Act 2022 (the “FA 2022”), which enacts into law the measures announced by the Honourable Minister of Finance in the Budget Speech 2022-2023.

In line with the Budget Speech, the FA 2022 displays a strong social element aimed at alleviating hardships suffered by the lower and middle classes as the country gradually comes out of the economic crisis caused by the Covid-19 pandemic but faces the new challenge of rising inflation resulting from the Russia-Ukraine war and depreciation of the rupee. In parallel, the FA 2022 strengthens the regulatory landscape as part of the ongoing efforts to keep Mauritius a compliant jurisdiction following its removal from the EU anti-money laundering blacklist, whilst at the same time enacting some environment-friendly measures.

Below is an overview of key measures in the FA 2022 that will impact businesses – it does not purport to be a comprehensive coverage of all of the FA 2022’s provisions and should not be construed as being legal advice.

B TAXATION

VAT

Tax administration

Effective as from 03 October 2022, the Mauritius Revenue Authority (the “MRA”) will be empowered to register a taxable person where the latter has failed to apply for compulsory registration, to publish a list of VAT-registered persons and to publish the name of a VAT-registered person who has failed to submit a VAT return.

Also as from 03 October 2022, where a person fails to submit information, books or records requested by the MRA, the latter may determine that the taxable person’s objection to an assessment has lapsed. Where an appeal is then made to the Assessment Review Committee (the “ARC”), the taxable person will not be allowed to submit such information, books or records before the ARC.

Upon the death of a taxable person, the agent of the deceased will now be liable to file VAT returns and pay any VAT due by the deceased. An agent includes:

- (a) An heir who accepts the succession of the taxable person;
- (b) A surviving spouse;
- (c) An executor or liquidator of the deceased person’s succession.

An agent who is registered for VAT should charge VAT on goods made available to him under consignment in his own name. Any VAT collected should thereafter be remitted by that agent to the MRA. In case where a sale of goods is made in the name of the principal, VAT shall be charged by the agent in the name of the principal.

The MRA will introduce an e-invoicing system whereby a VAT-registered person, subject to certain conditions, will be required to connect to the system to issue fiscal invoices system to customers. Failure to issue invoices through the system will entail a penalty ranging from Rs 10,000 up to Rs 200,000.

B TAXATION *(Continued)*

VAT refunds

The regime for VAT refunds has been relaxed as follows:

- (a) VAT refunds to event organizers registered with the Economic Development Board (the “EDB”) on accommodation costs have been revised to events having a minimum of 50 visitors instead of 100 visitors;
- (b) VAT refunds on approved items have been extended to groups of small farmers provided that their annual turnover does not exceed Rs 10 million and they are registered with the Small Farmers Welfare Fund; and
- (c) Previously, one of the criteria to be eligible for VAT refund on a residential building, house or apartment was the cost of the construction or purchase price not exceeding Rs 3 million. This threshold has now been replaced by the floor area of the residential building, house or apartment in accordance with the approved Building and Land Use Permit issued under the Local Government Act not exceeding 1,800 square feet.

Exemptions

The list of zero-rated supplies has been extended to include diagnostic or laboratory reagents.

A person operating a museum for motor vehicles and holding an investment certificate issued by the EDB will be exempted from VAT on qualified items.

Income Tax

Administration

Tax deduction at source has been extended to cover consultancy services, security and cleaning services, pest management services and payment made by insurance companies to motor surveyors and mechanics for repairs of motor vehicles of policyholders.

An individual liable to the solidarity levy and deriving pension or director’s fees is given the option to request the person responsible for the payment to deduct the Pay As You Earn (PAYE) for the solidarity levy at the rate of 10% or 25%.

The MRA may request information from a foundation or trust to enable it to make an assessment, collect tax or comply with any request for the exchange of information under a Double Taxation Avoidance Agreement.

The MRA will be allowed to share information to the Gambling Regulatory Authority for assessing an application made by a person.

The MRA can publish on its website the name of companies not having filed their income tax returns.

Competent authorities will be allowed to enter into arrangements with the government of a foreign country for:

- (a) alternative dispute resolution with a view to resolving cross border tax disputes; and
- (b) implementing the internationally agreed standards to prevent base erosion and profit shifting.

Global Minimum Tax

A Qualified Domestic Minimum Top-Up Tax will be introduced to companies resident in Mauritius forming part of multinational enterprise group having a global annual revenue of more than EUR 750 million.



B TAXATION (Continued)

Personal taxation

As from 01 July 2022, the new tax rates applicable on net income earned by an individual will be as follows:

Not exceeding Rs 700,000	10%
Exceeding Rs 700,000 but not exceeding Rs 975,000	12.5%
Exceeding Rs 975,000	15%*

(* plus, solidarity levy if applicable)

Deduction in respect of expenditure incurred for a dependent child who is pursuing tertiary studies is increased from Rs 225,000 to Rs 500,000 and covers both undergraduate and postgraduate courses.

