PRISM CHAMBERS

LEGAL ALERT

The Finance (Miscellaneous Provisions) Act 2023

26 July 2023

TAX MATTERS – INCOME TAX

Introduction to a Progressive Tax System

- The Income Tax Act 1995 ("Income Tax Act") has been amended to introduce as from the income year commencing on 1 July 2023, a new progressive tax regime comprised of 11 tax brackets as follows:

Annual Net Income (Rs)	Tax Rate
0 – 390,000	0
390,001 – 430,000	2
430,001 – 470,000	4
470,001 – 530,000	6
530,001 – 590,000	8
590,001 – 890,000	10
890,001 – 1,190,000	12
1,190,001 – 1,490,000	14
1,490,001 – 1,890,000	16
1,890,001 – 2,390,000	18
Above 2,390,001	20

- The new progressive tax system seeks to improve the standard of living of taxpayers and improve the inequality of income distribution. Although the Finance (Miscellaneous Provisions) Act of 2022 had refined the tax rates into three brackets (10%, 12.5% and 15% respectively), this complete revamping of the taxation system is an attempt at implementing a framework which takes into account the disparate economic status of taxpayers and the rising costs of living. It is hoped that the new system will not result in unduly complex administrative burdens and arbitrage opportunities. These new rates have been applicable since 1 July 2023.

TAX MATTERS – INCOME TAX

Abolition of Solidarity Levy

- The Income Tax Act has been amended to abolish the imposition of the solidarity levy applicable to the leviable income of individuals exceeding Rs 3M in an income year.

This long-awaited measure comes as a relief to taxpayers who have been imposed a solidarity levy of 25% on their leviable income in excess of Rs 3M capped at 10% of their net income. This is a particularly welcome measure since the solidarity levy imposed income tax on dividends paid out by resident companies, the profits which were already subject to corporate income tax.

Removal of income exemption thresholds and replacement by personal deductions

- As part of the implementation of the new progressive taxation system, the income exemption thresholds (IET) have been replaced by deductions for dependents, as follows:

Dependents	Amount of deduction (Rs)
One dependent	110,000
Two dependents	190,000
Three dependents	275,000
Four or more dependents	355,000

- With the application of the new tax brackets, in particular, the rate of 0 percent on the first Rs 390,000 chargeable income (compared to the previous Rs 325,000 exemption), and the new deductions for dependents, the overall net effect is that taxpayers should pay less tax (on a pari passu basis).

TAX MATTERS – INCOME TAX

House loan relief scheme

- The Income Tax Act has also been amended so as to include new provisions on the implementation of a housing loan relief scheme enabling Mauritian taxpayers who have contracted secured housing loans (not exceeding Rs 5M), to benefit from an allowance of Rs 1,000 per month.

This measure in line with the Minister of Finance, Economic Planning and Development's statement "to dare and to care" brings some relief to certain taxpayers i.e., those having taken secured housing loans, not exceeding Rs 5M only, for the purchase, construction and extension of immoveable property.

It remains to been seen how this will be implemented in practice and whether renovations of immoveable property will also be included within this scope.

Change in taxation rate of banks

- The tax rate applicable to banks has been amended to a flat rate of 15% on their chargeable income in excess of Rs 1.5 billion and kept at 5% on amounts less than Rs 1.5 billion.

This change, mentioned in the annex to the budget speech, came as a cold shower to banks operating in Mauritius; the previous, more favourable, corporate taxation of banks i.e. 5% on the first Rs 1.5 billion of the chargeable income; 15% on the excess of chargeable income for the base year over Rs 1.5 billion; and 5% on the remainder (subject to the satisfaction of certain prescribed conditions) has now been amended so that amounts in excess of Rs 1.5 billion bear a 15 % tax rate.

While this amendment was initially intended to apply as from the year of assessment 2022/2023, this has now been amended to apply prospectively as from the date of proclamation of the Finance (Miscellaneous Provisions) Act 2023 (the "Finance Act 2023"). It remains to be seen however, whether the MRA will seek to apply the 5/15% rate on the basis that the Income Tax Regulations 1996 which listed the prescribed the conditions for the availability of the 5-15-5 income tax rates were in effect only applicable for the years of assessment 2020-2021 and 2021-2022.

