

LEGAL HIGHLIGHTS

BUDGET

2022-2023

EDITORIAL

"Things will get worse before they get better": we've all heard this before. No matter how hard one tries to paint a rosy picture of the state of affairs, the cold hard truth remains that we (like almost every other country in the world) are still dealing with the longer-term effects of the pandemic exacerbated by the wide-ranging implications of the Ukraine war, supply chain disruptions and rising inflation. It is, quite simply, impossible to emerge from the ashes unscathed.

Dr The Honourable Renganaden Padayachy Minister of Finance, Economic Development and Planning delivered his Budget Speech 2022-2023 yesterday 7 June 2022.

Le Grand Argentier, was once again faced with the challenging task of presenting a budget that is both fair and encouraging, one which can support the country and its people meaningfully whilst equipping it with the right tools to build, rebuild, invest and inspire.

Titled *"With the people, for the people"*, we were taken – over 81 pages - on a lovely geographical scenic voyage and spending spree across many towns and villages in Mauritius.

Laudable measures were announced with the objective of providing much needed relief in the face of rising cost of living through allowances, exemptions and benefits. Unlike previous budgets, the support was not only limited to low-income households (increased benefits and allowances) and the elderly (increase of basic retirement pension to Rs 11,000) but also included the middle-income segment (through increased allowances and reduced tax rates of 10% and 12.5%). It would seem that Dr The Honourable Minister of Finance, Economic Development and Planning has now acknowledged the fact that raising taxes would not be conducive to recovery and growth in the long term.

We also note – quite rightly – a marked focus on self-sufficiency, sustainability, economic circularity and resilience. Interesting measures include, inter alia:

- Increased grants, financial assistance, subsidies and leasing facilities to planters, farmers, breeders and fishermen;

- A new Integrated Modern Agricultural Morcellement Scheme designed with the objective of encouraging innovative agricultural practices with associated tax holidays and duty exemptions;
- Targeted measures to encourage the production and supply of renewable energy (such as loan facilities at concessionary rates and the ability of households and companies to generate renewable energy of up to 150% of their annual requirement);
- Targeted measures to accelerate the land transport electric vehicle transition (such as advantageous loan facilities granted to taxis and van operators for the purchase of electric vehicles, the removal of duty from all hybrid and electric vehicles from 1 July 2022 and the introduction of a negative excise duty scheme of 10% for the purchase of electric vehicles by individuals up to Rs 200,000);
- Revamping the definition of SMEs (companies with a turnover of up to Rs 100m compared Rs50m previously), thereby giving them improved access to support programmes and financing; and
- Further facilitating the ease of doing business (free incorporation of domestic companies and faster opening of bank accounts).

But one cannot help but wonder after hearing the Budget Speech: a lot of spending and relieving but what of rebuilding the country and economic growth? Whilst the Budget Speech asserts that *"this Budget is driven by investment"*, it is unclear how all this expenditure will translate into investment, job creation and opportunities?

This may well be a budget "for the people" but it is also one of missed opportunities. Some potential areas of opportunity were identified (such as revamping the tourism sector and the crucial role of the financial services and ICT sector) and, passing references to the creation of research bureaus, blueprints and roadmaps were made but, regrettably, without further elaboration.

Things will get worse before they get better ...

TAX MATTERS

Commentary

- ❑ This Budget was (perhaps surprisingly) one of “lower taxes” for individuals, including on middle income earners. The reduction in the income tax rate to 12.5% for individuals with a monthly chargeable income not exceeding Rs 75,000, together with the decent increases in allowances and thresholds, will help make lives that little bit easier for a large part of the population who are struggling in the face of rising costs and inflationary pressures.
- ❑ On the other hand, few tax holidays were introduced and no further extension of the partial exemption regime applicable to companies.
- ❑ Increased powers to the Mauritius Revenue Authority in terms of access to information and cross-border cooperation will add to the array of tools available to the tax authority to tackle tax avoidance and evasion.
- ❑ The increase in TDS rate for professional services fees and rental income and the introduction of TDS on new services will provide quicker access to tax revenue.
- ❑ The reintroduction of the Tax Arrears Settlement Scheme (including for tax cases before the Assessment Review Committee) will be seen as a welcome measure for certain taxpayers who will have the opportunity of having all interest and penalties waived.
- ❑ The suite of efficiency measures announced at the level of the Assessment Review Committee will (we think) be treated with relief by practitioners, taxpayers and the authority.
- ❑ Mauritius continues to adhere to commitments made with international standing setting institutions, namely with the introduction of the global minimum tax for large multinationals and measures to be introduced to deal with the digital economy.
- ❑ Perceived loopholes (such as registration duty on certain share buy backs) will be addressed.