Deduction in respect of medical insurance premium is increased from Rs 20,000 to Rs 25,000 for each of the individual and the first dependent, and from Rs 15,000 to Rs 20,000 for each subsequent dependent.

Deduction in respect of contributions made to a personal pension scheme is increased from Rs 30,000 to Rs 50,000. Deduction in respect of donations made to a charitable institution is increased from Rs 30,000 to Rs 50,000.

The maximum allowable deduction for petrol or travelling allowance paid to an eligible employee using his private car for the performance of his duties is increased from Rs 11,500 to Rs 20,000.

The Social Contribution and Social Benefits Act has also been amended so as to provide that employees and self-employed individuals earning a monthly income not exceeding Rs 50,000 are entitled to a monthly allowance of Rs 1,000 for the period of 01 July 2022 to 30 June 2023 provided that certain conditions are met.

Angel investors

An angel investor investing a minimum of Rs 100,000 in the seed capital of a qualifying start-up small and medium enterprise (SME) will be entitled to a relief of 50% of the amount invested up to Rs 500,000 by way of a deduction from his net income. The angel investor, together with his relatives, shall not hold more than 25% of the share capital and the angel investor must hold the shares for at least 36 months. Any unrelieved amount may be carried forward and deducted against the net income of the two succeeding years.

B TAXATION *(Continued)*

Other measures

Foreign employers of individuals holding a premium visa will be exempted from corporate tax in respect of income derived by that employee and from social security contributions.

An 8-year income tax holiday will be granted to a newly set up freeport operator or developer making an investment of at least Rs 50 million and provided it (i) starts its operations on or after 01 July 2022; and (ii) meets the prescribed substance requirements.

As from 01 July 2022, a manufacturing company, whose turnover exceeds Rs 100 million, can now claim an additional 25% of the amount of expenditure incurred on the direct purchases of products manufactured locally by SMEs whose turnover does not exceed Rs 100 million.

An 8-year tax holiday will be granted on income derived by a person using an innovative agricultural method under the Integrated Modern Agricultural Morcellement Scheme administered and managed by the EDB. An 8-year tax holiday will also be granted on income derived by a person engaged in sustainable agricultural practices and registered with the EDB.

An eligible employer may benefit from a monthly allowance of up to Rs 15,000 per eligible employee (*prime à l'emploi*) in respect of the basic salary paid to the eligible employee taking employment for the period of 01 July 2022 to 30 June 2023 provided that certain conditions are met and limited to the first 10,000 eligible employees.

Customs and excise

The Customs Act is amended to restrict the situations where the Director-General of the MRA may disclose information to a public sector agency or parastatal body for the discharge of its functions, i.e. only when an individual (data subject) has given consent in accordance with the Data Protection Act.

The Customs Act is also amended to allow an officer of the MRA to communicate information concerning the valuation of goods to another Ministry or Government Department if the Minister of Finance authorises the officer to disclose such information to discharge that Ministry's or Government Department's functions.

Both the Customs Act and the Customs Tariff Act are amended to allow for the electronic filing of objections.

The Excise Act is amended to allow an individual who has, during the period starting on 01 July 2022 and ending 30 June 2023, purchased an imported electric motor vehicle car or electric motor vehicle for the transport of goods of specified H.S Code to claim an amount representing 10 per cent of the value at importation or 200,000 rupees, whichever is lesser. A claim must be made not later than 30 days after the date of purchase, i.e. the date on which a deed of sale has been duly registered with the Registrar-General.

B TAXATION *(Continued)*

Tax disputes

Amendments brought to the Mauritius Revenue Authority Act seek to increase the speed and efficiency of resolution of disputes before the ARC, namely:

(a) In certain tax disputes under the Customs Act, Customs Tariff Act or Excise Act, requiring a person making representations before the ARC to file a statement of case, witness statement and other relevant documents. The statement of case must contain, precisely and concisely (i) the facts of the case, (ii) the grounds for representations and the arguments relating to each ground; (iii) the reasons for the decision, determination, notice or claim, as applicable; (iv) submissions on any point of law; and (v) any other submissions relevant to the representations;

(b) The Chairperson or Vice-Chairperson of the ARC may, having regard to the nature of the matter, take the view that it can be decided solely on the statements of case without a hearing, if the parties so agree;

(c) An oral decision may be given on the same day a case is heard in a limitative list of cases, e.g. failure to file a tax or VAT return, lodging an objection outside the statutory delay, failure to pay the amount due when objecting, failure to produce required documents before the objections directorate of the MRA, where the MRA has failed to pay the 5% on appeal under section 19(1F) of the Mauritius Revenue Authority Act or where a party has raised a preliminary point of law before the start of the hearing;