TAX MATTERS – INCOME TAX

Increase in partial exemption rate on interest income derived by Collective Investment Schemes (CIS) or Closed-End Funds (CEF)

- ❑ The exemption rate for the partial exemption regime on interest income increases from 80% to 95% for CIS and CEFs.

While this is a welcome measure by the operators of the fund industry in Mauritius, it remains to be seen whether the authorities will be consistent and fair in the application of the partial exemption to the interest income in respect of the related core income generating activities conditions.

Interest income on bonds, sukuks and debentures - extension to bonds, debentures or sukuks issued by an overseas entity to finance renewable energy projects

- ❑ The Income Tax Act has been amended to extend the exemption of interest to bonds, debentures or sukuks issued by an overseas entity to finance renewable energy projects.

In view of the increasingly worrying impact of climate change, this measure highlights to Government's acquiescence of the need to preserve our blue planet. This measure aims to promote the financing of projects that benefit the environment and/or climate.

TAX MATTERS – INCOME TAX

Other notable changes

- Protected Cell Companies/ Variable Capital Companies - tax due by a specific cell, sub-fund or special purpose vehicle (SPV) will not be recoverable from another cell of the same protected cell company or other sub-fund, where so elected by the respective companies.
- Adoption of animals - individuals will be entitled to a relief of Rs 10,000 on each animal adopted from the Mauritius Society for Animal Welfare or a non-governmental organisation. This is capped at Rs 30,000 per income year.
- Companies engaged in the sale of fuel to an airline company will benefit from a reduced income tax rate of 3%.
- The investment tax credit of 15% over 3 years granted to manufacturing companies in respect of expenditure incurred on new plant and machinery (excluding motor cars) will be extended up to 30 June 2026. Any unrelieved investment tax credit may be carried forward over 10 years. Companies manufacturing both alcoholic and non-alcoholic beverages will be able to claim the investment tax credit on expenditure incurred on new plant and machinery used exclusively for producing non-alcoholic drinks.

TAX MATTERS – VALUE ADDED TAX (VAT)

Special levy on banks

- ❑ Every bank will now be liable to a special levy of 5.5% on its leviable income derived in every accounting period.

This flat rate seeks to harmonise the application of the special levy amongst all banks.

Zero-rating

- ❑ The Value Added Tax Act 1998 ("VAT Act") provides for zero-rating of 15 key items of everyday consumption, musical instruments, apparatus used in medical, surgical, dental or veterinary sciences, medical grade silicone and glass-ceramic blocks for dental use.

This is a welcome amendment since VAT-registered suppliers will still be able to reclaim VAT paid on the costs of making that supply.

Other notable changes

- ❑ A person who voluntarily registers for VAT will be eligible to claim credit for input taxes as from the date of registration.
- ❑ Glass-ceramic blocks also benefit from the custom duty removal.
- ❑ Any contractor engaged in the construction of social housing units under a social housing project implemented by New Social Living Development Ltd will benefit from tax exemptions on VAT, customs duty and excise duty on procurement of goods (save for vehicles), works, consultancy services and other related services.
- ❑ The water supplied, infrastructure works and renting out of meters by the Rodrigues Public Utilities Corporation will be zero-rated for VAT purposes (similarly to the Central Water Authority).
- ❑ The construction of purpose-built buildings for the provision of primary and secondary education will now be VAT exempted.

TAX MATTERS – MRA

The Mauritius Revenue Authority Act 2004

TAX ARREARS SETTLEMENT SCHEME ("TASS")

- ❑ Re-introduction of TASS for the implementation of the full waiver of penalties and interests for tax arrears outstanding as at 2 June 2023 under the Income Tax Act, the VAT Act and the Gambling Regulatory Authority Act 2007, provided the taxpayer registers by 31 December 2023 and pays the tax in full by 31 March 2024.
- ❑ Taxpayers having representations pending on 2 June 2023 before the Assessment Review Committee ("ARC"), or appeal before the Supreme Court or Judicial Committee of the Privy Council may apply to the TASS by withdrawing the case before these institutions.

The renewal of the popular TASS (including for tax cases before the ARC) is a relief for certain taxpayers with existing tax assessments who will have the opportunity of having all interest and penalties waived. This measure has been utilised by many taxpayers in recent years, in order not to engage in drawn-out legal battles in court.