TAX MATTERS

INCOME TAX (INDIVIDUAL)

❑ Introduction of a new tax rate

The 2022-2023 Budget programme introduces a new tax rate to individuals earning above Rs 700,000. As from the income year 2022-2023, the revised tax rates are as follows:

- 10% for annual income up to Rs 700,000;
- 12.5% for Rs 700,000 to Rs 950,000 (i.e. monthly income of Rs 75,000); and
- 15% for annual incomes above Rs 950,000. The Solidarity Levy will remain applicable to this tranche of taxpayers.

❑ Exemptions and reliefs

The following additional allowable deductions will be introduced:

- Tertiary Education: The deduction bandwidth in respect of a dependent pursuing tertiary education (both undergraduate and postgraduate) has been amended from Rs 225,000 to Rs 500,000.
- Medical/Health Insurance Allowable: Deductions have been amended from Rs 20,00 to Rs 25,000 for an individual and his/her first dependent child and from Rs 15,000 to Rs 20,000 for every other dependent.
- Personal Pension Schemes: The allowable deduction made by a taxpayer for himself will be increased to Rs 50,000 instead of Rs 30,000.
- Donations to charitable institutions: the allowable deduction for any donations to an approved charitable institutions will be increased to Rs 50,000 instead of Rs 30,000.
- Deduction for bed-ridden next of kin: Since 2020, taxpayers have been able to claim bed-ridden next of kin as dependent when filing their income tax return. It has been clarified that a taxpayer will be able to claim a deduction in respect of his/her spouse as a bed-ridden next of kin, irrespective of financial assistance provided under the National Pensions Act.
- Exempt Income: The allowable deduction given to an employee on transport allowance for the use of her/his private car will be increased to Rs 20,000 instead of Rs 11,500.

TAX MATTERS

INCOME TAX (CORPORATE)

❑ Additional deduction to large manufacturers – Procurement from Small Enterprises

A large manufacturing company (turnover of more than Rs 100 million) will be entitled to a new allowable deduction rate of 25% (instead of 10%) on the amount purchased for any locally manufactured products from a small enterprise.

❑ Income Tax Holiday for Freeport Companies

Newly incorporated freeport operators or developers making an investment of at least Rs 50million will benefit from an 8-year tax holiday if (i) it starts operations on or after 1 July 2022 and (ii) conforms with the substance requirements set by the Economic Co-operation and Development (OECD)

❑ Waiver of income tax penalties for SMEs

The Income Tax Act will be amended to waive penalties for late submissions of income tax returns and late payment of income tax for the years 2020/2021 on SMEs outstanding, for penalties outstanding as at 25 March 2022.

❑ Financial assistance to SMEs – salary compensation 2022

The Income Tax Act will be amended to enable SMEs to be refunded the salary compensation of 2021 and 2022 paid to its employees up to 30 June 2022, effective as from 1 January 2022.

❑ Financial assistance to enterprises in the tourism sector

The Income Tax Act will be amended to refund enterprises in the tourism sector the salary compensation paid to employees for the period January to June 2022, effective as from 1 January 2022. This will not apply to SMEs in the tourism sector in light of the SME Salary Compensation Refund, nor to workers in an enterprise located in Rodrigues if they have benefitted from the Wage Assistance Scheme.

❑ Premium Visa

It will be clarified that the foreign employer of the Premium Visa holder will not be liable to corporate tax under the Income Tax Act and social contributions under the Social Contribution and Social Benefits Act.