(d) Where the Chairperson or Vice-chairperson considers that a matter may be resolved through mediation and with the consent of the parties, a mediation meeting may be fixed at which the Chairperson or Vice-chairperson will act as a mediator and endeavour to facilitate a settlement. There will be

only one mediation meeting. If a settlement is reached, the agreement (which is not a binding precedent) will be signed by both parties in presence of the Chairperson or Vice-chairperson, and any representations will be forthwith withdrawn. If no agreement is reached, the matter will proceed to hearing; and

(e) If the parties agree, the panel of the ARC may hold a hearing through videoconferencing, in which case no person shall record the proceedings of the hearing unless the Chairperson or Vice-Chairperson consents. The FA 2022 amends section 28 of the Mauritius Revenue Authority Act to allow taxpayers with tax arrears outstanding as at 7 June 2022 under the Income Tax Act, the Value Added Tax Act or the Gambling Regulatory Authority Act to pay such taxes without penalty and interest in the tax arrears provided that they make an application to the Director-General on or before 31 December 2022 and the tax arrears are fully paid on or before 31 March 2023.

If the tax due is in respect of an assessment of which proceedings are pending before the Assessment Review Committee, the Supreme Court of the Judicial Committee of the Privy Council on 7 June 2022, a taxpayer will not benefit from the above tax payment incentive unless the action leading to the proceedings is withdrawn before the date on which the application is made to the Director-General.

Certain persons will not benefit from the tax payment incentive, e.g., those who have been convicted of an offence on or after 1 July 2012 or against whom there are any pending or contemplated civil or criminal proceedings or who are under investigation for drug trafficking, arms trafficking, terrorism offences, money laundering offences or corruption offences.

C EMPLOYMENT

Employment Relations Act

An officer or negotiator of a recognised trade union may now access an employer’s workplace for its business and for employment or industrial issues in respect of its members as well as for members of the bargaining unit for which the union has been granted recognition.

In relation to employment issues, an employer shall, upon a request from a recognised trade union representing workers of a bargaining unit, be required to submit to the trade union information regarding wages and conditions of employment in respect of those workers.

The recommendations of a salary commissioner for review of wages and conditions of employment, shall be from a salary commissioner as approved by the employer.

The six existing grounds for reinstatement of employment have been removed from the jurisdiction of the Commission for Conciliation and Mediation and henceforth all applications for reinstatement, except for termination, for reduction of workforce and closure of enterprise (for which if justified, no reinstatement shall apply) shall be addressed at the Employment Relations Tribunal.

Workers’ Rights Act

Service Providers

The definition of the term “worker” has been significantly amended and broadened to now include a person who an employer classifies as a “service provider”, whether or not he holds a business registration number and who performs personally the same or similar work of a comparable worker in the same enterprise or industry.

The term “atypical worker” has also been amended to now include a “service provider”.

A consultant is excluded from the definition of a “service provider” and hence of a “worker”.

The definition of “sexual harassment” in the Workers’ Rights Act is to be aligned with that of the Equal Opportunities Act.

Working while a cyclone warning class 3 or 4 is in force

Henceforth, where, by the nature of the operation of an undertaking of his employer, a worker is required to work on the employer’s premises, from home or at any other place where he has been assigned duty, or where he is required to remain at the employer’s premises, on a day on which a cyclone warning class III or IV is in force, the worker shall, in addition to any remuneration due to him, be entitled to an allowance equal to 3 times the basic rate per hour in respect of every hour of work performed and to adequate free meals.

A worker working from home shall not however be entitled to a free meal.

Adequate free meal

An adequate free meal shall now be provided to a worker who performs a normal day’s work of at least 10 hours. Alternatively, he shall be paid a meal allowance.

Accumulation of 90 days sick leave

The law has removed the maximum limit of 90 days. There is now no limit on the amount of days of sick leave a worker can accumulate.

Leave to care for sick child

A worker can now take up to 10 days’ paid leave to care for a sick child in any period of 12 months. This entitlement is to be taken against any of his annual, sick or vacation leaves.

Petrol allowance

Any petrol allowance shall be at least 10% higher than the allowance paid in December 2021 but the monthly increase shall be of a maximum of Rs 2,000.

C EMPLOYMENT *(Continued)*

Termination of employment

The employment of a worker shall not be terminated where his performance is being affected by reason of an injury sustained arising out of and in the course of work where the worker produces a medical evidence from a government medical practitioner that he has not fully recovered from the injury.

An employer can avail of his duty to give an opportunity to a worker to answer a charge of misconduct or poor performance, in writing. However, an employer can still hold a disciplinary committee after receipt of the written explanations of the worker. The seven days' notice provided to a worker to answer a charge will only apply to the worker's written explanations when this is followed by an oral hearing.