This reintroduction is in line with the Minister of Finance, Economic Planning and Development's proposal to ensure a better administration of cases. However, it is regrettable that the TASS applies for the tax arrears until 2 June 2023 only. There has been no explanation provided in the 2023/2024 budget speech on the imposition of this date and why the period after this date is not covered.

TAX MATTERS – MRA

The Mauritius Revenue Authority Act 2004 (cont.)

APPOINTMENT AND ASSISTANCE OF TECHNICAL EXPERTS

- The Director-General or any officer he may authorise may now retain the services of an expert in a technical field or the services of a specialised agency for the purposes of administering the revenue laws.
- An officer assigned to the Fiscal Investigations Department may also now be accompanied by an expert or the representative of a specialised agency whose services have been retained.

While this measure seems to be made in the spirit of ensuring correct and impartial administration, there is no further details on who a “technical expert” or a “specialised agency” comprises of.

Should no further clarification be made, it may well be that a seemingly productive provision has an opposite effect, without proper checks and balances in place.

OTHER NOTABLE CHANGES

- If aggrieved by an under/overvaluation of goods or any classification of goods under the Customs Act 1988, a person shall be able to file written representations with the clerk of the ARC. This shall also be possible for any disputes regarding payment under protest, as per the Excise Act 1994.
- The procedure of *contrainte* has been rectified to enable to Director-General to apply to the Judge in Chambers for a declaration to make a compulsory notice (*contrainte*), made by him against a debtor in respect of tax owed by him, to be made executory, as opposed to applying for a *contrainte*.
- The definition of “Revenue laws” has been modified to specify Part II and III of the Social Contribution and Social Benefits Act 2021.
- Although the budget speech referred to forthcoming amendments to be made to the current tax appeal procedures (with the intention of improving its efficiency and effectiveness), there seems to be no meaningful changes brought the Mauritius Revenue Authority Act 2004 in that respect. It remains to be seen whether current regulations will be amended.

TAX MATTERS – LAND TAX MATTERS

The Registration Duty Act 1804

NOTABLE AMENDMENTS

- The definition of "duty" has been amended to include any surcharge on duty, penalty as well as interest.
- The provisions for the levying of duty have been amended to permit for the levying of an additional registration duty of 10% on the acquisition by a non-citizen of an immovable property of at least USD 500,000 (compared to the previous USD 350,000).
- A person, feeling aggrieved to a Registrar General's assessment following a transfer of movable property now has 28 days to object, instead of 15 days. If the objection is of a technical nature, the Registrar General may retain the services of a "suitable expert" in the field to advise the objection unit of the Registrar General.
- Persons acquiring more than 20% of a company's share capital and opting to be taxed on the value of shares transferred, will be required to provide a description of immovable property held in the company together with a site plan at the time of the registration of the deed of transfer.
- The Home Ownership Scheme has been extended for another year, for residential property acquired from 1 July 2023 to 30 June 2024. A refund of 5% of the value of the property not exceeding Rs 500,000 will be available to eligible purchasers.
- The payment of fees, duties and taxes through the direct debit scheme shall not be applicable for any amount exceeding Rs. 2 million.
- The Home Loan Payment Scheme will be extended until 30 June 2024, providing for a refund of 5% of the loan amount disbursed up to 30 June 2025. The amount will be capped to a maximum of Rs 500,000.

TAX MATTERS – LAND TAX MATTERS

The Land (Duties & Taxes) Act 1984

NOTABLE AMENDMENTS

- For transfer of shares exceeding Rs. 200,000 in value and requiring a supporting certificate from a professional accountant, duties and taxes are now levied on the higher value declared in either the deed of transfer or in the certificate, whichever is the higher.
- The objection unit now also consists of an officer designated by the Receiver of Registration Duties to act as "secretary".
- The Registrar General may enlist the services of a suitable expert in the field, including the valuer to advise the objection unit where the subject matter of an objection relates to a technical field.
- Representations filed with the ARC must equally be filed with the Registrar General.
- The scheme providing for the full waiver of the penalties and interest unpaid as at 31 May 2023 has been implemented on the condition that debtor settle the amounts due by 31 March 2024, and the person withdraws or formally undertakes to withdraw any objection before the Registrar General, any representations before the ARC, any appeal before the Supreme Court or Judicial Committee of the Privy Council in relation to the payment of the duties and taxes.