TAX MATTERS

INCOME TAX (CORPORATE) continued

☐ Introduction of a global minimum tax

The Income Tax will be amended to introduce a domestic minimum top-up tax to ensure that resident companies forming part of large multinationals, having a revenue of Euros 750million, are taxed at a minimum rate of 15 percent.

TAX MATTERS

TAX ADMINISTRATION (General)

☐ Declaration of Assets

The Independent Commission Against Corruption will now be allowed to disclose a copy of the declaration of assets of the employees to the MRA.

☐ Tax Arrears Settlement Scheme (TASS)

The TASS will be re-introduced to the effect that a full waiver of penalties and interest where tax arrears under the Income Tax Act, Gambling Regulatory Authority Act and Value Added Tax Act are paid in full by March 2023 and the taxpayer is registered under the Scheme by 31 December 2022. The Scheme is also eligible to taxpayers having cases pending before the Assessment Review Committee (ARC).

TAX MATTERS

TAX ADMINISTRATION (Income Tax)

❑ Tax Deduction At Source (TDS)

The rate of TDS has been amended from 3% to 5% for services provided by professionals and from 5% to 7.5% on rent paid by a resident of Mauritius.

❑ Extension of the scope of TDS

The scope of application of TDS will be widened consultancy fees, security and cleaning services, pest management services and payment of fees made by insurance companies to motor surveyors and mechanics for repairs of motor vehicles of policy holders. The rate applicable will be of 3%.

❑ Solidarity Levy - PAYE

Individuals liable to solidarity levy and deriving pension/director's fees will be entitled to request the responsible person for the payment to deduct the PAYE for the Solidarity Levy at the rate of 10%.

❑ Transfer of assets to a related company

Any transfer of an asset (plant, machinery or industrial premises) to a related company will be deemed to be transferred at its net value, including assets which are subject to depreciation.

❑ Power to require information from the Stock Exchange

The Central Depository and Settlement Company Ltd will be required to submit, on an annual basis to the MRA, a statement of financial transaction on individuals and companies that have purchased shares in listed companies exceeding Rs 250,000 in one transaction (in the case of an individual) and Rs 500,000 (in one transaction in the case of a company).

KEY POINTS



TDS rate

From 3% to 5% for professional services

TAX MATTERS

TAX ADMINISTRATION (Income Tax) (continued)

❑ Banks - Requirement to provide information

Banks, pursuant to the Income Tax Act will be required to provide information pertaining to bank accounts held jointly by a taxpayer in the same manner as an individual.

❑ Foundations and Trusts

The MRA will hold the right to request information from foundations and trusts to enable it to make assessments, collect tax or comply with any request for the exchange of information under any Double Taxation Avoidance Agreement (DTAA).

❑ Information sharing between the MRA and the Gambling Regulatory Authority (GRA)

The MRA will be allowed to share information with the GRA for the purposes of issuing personal management licences.

❑ International Arrangements

The Income Tax Act will be amended to allow Mauritius to enter into international arrangements for the resolution of cross border tax disputes through alternative dispute resolutions mechanisms and to implement internationally agreed standards to prevent base erosion and profit shifting.

❑ Taxation of digital economy

The Minister of Finance's powers will extend to encompass internationally agreed policies to address tax challenges from the digitalisation of money.

KEY POINTS



Banks, will be required to provide information pertaining to bank accounts held jointly by a taxpayer.



Information sharing by the MRA extended to GRA and from foundations and charities

TAX MATTERS

TAX ADMINISTRATION (Value Added Tax Act 1998)

The Budget 2022-2023 proposes various solutions to ensure that person liable to VAT are registered and comply with their VAT obligations., including the following measures:

- ❑ The MRA will be empowered to register a person for VAT that person is required by law to be VAT registered or where the MRA directs him/her to be registered.
- ❑ A list of all VAT-registered persons will be published on the website of MRA to avoid fraudulent practices. The list will be updated on a quarterly basis.
- ❑ In the event of a failure to submit a return by a taxpayer, the MRA will be empowered to publish electronically, 3 months after the due date, the name and address of the taxpayer and his directors and the taxable period in respect of which the return has not been submitted, with prior notification of the publication.
- ❑ In case an aggrieved person makes an objection against a decision of the MRA but fails to submit information, books or records requested by MRA within the required time frame, MRA may determine that the objection has lapsed. The taxpayer will not be entitled to submit any documents not submitted to the MRA, to the ARC on appeal.
- ❑ The eligibility conditions for VAT refund on a residential building, house or apartment of a cost not exceeding Rs 3 million, will be replaced by the condition that the covered area constructed should not exceed 1,800 square feet.
- ❑ Where a taxable person dies, any heir/legatee who accepts the succession of his estate or any executor/liquidator of his estate will be deemed to be an agent of the deceased and be liable to submit any VAT return and pay the VAT due with respect to transactions where VAT has been collected by the deceased. Where the business continues to operate after the death of the taxable person, the transactions will be deemed to be those of the succession and the latter will be required to register for VAT purposes.
- ❑ It will be clarified that, where a VAT-registered person acts as an agent of a principal and goods received under consignment or a sale or return agreement are sold by the agent in his own name, VAT should be charged by the agent on the selling price of the goods

TAX MATTERS

TAX ADMINISTRATION (Mauritius Revenue Authority Act 2004)

- ❑ **Recovery of foreign taxes:** The MRA Act will be amended to empower the MRA to recover foreign taxes in order to provide assistance to foreign countries in the recovery of taxes.
- ❑ **Appointment of additional board member of the MRA:** The MRA Act will be amended to cater for the appointment of an additional member on the board of the MRA
- ❑ **Alternative Tax Dispute Resolution Panel:** The threshold to bring cases before the Alternative Tax Dispute Resolution (ATDR) panel will be reduced to Rs 5 million (instead of Rs 10 million).
- ❑ **Customs cases before the ARC:** Insertion of a provision to allow aggrieved person lodging a representation at the ARC against a decision taken by MRA Customs under the Customs Act and Customs Tariff Act to file a Statement of Case.
- ❑ **Improving Efficiency of the Assessment Review Committee:** In order to speed up determination of cases at the level of the ARC, the following amendments will be brought in the Mauritius Revenue Authority Act to:
 - (A) Conduct one mediation meeting, subject to agreement from both parties, by the Chairperson or the Vice-Chairperson, if he is of the view that some or all of the issues of a case can be resolved through mediation;
 - (B) Constitute a panel of 2 persons instead of 3 persons, (i.e. the Chairperson or Vice-Chairperson and a member) depending on the nature of a tax appeal case,

TAX MATTERS

TAX ADMINISTRATION (Mauritius Revenue Authority Act 2004) continued

❑ Improving Efficiency of the Assessment Review Committee:

(C) the possibility of the Chairperson or the Vice-Chairperson, hearing a case alone and giving a decision orally, on the same day on the issues where –

- a taxpayer has failed to file a tax return or produce required documents to the Objection Directorate of the MRA;
- an aggrieved taxpayer has failed to pay the 10% due on objection or 5% due on appeal;
- a case is lodged after the statutory delay; or
- a point of law is taken before the start of a hearing.

(D) subject to agreement from both parties, a panel of the ARC will be allowed to replace up to 2 of its members, apart from the Chairperson or Vice-Chairperson, and proceed with the hearing of a case without having to start anew;

(E) the ability to conduct, at the request of a party, hearing through videoconferencing subject to the agreement of the other party, at the ARC;

(F) The empowerment of the Chairperson or the Vice-Chairperson, depending on the nature of a tax appeal case, to give a decision based on the submission of statements of case only subject to the agreement of both parties; and

(G) The submission of statements of cases and witness statement, within 21 days if any, to the Committee with copy to the other party after a case has been called proforma for the first time before the Committee.

TAX MATTERS

TAX ADMINISTRATION (Excise Act 1994)

The 2022-2023 proposes a host of measures relating to the Excise Act 1994. The salient ones are as follows:

- ❑ It will be clarified that, where the Objection Directorate of the MRA allows an objection by a stakeholder claiming refund of excise duty paid in excess, the refund will be made together with interest.
- ❑ MRA will be empowered to carry out “controlled delivery” of excisable goods such as cigarettes and tobacco with a view to gathering evidence on the smuggling chain.
- ❑ The opening hours for the sale of alcoholic products in restaurants and pubs will be extended to 2 a.m. daily.
- ❑ The requirement to affix excise stamps will be extended to cover beer and wine in cans and other types of packaging.