Redundancy

Where the reasons in support of the notification of the intended reduction of workforce are unjustified, the Redundancy Board shall make an order for the employer not to reduce his workforce or close down his enterprise.

Reinstatement

Where an employer terminates the employment of a worker, other than for the reasons related to reduction of workforce or closure of enterprises, the worker may, instead of claiming severance allowance, register a complaint with the supervising officer (of the Ministry of Labour) to claim reinstatement. The supervising officer may, where he is of the opinion that the worker has a bona fide case for reinstatement, refer the matter to the Employment Relations Tribunal; the Industrial Court shall not have jurisdiction in respect of such matters.

Portable Retirement Gratuity

The "appropriate retiring age" has been amended to include an employee who has retired before the age of 60, being unable to perform work through incapacity.

The share of an employer's rate of contribution in a private pension scheme must not be less than the rate prescribed in the Workers' Rights (Portable Retirement Gratuity Fund) Regulations 2020.

An employer must submit a certificate to the Director General of the MRA issued by the Financial Services Commission certifying that he has a private pension scheme that satisfies the eligibility criteria.

The share of contribution of an employer to the Sugar Industry Pension Fund or any other pension fund set up under the Sugar Industry Pension Fund Act shall not be less than the rate prescribed in the Workers' Rights (Portable Retirement Gratuity Fund) Regulations 2020.

Penal sanctions have been introduced for failure to comply with the payment of the minimum contribution to private pension scheme or fund. An employer, shall upon conviction, be liable to a fine of not less than 50,000 rupees and not exceeding 150,000 rupees and to imprisonment for a term not exceeding 12 months.

As concerns contributions for past services, an employer must pay in the case of a worker whose employment is terminated, such contributions as from the date of employment with the employer; and in the case of a worker who has resigned, past contributions as from 1 January 2020 not later than one month after the date of termination of employment or the date of resignation of the worker.

Where a worker retires or dies, the employer must pay to a full-time worker or his heirs, as the case may be, a lump sum representing 15 days' final remuneration for every period of 12 months' employment instead of contributions for past services. A different formula applies to part time workers.

C EMPLOYMENT *(Continued)*
Portable Retirement Gratuity (Continued)

An employer who has insured a worker 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 before 1 January 2020 shall pay to the relevant pension scheme or fund, on the termination of employment, resignation, retirement or death of the worker, any contribution for any past length of service, where contributions were not made from the period commencing on the date the worker was employed up to the date preceding the date when the worker was insured.

Notwithstanding the amount of gratuity determined by the Board under the Sugar Industry Pension Fund Act, any worker whose pension benefits are covered under the Sugar Industry Pension Fund Act shall be entitled to a gratuity which shall not be less than the lump sum of

15 days' final remuneration for every period of 12 months' employment for a full time worker and the prescribed formula for a part time worker.

Where the terms and conditions of employment of a worker is covered by a collective agreement, the gratuity payable to the worker on his retirement or to his legal representative or legal heirs on his death, under the collective agreement, shall not be less than the lump sum of 15 days' final remuneration for every period of 12 months' employment for a full time worker and the prescribed formula for a part time worker.

Complaint procedure

A supervising officer can now refer a complaint made to him by a worker to the Commission for Conciliation and Mediation.



D CONDUCT OF BUSINESS

Companies Act

The threshold of turnover which defines a small private company has been increased from less than Rs 50 million to less Rs 100 million rupees. As such more businesses will be able prepare their financial summaries on a cash basis and file same with the Registrar of Companies (the “ROC”). Also, these businesses shall not be required to file an annual return with the ROC, unless there is a change in shareholding or the composition of the board or any other particulars in relation thereto.

The time limit for calling an annual meeting has reverted to not later than 6 months after the balance sheet date or such other period as the ROC may determine. The flexibility of calling such meeting not later than 9 months after balance sheet date has been removed. Likewise, the obligation to prepare financial statements within 6 months or such other period which the ROC may determine has been reinstated, as has the registration of such financial statements with the ROC within 28 days after sign off on the financial statements.

There is now no longer the requirement to file a ‘certified’ copy of an instrument of charge along with the statement of particulars following the creation of any charge affecting any property of a company.

The suspension of the duty of directors on insolvency (i.e. to convene a board meeting to consider whether to appoint a liquidator or administrator to an insolvent company or to vote in favour of such an appointment) introduced because of the Covid-19 pandemic has been removed.

A company which is required to include group financial statements in its annual report shall, henceforth, also include the following information in relation to each of its subsidiaries:

- (a) particulars of entries in the interests register made during the accounting period;
- (b) the total amount of donations made during the accounting period;
- (c) the names of the persons holding office as directors at the end of the accounting period and the names of any persons who ceased to hold office as directors during the accounting period;
- (d) the amounts payable to the person or firm holding office as auditor as audit fees and, as a separate item, fees payable for other services provided by that person or firm; and
- (e) disclose any major transaction as defined in the Companies Act.

