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GLOBAL SERVICES



Legal measures in the time of Covid-19



The COVID-19 (Miscellaneous Provisions) Bill



Introduction

Since the first 3 cases of COVID-19 were found in Mauritius on 17th March 2020, at the time of writing of this article, a total of 332 cases have been reported, with unfortunately 10 deaths. In a bid to slow-down the spread of the virus, the Government declared a national lockdown in Mauritius on 20th March 2020. The lockdown is now currently set to end on 1st June 2020, with a partial relaxing of measures to take place as from 15th May 2020 for certain activities such as hairdressers, bakers, butchers etc. The strict measures accompanying the lockdown seem to have worked and we are pleased to hear that there are currently no active cases.

In a view to better regulate the end of the lockdown and support the economy, businesses and the population at large, the Government will present the COVID-19 (Miscellaneous Provisions) Bill ("Covid-19 Bill") at 1st and 2nd reading to the National Assembly this Wednesday 13th May 2020. The Covid-19 Bill aims to amend some 56 laws.

This article provides a summary of the main proposed measures to be brought by the Covid-19 Bill.

Measures for the Economy

- In order to help stabilize the economy after the negative impact of the COVID-19 pandemic, the Bank of Mauritius ("BoM") has been given the power to grant such amount as its Board may approve to the Government of Mauritius to assist it in its fiscal measures. The said grant may be paid-out from the Special Reserve Fund if approved by the Board of the BoM.

The BoM may also now use its official foreign reserves to invest in any corporation or company set up for the purpose of facilitating economic development.

- The Public Debt Management Act has been amended to remove the public sector debt ceiling which was previously set at 65% of GDP.
- The limit the advance the Minister of Finance is allowed to take from the Consolidated Fund has been raised from MUR 3.5 billion to MUR 15 billion.



Business-Related Measures

The Companies Act, the Foundations Act, the Limited Liability Partnerships Act and the Limited Partnerships Act

- Temporary measures have been introduced for the COVID-19 period under the Companies Act, the Foundations Act, the Limited Liability Partnerships Act and the Limited Partnerships Act. During the said period the Registrar of Companies (the “Registrar”) may, during the COVID-19 period and such further period, as the Registrar may determine, after the COVID-19 period lapses, issue such Practice Directions, guidelines or such other instructions as may be necessary for the proper administration of the COVID-19 (Miscellaneous Provisions) Act 2020.
- Annual meetings of shareholders may be held not later than “9 months or such further period, as the Registrar may determine, after the COVID-19 period lapses”.
- The following provisions of the Companies Act shall **not** apply during the COVID-19 period and such further period, as the Registrar may determine, after the COVID-19 period lapses:
 - The Board of directors shall call an annual meeting of shareholders to be held not more than once in each year;
 - The Board of directors shall call an annual meeting of shareholders to be held not later than 15 months after the previous annual meeting.

The Registrar may issue such Practice Directions as may be necessary to determine the manner in which a meeting is to be held during the COVID-19 period and such further period, as the Registrar may determine, after the COVID-19 period lapses.

- Section 162 of the Companies Act relating to the duty of directors on insolvency shall not apply during the COVID-19 period and such further period, as the Registrar may determine, after the COVID-19 period lapses.
- The Board of every company now have up to “9 months or such further period, as the Registrar may determine, after the COVID-19 period lapses” after the company’s balance sheet date, to ensure that financial statements are completed at its balance sheet date, dated and signed.
- Companies, other than a small private company, have up to “3 months or such further period, as the Registrar may determine, after the COVID-19 period lapses” after the financial statements of the company and any group financial statements are required to be signed, to file the copies of those statements together with a copy of the auditor’s report with the Registrar.



Insolvency Act

- The Insolvency Act has been amended such that the minimum amount of debt due must be at least MUR 100,000, instead of MUR 50,000 previously, before a petition for insolvency can be filed.
- A resolution passed by a company other than a Global Business Company for its voluntary wind-up, or a resolution of creditors passed at a watershed meeting for a company other than a Global Business Company, during the COVID-19 period, or during a period not exceeding 3 months after the COVID-19 period lapses, shall be deemed not to have been passed and shall be void.

Landlord and Tenant Act

- Amendments have been made so that non-payment of rent for the months of March to August 2020 shall not constitute a breach of a tenancy agreement provided that the rent for the said months and such other subsequent month as may be prescribed is fully paid, in instalments, by 31 December 2021.