COMPANY LAW

The Companies Act 2001 ("CA 2001")

The CA 2001 has been amended to cater for the following changes as set out below.

- The definition of "service address" in section 2 of the CA 2001 has been amended to reflect that service address means the address at which documents may be served in Mauritius and includes the address of a registered office in Mauritius. The definition of service address was previously wide in interpretation as it was not limited only to the jurisdiction of Mauritius and the address of a foreign jurisdiction could also fall within this definition.
- A new sub-section has been added in section 133 of the CA 2001 to the effect that a public listed company must have a minimum of 25 percent of women on its board. This new threshold seeks to emphasise women participation on the board of a public company. This change shall be effective as from the 01 January 2024.
- A new sub-section has been added in section 140 of the CA 2001 stating that the meeting of shareholders for considering the resignation of the last remaining director and the appointment of one or more new directors must 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 the shareholders fail to appoint new directors within the prescribed time limit, the Registrar of Companies (ROC) may remove that company from the register. The one-month time frame to call for a meeting of shareholders is a good measure. If a sole director needs to resign imminently, he or she may do so compared to previously whereby a notice of resignation given by the sole director does not take effect until the date of the meeting of shareholder.
- Regarding the sending of annual reports to the shareholders, a company now has 21 days prior to the annual meeting to do so. Where shareholders have elected not to receive the annual report, the board of the company must cause the financial statements to be sent to every shareholder of the company not less than 21 days before the annual meeting of the shareholders. This is a departure from the prescribed limit of 14 days.
- A copy of the annual report or financial statements to be sent to every shareholder may be in such form as the ROC may approve and the shareholders may retain the right to receive a hard copy of the annual report or financial statements within a reasonable time.
- Paragraph 3 of the Fifth Schedule of the CA 2001 has been amended to reflect that a meeting of shareholders may be held in such manner as the ROC may approve. It remains to be seen how the ROC implements this amendment which we believe must be through a new practice direction.

FINANCIAL SERVICES

The Financial Services Act 2001

The Financial Services Act 2001 ("FSA") has been amended to cater for the following changes as set out below:

Anti-money laundering and combatting the financing of terrorism and proliferation ("AML/CFT")

- The section 2 of the FSA has been amended to include definitions of "AML/CFT" and "AML/CFT legislations." The AML/CFT legislations include regulations or guidelines issued under the Financial Intelligence and Anti-Money Laundering Act 2002 and United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019.
- The powers of the Financial Services Commission (FSC) under section 7 has been enlarged so that it may now also give directions to any person to ensure compliance with AML/CFT legislations.
- If a licensee fails to take such measures required under the AML/CFT legislations, the chief executive of the FSC may order that an investigation be conducted into the business or any part of the business of the licensee or its associate. The chief executive may authorise the investigator to issue such directions to ensure the smooth running of the investigation.
- The chief executive may give the licensee a written direction if he has reasonable cause to believe that a licensee has contravened or is likely to contravene the AML/CFT legislation.
- Breach of the AML/CFT legislation is a ground for referral to the Enforcement Committee of the FSC.

Administrative penalty

- Administrative penalty has now been defined in section 2 of the FSA.
- In relation to failure to pay administrative penalties, the chief executive may terminate the licence of a licensee after giving notice of not less than 90 days to the licensee.

FINANCIAL SERVICES

The Financial Services Act 2001 (cont.)

Other notable changes

- The FSC can enter into arrangements and extend assistance to a foreign supervisory institution if that institution satisfies relevant confidentiality requirements imposed by the FSC.
- Section 14A (2) has been amended to reflect that moneylenders will be required to comply with any requirement of the FSC instead of prudential requirements.
- Licensees are now under an obligation to submit independent compliance reports to the FSC.
- The chief executive of the FSC has been removed as a member of the Settlement Committee of the FSC to avoid possibility of conflict.
- The role of management companies has been enhanced with respect to ensuring compliance of their clients with relevant laws.
- The issuance of a certificate of good standing will also be applicable to authorised companies.
- Licensees can now file documents electronically.
- The recovery of annual fees and late charges due to the FSC is not time barred to enhance recovery capacity of the FSC.
- The FSC is now empowered to make rules on obligations and responsibilities of holders of a management licence.