Freeport Act

The Director-General of the MRA shall have online access to the warehouse management information system with regard to goods entering and leaving the freeport zone and the stocktaking of goods in the freeport zone, and the closed circuit television system or other electronic system which every freeport zone shall now be required to have.

Mauritius Broadcasting Corporation Act; and Mauritius Broadcasting Corporation (Collection of Licence Fees) Act; Under the Mauritius Broadcasting Corporation (Collection of Fees) Act, persons possessing televisions sets are required to pay the licence fee set out in the First Schedule to that Act. Non-domestic users who possess television sets are required to pay a licence fee of Rs 150 per television set or Rs 20,000, whichever is the lesser. The meanings of “television” and “television set” have been substantially broadened so that they do not refer only to the transmission and reception by radio communication of sound and image, but also mean:

D CONDUCT OF BUSINESS *(Continued)*

Freeport Act (Continued)

(a) in respect of “television”: a system for converting and transmitting visual images and sound

that are reproduced on screens, and includes broadcast programming, cable programming, on-demand programming, satellite programming or Internet programming including any video programming downloaded or streamed via the Internet; and

(b) in respect of “television set”: a device which, alone or in combination with any other device, is capable of receiving by means of wired or wireless technologies any signal and reproducing them in the form of images or other visible signals, with or without accompanying sounds, but does not include mobile phones and tablets.

With the broadened definitions, personal computers and laptops connected to the internet will now be categorised as “television sets” in respect of which licence fees have to be paid.

Public Procurement

The definition of a “major contract” in the Public Procurement Act has been amended to now mean a contract for the procurement of goods and services or the execution of works to which a public body is or proposes to be a party and the estimate of the fair value of which or the value of the lowest evaluated substantially responsive bid exceeds the prescribed amount.

The Central Procurement Board, shall in respect of major contracts as far as reasonably possible, ensure that a bid evaluation committee includes qualified persons from the public body concerned.

The Public Procurement Act now provides that a public body is allowed to purchase consultancy services through the direct procurement method from a single source without competition. Services of an intellectual and advisory nature, not incidental to the supply of goods or to the execution of works, such as design supervision, training, analysis, auditing, software development and similar services fall under the definition of consultancy services.

The Public Procurement Act now permits a public body to exclude a bidder from a bidding exercise, in cases where the bidder’s performance in a previous public contract has been deficient, has failed to deliver goods, works or services satisfactorily and has caused prejudice to another public body with regard to its contractual requirements. This discretion can be exercised even though the bidder is not disqualified from the bidding process. Previously, a public body was only allowed to exclude a bidder where the prejudice was to the public body itself.

E REGULATORY ENVIRONMENT

Financial Services Act (FSA)

Under the FSA, the prior approval of the Financial Services Commission (the “FSC”) is needed for appointment of an officer. The FSA is amended to make an officer of a licensee appointed without the approval of the FSC remain liable for any offence committed under “relevant Acts” specified in the FSA.

Any person who is acting as an officer of a licensee without the approval of the FSC is now captured under the definition of a ‘licensee’ in relation to the proceedings before the Enforcement Committee for the purposes of Sub-Part A of Part IX of the FSA. Additionally, the Chief Executive of the FSC may now refer a matter to the Enforcement Committee for an appropriate action when he becomes aware that a person is acting as an officer of a licensee without the required approval of the FSC.

Part IX of the FSA has been amended to provide for the setting up of a novel internal committee of the FSC to be known as the ‘Settlement Committee’ which has been introduced for the purpose of assessing the possibility for early resolution of disciplinary matters with a licensee. The Settlement Committee will not be subject to the direction or control of any person or authority while discharging its functions and exercising its powers and is also empowered to exercise disciplinary powers of the FSC to impose administrative sanctions on licensees.

‘Global headquarters administration’, “Global shared services” and “Global treasury services” are now removed from the Second Schedule of the FSA and have been moved to an entirely new schedule (i.e., the Sixth Schedule to the FSA) as separate activities. The application for these licences will remain subject to the regulations under Part IV of the FSA.

Securities Act

The Securities Act is amended to clarify the obligation and function of an Official Exchange (i.e. the Stock Exchange of Mauritius Ltd and Afrinex Ltd) to investigate market abuses, insider dealings and fraudulent behaviour by market participants and issuers on the Official Exchange. A new condition is also now imposed that an audit firm needs to be approved by the FSC to be able to audit the financial statements of a CIS Manager or a collective investment scheme.

Insurance Act

The FSC has been empowered to require an insurer which provides motor insurance business to furnish, such data to any claim or other information as it may require for the purpose of facilitating, in collaboration with other regulatory bodies, the clearing and settlement of claims through a clearing system.