Electricity and Water Supply

- No surcharge shall be imposed for late payments to the Central Electricity Board and the Central Water Authority during the COVID-19 period. Neither the electricity supply nor the water supply shall be disconnected during the said period.

Extension of Licence Expiry Dates

- Licences granted under the following acts expiring during the COVID-19 period or 30 days thereafter shall be deemed not to have expired and continue to be valid for such period as may be prescribed by regulation under the relevant enactment:
 - Tourism Authority Act;
 - Environment Protection Act;
 - Gambling Regulatory Authority Act;
 - Information and Communication;
 - Technologies Act.

Residence Permits

- Persons issued with a permanent residence permit or a residence permit can now apply for an extension or a variation of their permit while being in Mauritius.
- A permit is deemed not expired if it has expired during the COVID-19 period and will remain valid 30 days after the COVID-19 period lapses or further as prescribed.
- A permit is deemed not expired if it expires 21 days after the COVID-19 period lapses and will remain valid for 30 days or any further period as prescribed.



- A visa shall be deemed not to have expired and shall remain valid:
 - For a period of 30 days after the COVID-19 period lapses or for such further period as may be prescribed;
 - A period of 21 days after the COVID-19 period lapses, the visa shall be deemed not to have expired and shall remain valid:
 - For a period of 30 days after the period; or
 - 21 days lapses; or
 - Such further period as may be prescribed.

Measures for Employment

- An employer may require any worker to work from home, or request a worker to work on flexitime, provided a notice of at least 48 hours is given to the worker.
- A worker who is employed on shift work shall not, during the COVID-19 period and such further period as may be prescribed, be entitled to any allowance for work performed on night shift.
- An employer may, during a period of 18 months following the expiry of the COVID-19 period, withhold up to 15 days' annual leave, or such other number of annual leave as may be prescribed, from the aggregate of the annual leave which accrues to a worker as from the beginning of the year of the COVID-19 period or such further period as may be prescribed.

Where a worker has performed work during the COVID-19 period, excluding the period starting from 15 May 2020 and ending on 1 June 2020, the employer shall not withhold more than half of the said 15 days' annual leave.

- For part-time workers the number of annual leaves an employer may withhold shall be calculated based on the number of days of work the worker is required to perform in a week.
- Employers in the service sector (such as air traffic control, civil aviation and airport, customs, health, hospital, hotel services, port, amongst others) do not need to consult the employees' representatives or trade union to consider alternatives to termination. Employers may now directly give a 15 days' notice (instead of 30 previously) to the Redundancy Board before reducing workforce or closing down. If the Board finds the reasons are justified, the employees shall be entitled to 30 days wages. Otherwise the employees shall be entitled to 3 months of remuneration per year of service.
- The provisions of Section 67 of the Workers Rights Act relating to employment following a transfer or taking over of a trade or business by a new employer shall not apply for the service sector.



Tax-Related Measures

The COVID-19 Solidarity Fund

- Contributors to the COVID-19 Solidarity Fund (both companies and individuals) will be given relief, by way of a deduction from their net income, of the amount contributed or donated in that income year. Any unrelieved amount for an income year may be carried forward up to a maximum of 2 income years.

The Wage Assistance Scheme

- A Wage-Assistance Scheme (“WAS”) was introduced, whereby the Mauritius Revenue Authority (“MRA”) would contribute for the salaries for the months of March, April and May 2020 of full-time and part-time employees whose basic monthly salary does not exceed MUR 50,000, and who are employed by:
 - An employer deriving gross income from business;
 - A charitable institution approved by the MRA or registered under the Registration of Associations Act, charitable trust or charitable foundation;
 - Any other category of employer as may be prescribed.
- The allowance payable under the WAS are as follows:

Month	% of Salary or Wage contributed under the WAS		Maximum Allowance Payable (MUR)	
	Mauritius	Rodrigues or Agalega	Mauritius	Rodrigues or Agalega
March 2020	50%	50%	12,500	12,500
April 2020	100%	50%	25,000	12,500
May 2020	100%	-	25,000	-

- An application for the WAS in respect of each prescribed month must be made electronically to the MRA within a period of 3 months from the end of the month to which it is related, or within a period of 2 months from the date the COVID-19 period lapses, and accompanied by the following information:
 - The number of eligible employees;
 - The aggregate basic wage or salary of all eligible employees;
 - The amount of allowance to be paid in respect of all eligible employees;
 - Such other information as may be required.
- The MRA may base itself off the NPF / NSF return submitted for the month January 2020 to pay the WAS allowance of an employee, and if required, pay the difference payable based on the NPF / NSF returns submitted for the months of March, April and May 2020 or such other month as may be prescribed.