The Variable Capital Companies Act 2022

- A company is now able to operate as a family office through a special purpose vehicle with the authorisation of the FSC.
- A special purpose vehicle can now also operate as a family office activities.
- The FSC is empowered to make rules which provide for (a) the criteria, requirements and obligations applicable to a variable capital company, sub-fund or special purpose vehicle; and (b) the taking of fees and the levying of charges.

FINANCIAL SERVICES

The Securities Act 2005

The Securities Act 2005 has been amended to cater for the following changes as set out below.

- The definition of closed-end fund has been expanded so that it is now possible for closed-end fund to invest in money market instruments or debt instruments including loans, debt obligations or similar instruments.
- Likewise, a collective investment scheme can now invest in money market instruments or debt instruments including loans, debt obligations or similar instruments.

The Banking Act 2004

- The Banking Act 2004 has been amended to replace the term "Repo Rate" by "Key Rate" in the context of the implementation of the new monetary policy framework by the Bank of Mauritius. This change shall be deemed to have come into operation on the 16 January 2023.

The Virtual Asset and Initial Token Offering Services Act 2021

- A virtual asset custodian can hold custody of securities tokens.
- The requirement for an applicant to be considered as issuer of initial token offerings to submit an approval letter, in respect to the initial token offerings, issued by the virtual asset exchange or its equivalent acceptable to the FSC has been removed.
- The FSC is also empowered to make Rules for the setting up of a virtual asset register on virtual asset service providers.

ECONOMIC DEVELOPMENT BOARD

The Economic Development Board Act 2017

Premium Investor Scheme (PIS)

- The objects of PIS have been extended to include the facilitation of the acquisition of non-strategic assets of the Government. Projects implemented under an appropriate Environmental, Social and Governance (ESG) framework and having met a minimum ESG score, as certified by a recognised rating agency, shall also be considered under PIS.
- The integration of ESG-related projects under the PIS will encourage investors and companies to adopt “climate-smart solutions.” This initiative is in line with the Government’s intention to enhance Mauritius’ position as an ESG-rated investment destination and promoting a greener and more sustainable energy industry.
- The purview of PIS will also include qualifying projects in terms of acquisition or taking over of a Government undertaking, or of more than 50% shareholding held (directly or indirectly) by the Government in a company. It is expected that foreign innovative technologies will be attracted to acquire or take over government undertakings thus enabling a flow of innovative know-how and expertise in the selected fields under the PIS.

National Contact Point

- A National Contact Point for Responsible Business Conduct has been provided for in the Economic Development Board Act 2017 for the purpose of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The functions National Contact Point have been listed quite broadly as to handle matters which may be prescribed.

No provisions have yet been included in relation to the unique identification number as announced in the budget speech.

NON-CITIZENS

The Economic Development Act 2017

OCCUPATION PERMIT

- Investors applying for occupation permit will be required to provide a certified bank statement from his country or origin or residence showing sufficient proof of funds. Same will be required for those applying as retired non-citizens.
- Non-citizens can now apply for occupation permit as professional under all sectors. The previous selected sectors have been abolished. The monthly basic salary will be at minimum MUR 30,000.
- Removing the restricted sectors will attract non-citizens to work in Mauritius. Employers can tap in a wider talent pool. However, the domestic labour force may face fierce competition.

RETIRED NON-CITIZENS

Retired non-citizens applying for a residence permit will be required, at the time of application, to provide a certified bank statement from the applicant's country of residence or origin to show proof of funds together with a written undertaking to open a local bank account in two months' time. This two-month period, in line with the effort of increasing efficiency, will provide more flexibility and time for retired non-citizens to deal with time-consuming processes in completing their residence permit applications.

The Immigration Act 2022

- Young professional occupation permit is no longer be restricted to listed activities in the Immigration Act's schedule and extended to all sectors.
- The Immigration Act 2022 is also amended in line with the changes in the EDB Act introducing the "Sustainable City Scheme". Further guidelines on this new scheme are expected to be issued by the EDB.
- A non-citizen, aged above 50 years, shall now be eligible for residence permit where he acquires a property under the Property Development Scheme related to senior living for an amount exceeding USD 200,000 (or equivalent). The spouse and dependent child of the acquirer shall equally be eligible.