The appointment of an officer was previously deemed approved by the FSC where it had not objected to such appointment within 15 days of having been notified in writing of the proposed appointment. Now, such appointment is deemed to be approved where no objection is raised within 15 days of the receipt of (a) the application for approval; or (b) any further information that the FSC may request following the receipt of the application.

The time limit for application of claims to be paid out of the Insurance Industry Compensation Fund has been increased from 2 to 5 years. Such claims may be sought (i) in relation to hit and run cases and (ii) in case of insolvency of an insurer.

E REGULATORY ENVIRONMENT *(Continued)*

Insurance Act (Continued)

Structured investment-linked insurance:

The FA 2022 introduces a framework for structured investment-linked insurance policies and to regulate the conduct of custodians in relation to such policies.

Structured investment-linked insurance business (“SILIB”) has been added as a class of long-term insurance business under the First Schedule of the Insurance Act.

SILIB is the business of effecting and carrying out contracts of insurance under which the benefits are, wholly or partly, to be determined by reference to the value of, or the income from, a dedicated investment portfolio held separately for each policyholder with a custodian, and which may include the own assets and investments of the policyholder, both existing at inception and accruing over the future term of the policy, with a minimum subscription at inception in cash or assets which may be specified in FSC rules or guidelines.

Various amendments have been brought to existing sections of the Insurance Act so that:

- (a) Separate accounts and records shall be kept for each portfolio where an insurer manages assets in the SILIB;
- (b) an insurer cannot invest in derivatives other than derivatives designated as an asset in respect of a linked long-term policy or a structured investment-linked insurance policy;
- (c) investment performance reports shall be provided to holders of SILIB policies at intervals not exceeding one year.

Assets of SILIB policies can only be kept for safekeeping with a licensed custodian in Mauritius (holder of a Custodian services (non-CIS) Licence from the FSC) or in an equivalent foreign jurisdiction as approved by the FSC.

An insurer carrying out SILIB must enter into a custodian agreement with a custodian in relation to the appointment and functions of the custodians. The amendments empower the FSC to make FSC Rules in relation to, inter alia: the criteria for selecting and the process for appointment of custodians; the terms of the custodian agreement; powers duties and obligations of the custodian; and use of sub-custodians. Custodians cannot carry out, in relation to a SILIB policy, an activity or a function in respect of which they have not been licensed or authorised.

Any person who, other than a custodian, holds the assets of the SILIB policy or any insurer which allows any person, other than a custodian, to hold the assets of the SILIB policy for safekeeping, commits an offence liable to a fine of up to one million rupees and to imprisonment for a term up to 5 years.

Financial Intelligence and Anti-Money Laundering Act

The Act is amended so that the Ministry (responsible for the subject of money laundering) shall coordinate and undertake measures to identify, assess and understand the national risks not only of money laundering and terrorism financing but also proliferation financing. The Ministry shall then review such risk assessments at least every 3 years.

It will then be incumbent on every supervisory and investigatory authority to use the findings of the risk assessment to (a) assist in the allocation and prioritization of resources; and (b) ensure that appropriate measures are put in place in relevant sectors, in order to combat/mitigate the risk of not only money laundering and terrorism financing but also proliferation financing.

E REGULATORY ENVIRONMENT *(Continued)***United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act**

A new definition of the term ‘international terrorism’ has been included to bring clear interpretation to the terrorist acts having a significant association beyond the national boundaries. ‘International terrorism’ is defined to include –

- (a) terrorist acts that go beyond national boundaries in terms of the methods used, the people who are targeted or the places from which the terrorists operate;
- (b) violent or criminal acts committed by individuals or groups that are inspired by, or associated with, foreign terrorist organisations.

F BANKING**Bank of Mauritius Act**Central KYC System and Central Accounts Registry

With the objective of more coherent structures to facilitate the collection, verification, validation and extraction of Know Your Customer (KYC) records, the definition of “Central KYC and Accounts Registry” or “Registry” has been deleted and replaced with a new definition of “Registry” which now means the Central KYC System or the Central Accounts Registry as the case may be.

Section 52A(1) of the Bank of Mauritius Act has further been amended to bring more details on the respective functionalities of the Central KYC System and of the Central Accounts Registry which may both be established by the Bank of Mauritius (the “BOM”):

- (a) the purpose of the “Central KYC System” will be to facilitate the electronic verification of the identity of customers, validation and extraction of KYC records of customers by KYC institutions, and to collect KYC records submitted to KYC institutions by their customers; and
- (b) the purpose of the “Central Accounts Registry” will be to collect information on accounts maintained by customers, other than the balance and amount held in these accounts.