- For employees who are citizens of Mauritius, are employed in an export manufacturing enterprise, are employed on a full-time basis and derive a basic salary or wage not exceeding MUR 9,000, the WAS allowance payable shall be calculated on the basis of the National Minimum Wage of MUR 9,000.
- The MRA may, not later than one year after payment of a WAS allowance, request any information or document from the employer or any employee to ascertain correctness of the information provided.
- Provisions have been made under the WAS to ensure that an employer does not terminate the employment of an eligible employee during the month in which the employer receives a WAS allowance. Failing which, the employer shall not be entitled to any allowance in any subsequent month.
- Should an employer reduce the basic salary or wage, or fail to pay the basic wage or salary, of an eligible employee in the month in which the employer benefits from the WAS allowance, the employer shall be liable to refund the amount received under WAS for that particular employee to the MRA and shall not be entitled to any allowance in any subsequent month.
- Where any employer or employee makes a false declaration, or refuses to provide any information or document that may be requested by the MRA to ascertain correctness of information provided, that employer or employee shall commit an offence and on conviction shall be liable to a fine not exceeding MUR 50,000 and to imprisonment for a term not exceeding 2 years.

The Self-Employed Assistance Scheme

- A Self-Employed Assistance Scheme (“SEAS”) was also introduced to pay an allowance to eligible self-employed individuals for the months of March, April and May 2020, subject to certain conditions. The allowance payable under SEAS is as follows:

Period	SEAS Allowance (MUR)
16 March 2020 to 15 April 2020	5,100
16 April to 30 April 2020	2,550
May 2020	5,100



COVID-19 Levy

- Every employer who has benefited from the WAS shall be liable to pay to the MRA in years of assessment commencing on 1 July 2020 and 1 July 2021, the COVID-19 Levy (the “Levy”):
 - In the case of an employer who is an individual, the Levy payable shall be equivalent to either the total amount paid to him under the WAS or 15% of the gross income derived by him after deduction of any expenditure allowable, whichever is lower.
 - In the case of an employer which is a resident société or company, the Levy payable shall be equivalent to either the total amount paid to him under the WAS or 15% of his chargeable income, whichever is lower.
- The Levy shall be payable in the year of assessment commencing on 1 July 2020 for individuals, resident sociétés and companies whose accounting period ends on any date during the period starting on 1 May 2020 and ending 31 December 2020.
- The Levy for a company having an accounting period ending between 1 January 2021 and 30 April 2021 shall be payable in the year of assessment commencing on 1 July 2021
- No Levy shall be payable where the employer to whom an amount has been paid under the WAS is not liable to income tax in the year of assessment the Levy is due.
- Where an employer fails to pay the Levy on or before the last day on which it is payable, a penalty of 10% of the amount of the Levy remaining unpaid, and an interest rate of 1% per month or part of the month during which the Levy remains unpaid, shall be payable to the MRA in addition to the Levy.
- Any employer who makes a false or misleading declaration or statement in relation to the Levy shall commit an offence and on conviction shall be liable to a fine not exceeding MUR 1m and to imprisonment for a term not exceeding 2 years.

Tax Administration

- Where the deadline for an assessment, a decision, a determination, a notice or a claim of the MRA falls during:
 - The COVID-19 period, it may be made or given not later than 2 months after the COVID-19 period lapses.
 - A period of 30 days after the COVID-19 period lapses, it may be made or given not later than 2 months after the period of 30 days lapses
- Where the deadline for a payment to the MRA falls during:
 - The COVID-19 period, the payment shall be made not later than 25 June 2020.
 - The period ending 30 June 2020, the payment shall be made not later than 26 June 2020.



- Any statutory delay relating to proceedings in front of the Assessment Review Committee which, expires or falls wholly or partly during:
 - The COVID-19 period, shall be suspended and shall start as from the first day following the end of the COVID-19 period.
 - A period of 21 days after the COVID-19 period lapses, shall be suspended and shall start as from the 22nd day following the end of the COVID-19 period.

Value Added Tax

- Protective masks, breathing appliances and hand sanitisers have been classified as zero-rated for VAT purposes.



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