NON-CITIZENS

Non-Citizen (Property Restriction) Act 1970

- No certificate from the Prime Minister's Office shall be required where a non-citizen purchases or otherwise acquires, or disposes of a property under the Sustainable City Scheme. Same is applicable where a non-citizen deemed a resident under the Immigration Act, purchases or otherwise acquires residential property provided that the purchase price is not less than 500,000 USD.

- The changes brought further demonstrate the Government's priority to encourage foreign investment. It is noted that not all changes proposed in the annex to the budget speech have been implemented in the Finance Act 2023.

EMPLOYMENT

The Workers' Rights Act 2019

- 4-day week

Introduction as projected under the budget speech of the 4-day week whereby a worker may complete stipulated hours of work (or any other number of hours agreed contractually between the worker and the employer) over a period of 4 days.

Where the proposal to work a 4-day week is made by the employer, such request shall be made with at least 48 hours notice. Where a request is made by the worker, the employer is required to grant the request subject to its operational requirements.

The 4-day week will certainly face teething issues but ultimately seek improved work-life balance, and reduced employee stress. The results across the world have also showed improved product quality and customer service, and a significant reduction in absences and sick days.

- Computation of time

The Finance Act 2023 brings clarity where for the purposes of computation of overtime, any authorised leave (whether with or without pay), including injury leave, is now deemed to constitute attendance at work.

- Calculation of hourly rate and overtime pay

The Finance Act 2023 brings clarity to the calculation of hourly rate whereby the monthly wage is simply divided by 195 hours (or 312 hours for a garde malade) for a fulltime worker. The same method is applied to determine the hourly rate for part-time workers where the month agreed wage is apportioned to the number of hours worked for the month.

This new calculation mechanism will therefore be utilised for computation of overtime pay.

EMPLOYMENT

The Workers' Rights Act 2019 (cont.)

- Cyclone and adverse weather conditions

The Finance Act 2023 extends full pay to employees absent from work during adverse weather conditions where a safety bulletin has been issued by the meteorological services. The provision brings clarity to recent uncertainty around the statutory interpretation applicable to adverse weather conditions bulletin in cases of torrential rain warnings.

All employees irrespective of their pay grades shall be entitled to full pay for absence by reason of cyclonic or adverse weather conditions.

It also imposes the obligation to contract the necessary insurance cover for injury, disease or death where an employee is required to work during cyclonic or adverse weather conditions. This measure is welcome to further ensure the safety of workers in the workplace and provide for compensation to the families of employees.

- Untaken annual leaves

The Finance Act 2023 now imposes the requirement to refund untaken leaves at the end of a period of 12 consecutive months where the worker has not taken or has not been granted his annual leaves. Instead of the refund, the worker may also avail to the accumulation of those leaves. This option was previously only available for untaken sick leaves and is a welcome measure for workers.

Untaken leaves accumulated over the years are refunded to the worker in case of termination. This measure will require amendments to existing payroll arrangements implemented by employers.

It is to be noted further that this provision is available to employees earning a basic wage or salary which does not exceed 600,000 rupees in a year only.

- Other leaves entitlements

In the case of a miscarriage, an employee shall now avail to an additional 5 days' leave on full pay, in addition to the 3 weeks leave already provided for under the Workers' Rights Act.

Paternity leave is now available to fathers who have adopted a child aged less than 12 months.

EMPLOYMENT

The Workers' Rights Act 2019 (cont.)

- **Leave to care for family**

The Finance Act 2023 brings the expansion of the provision of leave to care for children to now cater for elderly parents, grandparents and in-laws, whereby the worker may avail to up to 10 days of leave entitlements to attend to family care duties. The request for such leaves shall be made as prescribed under the Finance Act 2023 and be accompanied by the necessary medical records and proof of relationship.

However, in the case of a sick child, the prescribed limit of 10 days is not applicable, therefore allowing workers to make use of all their leaves entitlements in such situations.

This measure seeks to further assist workers in the various family responsibilities, a laudable proposal following last year's introduction of leave to care for sick child.

- **Childcare facilities at work**

In an effort to assist workers in the family responsibilities, the Finance Act 2023 imposes the obligation to provide for free childcare to workers where childcare facilities must be set up in the workplace or within one kilometer from the workplace where an employer counts more than 250 employees. Such childcare facilities shall be available to children of up to 3 years of age.

Although laudable, this measure may prove to be difficult to implement in the short future, the more so given that this provision is deemed to be in force since 20 July 2023.