TAX MATTERS

TAX ADMINISTRATION (Registrar General)

- ❑ **Re-introduction of the Arrears Payment Scheme:** The Arrears Payment Scheme under the Registrar-General's Department will be re-introduced for another year. The Scheme will provide for full waiver of penalties and interest if a debtor of the Department settles any debt amount on or before 31 March 2023. This Scheme will apply to tax arrears due as at 31 May 2022.
- ❑ **Claim for Additional Duty or Tax on Re-assessment:** No claim for additional duty or tax will be issued by the Registrar-General for an amount of less than Rs 7,500 instead of Rs 5,000 following a re-assessment of the value of an immovable property.
- ❑ **Transfer of Shares by a Non-citizen:** A non-citizen will be required to produce a certified copy of the certificate under the Non-Citizens (Property Restriction) Act not only on the acquisition of shares in a partnership, society or a company but also on the disposal of such shares.
- ❑ **Digital Signatures:** The Registration Duty Act will be amended for the acceptance of a deed for registration where a secure digital signature has been affixed in conformity with the Electronic Transactions Act.

PROPERTY TAXES

Tax on Transfer of Leasehold Rights in State Lands for hotels

The rate of tax on transfer of leasehold rights was halved last year. This halving will end on 30 June 2023.

Home Ownership Refund Scheme

This scheme was introduced last year with the aim of making home ownership more affordable. The Scheme will be extended for an additional year, up to 30 June 2023. The Scheme will also extend to transactions carried out during 12 June 2021 to 30 June 2021. Additional categories of beneficiaries and types of immovable properties are expected to be included in the Scheme.

Home Loan Payment Scheme

The Home Loan Payment Scheme will be extended until 30 June 2023 and will extend to transactions from 12 June 2021 to 30 June 2021.

Transfer of VRS Scheme among heirs

VRS properties transferred to heirs of the deceased beneficiary will be deemed to have been passed by inheritance, hence free from duty and tax. This amendment will be backdated to take effect on 1 July 2016.

Share buyback

The Registration Duty Act 1804 and Land (Duties and Taxes) Transfer Tax Act 1984 will be amended to impose registration duty and tax will be leviable on share buybacks on companies holding immovable property.

KEY POINTS



50% of tax rate on transfer of leasehold rights ending on 30 June 2023.



No registration duty for first-time buyers until 30 June 2023



Registration duty and tax applicable to share buybacks.

SOCIAL CONTRIBUTION AND SOCIAL BENEFITS ACT

Payment of social contribution by self-employed individuals

The Social Contribution and Social Benefits Act 2021 will be amended to:

- (I) allow self-employed individuals to pay the social contribution for a full year in advance, at any point in time, or on a monthly basis;
- (II) give a private household employer the option to pay on a yearly or monthly basis; and,
- (III) to allow a self-employed individual who opts to make an annual return not to submit a quarterly statement.

DOING BUSINESS

- ❑ To consolidate the position of Mauritius as an international financial centre, the current requirement for high-net worth individuals and families will be reviewed to a minimum portfolio of USD 5 million per management family office and holders of Global Headquarters Administration licence will be provided work and residence permits for 5 executives and their dependents.
- ❑ It will be free to start a business and incorporate a company in Mauritius. We will need to see what companies are being targeted here by the legislator as for now it is only an announcement.
- ❑ The Bank of Mauritius will ensure that a bank account can be opened within 1 week, whether for an individual or a business.
- ❑ A Business Regulatory Reform Bill will be introduced to facilitate business.
- ❑ The legislative framework will be adapted to enable re-insurance companies to set up in Mauritius.
- ❑ Where the holder of a Premium Investor Certificate fails to use the land acquired for the project approved under such certificate, the Registrar General will now be allowed to make an assessment, by written notice of duty or tax otherwise payable and claim such amount from the parties to the transaction.
- ❑ A tax allowance will be granted to angel investors providing seed equity financing to SMEs.