F **BANKING** *(Continued)*

Exceptions to the prohibition of trade of the BOM

New exceptions have been added to the prohibition of the BOM to engage in trade or acquire any interest in commercial, agricultural, industrial or other undertaking set out under section 9(1)(a). While section 9(1)(a) did not apply to an interest acquired by the BOM in satisfaction of debts due to it, such interest must now also be disposed of at the earliest opportunity. Furthermore, the BOM may now engage in trade where it relates to activities and operations of The Bank of Mauritius Museum.

Banking Act

Banking licence: in-principle approval

The Banking Act has been amended to modify the criteria on which the BOM could grant an in-principle approval to an applicant for a banking licence.

Section 5(8A) of the Banking Act provides that the BOM may grant an in-principle approval, subject to such terms and conditions it deems fit, where the applicant for a banking licence has duly submitted all necessary information or documents. The amendments however expressly provide that such in-principle approval (i) should not create any legitimate expectation for a positive final determination of the application, (ii) must not be construed by the applicant as an authorisation to conduct banking business and (iii) will automatically lapse if the applicant does not satisfy the terms and conditions attached to the in-principle approval.

Confidentiality

The BOM can now, where the circumstances so justify, require a financial institution or a service provider to comply with such confidentiality requirements as it may specify in such guidelines, directives or instructions issued by it.

Moreover, section 64(8A) of the Banking Act has been amended to require any person who intends to carry out a due diligence exercise on a financial institution, with a view to acquiring a shareholding in that financial institution, to either:

- (a) make a declaration of confidentiality before the chief executive officer or deputy chief executive officer of the financial institution; or
- (b) take an oath of confidentiality before a competent court or authority in his country of residence, in such form as the BOM may approve; or
- (c) comply with section 64(1)(aa) [relating to the confidentiality obligations of a service provider of a financial institution] with such adaptations and modifications as may be necessary.

Borrower Protection Act

Section 16 (Penalty on default payment) has been amended to prohibit the imposition of penalty interests in a loan agreement where the mortgaged immovable property is the sole residence of the borrower. It should be noted that the Borrower Protection Act applies to a loan agreement not exceeding MUR 3,000,000.

Electronic Signatures

The Inscription of Privileges and Mortgages Act and the Transcription and Mortgage Act have been amended to accept deeds and documents for the registration where a secure digital signature has been affixed in conformity with section 19 of the Electronic Transactions Act. This amendment is welcome as it confirms the general market practice in financing transactions in Mauritius.

F BANKING *(Continued)*

Banking Act

As from now, the BOM may amend, vary or cancel any condition, or impose new conditions on, an authorisation or a licence granted under by it to a licensee. In exercising the abovementioned power, the BOM will have to serve a notice and give reasons to the licensee for imposing such amendment or variation. Moreover, the new amendments provide that within 15 days of receipt of such notice, the licensee may make representations in writing and that the BOM is required to consider such representations in determining whether to confirm, modify or abandon its decision.

G REAL ESTATE

Non-Citizens (Property Restriction) Act

The Act introduces a new definition of “qualified entity” in the Non-Citizens (Property Restriction), i.e. an entity that owns property and in which a non-citizen directly or indirectly owns or controls all interests in the property. The amendments also provide that no qualified entity shall be wound up without the express authorization of the Minister of internal affairs.

Registration Duty Act

The Registration Duty Act has been amended such that where a secure digital signature has been affixed in conformity with the Electronic Transactions Act on a deed for registration, it is acceptable.