- **Fuel allowance**

In an effort to sustain the rising cost of living, the Finance Act 2023 provides for an increase in the rate of fuel allowance paid whereby the rate paid in December 2021 shall see an increase of 10% (provided that the monthly increase in allowance shall not be less than Rs 1000 but shall not exceed Rs 2000). This measure comes in force as from 20 July 2023.

EMPLOYMENT

The Workers' Rights Act 2019 (cont.)

- Termination of employment and hearings

Amendments have been brought to the conduct of hearings in the context of termination of employment whereby in the case of misconduct or poor performance, the employer must grant an oral hearing. The worker shall be entitled to answer charges after an oral hearing is conducted and the employer may not simply rely on written explanations.

Furthermore, the employer must make available to the worker (and his representative) any information or documentation necessary for the latter to answer the relevant charge.

- Portable Retirement Gratuity Fund (PRGF) and retirement benefits

The Finance Act 2023 further clarifies the position in relation to the payment of PRGF whereby the contribution made by employers into a private pension scheme shall not be less than the prescribed rate on a monthly basis payable under the Workers' Rights (Portable Retirement Gratuity Fund) Regulations 2020. It further imposes an obligation on the administration of such private pension schemes to ensure that the contributions match the prescribed rate through the submission of a certificate attesting to same.

The calculation mechanism for gratuity or lump sum has been simplified under the Finance Act 2023 whereby the same method is now applicable to both full time and part time workers and is made on the basis of 26 days in a month.

In the event an employer fails to promptly make the relevant PRGF contributions, a surcharge of 10% is applicable on any unpaid contributions together with interests at the rate of 1% for each month accruing.

Under the Finance Act 2023, the employer is not required to pay 15 days' remuneration per year of service to a worker where the latter has not been paid a retirement benefit under a private pension scheme sponsored by the employer.

EMPLOYMENT

The Human Resource Development Act 2003

For the period 01 July 2023 to 30 June 2025, every employer shall, in respect of every employee, pay a training levy of 1.5 per cent. This marks an increase of 0.5%. It is to be noted that the training levy rate is not applicable to household workers, persons employed by private secondary schools or charitable institutions, non-citizens who are not tax resident in Mauritius or holding a premium visa.

The Employment Relations Act 2008

The Employment Relations Act 2008 has been amended to clarify the definition of ‘labour dispute’ and ‘reinstatement’ and further provide that a non-citizen can only be a member of a trade union if they hold a valid work permit.

The non-citizen shall be required to renew their trade union membership on 31 December of each year by producing a copy of their work permit to the secretary of the trade union.

The Non-Citizens (Employment Restriction) Act 1970

The Finance Act 2023 introduces an overhaul of the work permit application system proposing the use of National Electronic Licensing System (NELS) for fresh or renewal applications for non-citizens.

An application on the NELS will thus be deemed approved within 30 working days except where the applicant has received notification from the Ministry that the application is still under consideration.

Although a laudable initiative to streamline such applications, a 30-day window to secure approval may prove to be lengthy in practice and eventually burden the system.

AML-CFT

The Financial Intelligence and Anti-Money Laundering Act 2002 (the "FIAMLA")

- ❑ The FIAMLA has been amended with the addition of an exemption section to provide that no registration duty or fee shall be payable in respect of any document signed or executed by FIU under which FIU is a beneficiary. This amendment will not have any direct impact on stakeholders.

The Asset Recovery Act 2011

- ❑ The Asset Recovery Act now provides for a preservation order. The FIU can apply to the Judge in Chambers for a preservation order requesting any party to preserve bank statements, financial records, customer or beneficial ownership information, emails, telephone logs, receipts and any other documents directly or indirectly relating to that order until the FIU gives written notice that the documents no longer need to be preserved.
- ❑ A preservation order will allow for documents to be stored beyond the statutory record-keeping limit, subject to a judge's order, enabling the FIU to have continued access to complete and accurate data in the completion of investigations.

More changes were proposed in the budget speech considering the forthcoming ESSAMLG evaluation. For instance, it was announced that the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 would be amended in view of reporting obligations to the National Sanctions Secretariat. However, there is no such provisions have been made yet.

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Prism Chambers is a full-service business law firm based in Mauritius and which specialises in all aspects of revenue law.

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