BANKING

The changes to the banking legislation appear to be very minimal and conservative and save for certain clarifications relating to digital currency, the amendments appear to be more administrative in nature.



The Bank of Mauritius Act ("**BoMA**") will be amended to empower the Bank of Mauritius ("**BOM**") to engage in trade that relates to the activities of the Bank of Mauritius Museum.



The Banking Act ("**BA**") will be amended to require any person who wishes to carry out a due diligence exercise on a financial institution, with the intention to acquire a shareholding in such financial institution to sign a declaration of confidentiality. This will ensure that any confidential information during such an exercise is not divulged improperly.



Following amendments to BoMA, the BOM shall increase the functionalities of the Central KYC system and the Central Accounts Registry established by the BOM to facilitate collection, verification, validation and extraction of KYC records.



Amended BA provisions will allow the BOM to require a licensee to comply with confidentiality requirement specified in guidelines, directives or instructions issued by the BOM.



The BA will be amended to remove the possibility of the BOM to grant an in-principle approval to an applicant in the context of an application for a banking licence. The banking licence will be issued to the applicant only if all the conditions imposed are fulfilled and all the required documents are submitted to the BOM.

BANKING (CONT'D)

DIGITAL CURRENCY

The BOM has embarked on journey to create a Central Bank Digital Currency ("CBDC") since 2020. The below amendments to the BoMA suggests that the creation of such a CBDC, although very slow, seems to still be on the cards of the BOM.



BoMA will be amended to clarify that the BOM may open accounts and accept deposits from persons for the purpose of issuing digital currency.



BoMA will also be amended to clarify that the BOM may open accounts and accept deposits from persons for the purpose of issuing digital currency.

INITIATIVES OF THE BOM

- ❑ The BOM will launch a regional Renminbi (“**RMB**”) Clearing Centre this year with the Bank of China. There is a fierce competition between offshore RMB clearing centres but with the use of RMB being used outside China, it is a smart move to set such clearing centre to try to be a gateway to RMB clearing.
- ❑ The BOM will issued “RuPay” cards and Indian QR Code in Mauritius in collaboration with the National Payments Corporation of India. With the great and growing Indian diaspora in Mauritius, this move seems only logical to further allow the Indian diaspora to have easy access to such payment methods in Mauritius.
- ❑ A national payment card will be introduced for customers in Mauritius. As a rising number of businesses seem wary of allowing the use of bank provided payment cards due to thinner profit margins in the looming recession, this measure is a welcome attempt to ease the burden on such businesses and allow the consumer to still enjoy cashless purchases.

COMPANIES ACT 2001

The Companies Act ("CA") will be amended to remove certain leniencies granted by the Government due to Covid-19 and to provide for certain measures set out below.

- ❑ The temporary time extension provided due to Covid-19 will be removed from the CA and the following requirements will be reinstated:
 - calling annual meeting of shareholders not later than 6 months after the balance sheet date;
 - preparing financial statements within 6 months after balance sheet date; and
 - filing of financial statements with the Registrar of Companies within 28 days from the date such financial statements have been signed, or such other period as may be determined by the Registrar of Companies.
- ❑ Section 162 of the CA on the duties of directors on insolvency will be reinstated. This section was suspended due to Covid-19. However, such duties will be subject to such conditions as may be prescribed, which was not the case prior to the amendment.
- ❑ Companies will be required to include certain information on its subsidiaries in its annual reports namely:
 - particulars of interest;
 - donations made by the subsidiaries;
 - details of past and present directors;
 - fees payable to auditors; and
 - details of major transactions.
- ❑ Companies will not be allowed to be registered simultaneously in Mauritius and another jurisdiction at the same time.

COMPANIES ACT 2001

(CONT'D)

- ❑ The Registrar of Companies will be allowed to remove a company from the Register of Companies where there is no reason for the company to continue its existence. This is a departure from the current provision which provides that the Registrar of Companies is allowed to remove a company where such company has ceased to carry on business and there is no other reason for the company to continue in existence. It will be interesting to see what scenario the legislator has in mind by making such an amendment.
- ❑ The CA will be amended to facilitate the restoration of a company to the Register of Companies in case such company was still carrying on business at the time of removal by the Registrar of Companies.