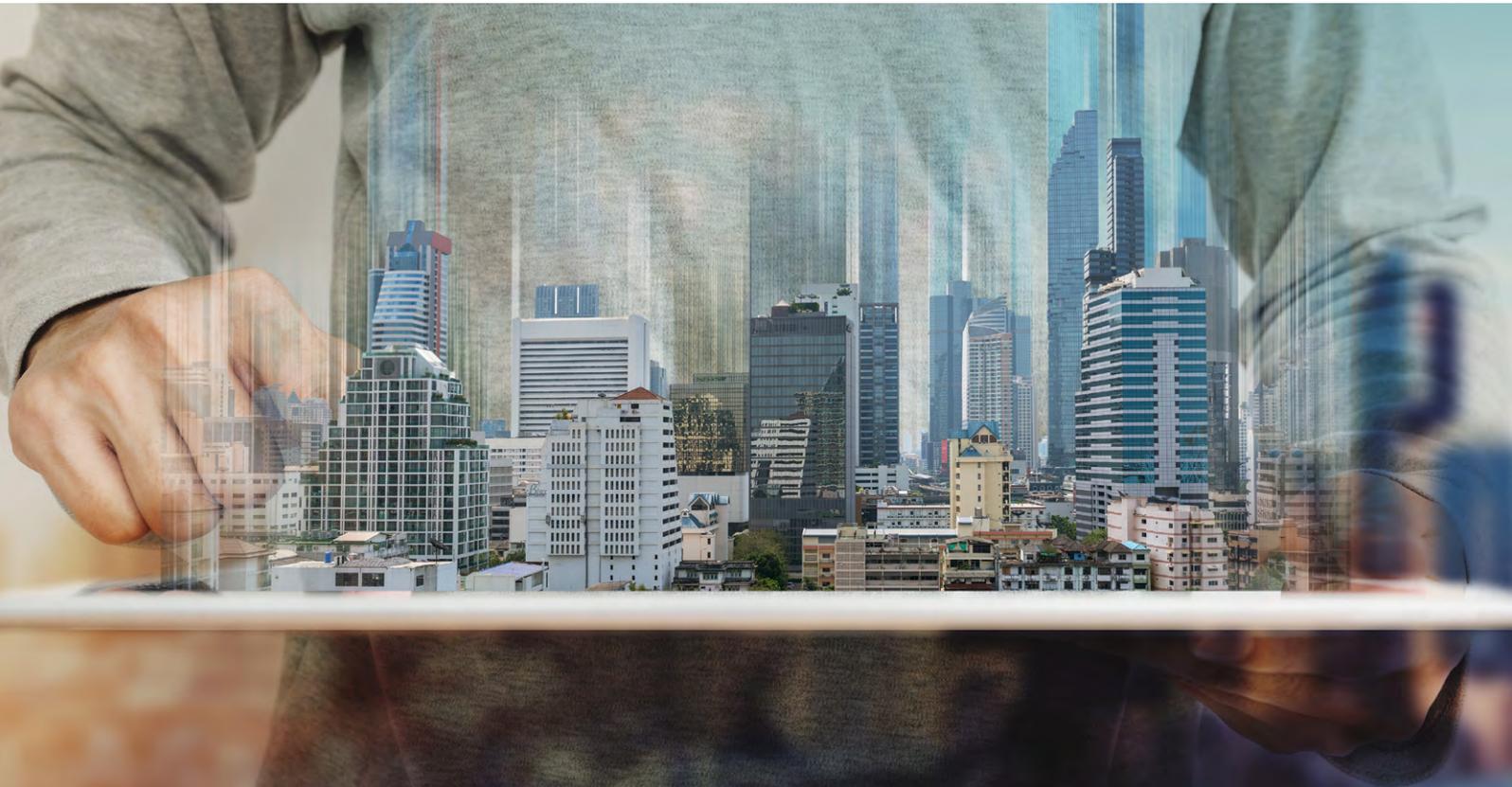
Another amendment is the introduction of additional duty leviable. Duty shall now be levied on any deed, irrespective of the date on which it has been drawn up, witnessing the transfer of an immovable property to a non-citizen as may be approved under the Non-Citizens (Property Restriction) Act and where the value of the property is not less than USD 350,000 or its equivalent or in such other amount as may be prescribed as follows –

- (a) at the rate in force at the time of registration, and
- (b) on the value, excluding VAT, of the property at the time of registration.

Presently, transfer of shares in a company holding immovable property is subject to registration duty. Land transfer tax is also leviable should the transfer of shares lead to a change in control of that company. The Registration Duty Act has been amended to specify that a share buyback, i.e. acquisition by a company of its own shares, will be subject to registration duty and tax in the same manner as for a transfer of shares.

Local Government Act

The law has been amended whereby Champs de Mars, being a state land in Port Louis, has been removed from the control and maintenance of the Municipality of Port-Louis.



G REAL ESTATE *(Continued)*

Land (Duties and Taxes) Act

The Land (Duties and Taxes) Act has been amended to extend the definition of a “transfer of shares”, which now includes any acquisition by a company of its own shares, by way of redemption, share buy-back or in any other manner where such acquisition results in an effective change in ownership of that company.

The Land (Duties and Taxes) Act has also been amended to capture that where the holder of a Premium Investor Certificate fails to use the land acquired for the project approved under the Premium Investor Certificate, the Registrar-General will, by written notice, make an assessment of the amount of duty or tax which would otherwise be payable and claim such amount from the parties to the transaction.

A further amendment is where the Registrar-General is dissatisfied with the value mentioned in any deed of

transfer or any other deed witnessing the transfer of any property, he may, make an assessment by notice in writing and notwithstanding the foregoing, the Registrar-General shall not issue a notice where the difference between the value of the immovable property assessed and the value mentioned in the deed does not exceed 150,000 rupees (from 100,000 rupees).

Economic Development Board Act

The Economic Development Board Act is amended to introduce new schemes and their respective certificates, namely (i) the Integrated Modern Agricultural Morcellement Scheme, (ii) the Sustainable City Scheme and (iii) the Transit Oriented Scheme. The new schemes are to be prescribed or specified in guidelines issued under that Act.