FINANCIAL SERVICES

The amendments to the Financial Services legislation seem to deal more with consolidation of the administrative and enforcement powers of the FSC.

- ❑ The definition of “financial services” in the Financial Services Act (the “FSA”) will be amended to remove “Global Headquarters Administration”, “Global Shared Services” and “Global Treasury activities” and a separate section will be created to regulate global activities as per FATF requirements.
- ❑ The FSA will be amended to enable the FSC to initiate regulatory actions against individuals who have been performing the functions of an officer although such persons have not been approved by the FSC.
- ❑ The FSA will provide for the creation of a settlement committee which will allow for the possibility for early resolution of disciplinary matters with a licensee.
- ❑ The FSA will be amended to review the provisions of global shared services and compliances services to regulate such activities.
- ❑ The Insurance Act will be amended to increase the prescribed period for claim applications of victims of hit and run accidents from 2 to 5 years.
- ❑ The Insurance Act will also be amended to establish a framework for structured investment-linked insurance business activities.
- ❑ A framework for the setting up of a multilateral clearing system to expedite the settlement of outstanding motor claim recoveries subject to rules made by the FSC.
- ❑ The Private Pension Scheme Act will be amended to allow the transfer from one private pension to another pension scheme under its scope or to the Portable Retirement Gratuity Fund.
- ❑ The Securities Act will be amended to allow an official exchange to allow for investigations of market abuse cases involving issuers on securities exchanges.

FINANCIAL SERVICES

(CONT'D)

- ❑ Amendment will be brought to the Virtual Asset and Initial Token Offering Services Act (the “Vaitos”) to allow the FSC and relevant authorities to use software/digital tools in carrying supervision and investigation.
- ❑ The Vaitos will also be amended to allow information obtained by the FSC and the relevant authorities from software/digital tools to be admissible as evidence in criminal investigation, prosecution or other related criminal or civil court proceedings.

NON-CITIZENS

- ❑ The Non-Citizen (Property) Restriction Act will be amended to mitigate the risk that a non-citizen owns residential premises for which he is not entitled through acquisition of shares in a company.
- ❑ Where a residential property is acquired by more than one non-citizen each owning a fraction of such property, it will now be possible for each such non-citizen to apply for residency in Mauritius provided that the investment by each non-citizen exceeds USD 375,000. This is a welcome incentive to promote investments from non-citizens willing to live and work from Mauritius.
- ❑ Holders of residence permits will be able to apply to acquire a residential property of a minimum of USD 350,000 outside the existing schemes, subject to a 10% contribution made to the Solidarity Fund. A committee chaired by the Prime Minister will examine such applications on a monthly basis.
- ❑ A work permit committee chaired by the Prime Minister will also be set up to expedite the issuance of work permits.

EMPLOYMENT

Workers' Rights Act ("WRA")

This year's Budget Speech and associated Annex bring a plethora of amendments to the provisions regulating employment, with an expansion in allowances afforded to workers as well as further regulation in respect of charges levied against a worker for alleged misconduct.

❑ Protection afforded to freelancers and service providers

Relevant freelancers or independent service providers, will now benefit from the protection afforded attached to the status of a worker or atypical worker. This will be applicable where the freelancer or service provider performs the duties which are same or similar to those typically carried out by a worker.

❑ Allowances to employees

Cyclone allowance for work from home

Cyclone allowance will now be payable to those workers required to work from home on a day on which a cyclone warning class III or IV is in force, bringing clarity to the existing stance on cyclone allowance. This measure will be restricted to those workers earning less than Rs 600,000 in a year.

Meal allowance

The existing provisions under the WRA provide that meal allowance is afforded to employees in respect of overtime work. This provision will be amended to apply to shift workers whose normal hours of work exceed 10 hours.

Travel and petrol allowance

Travel allowance shall now encompass travel by light rail and shall be refunded to any eligible worker

Petrol allowance shall be increased by 10% up to a maximum of Rs 2,000 in a month, irrespective of the salary earned by a worker.

EMPLOYMENT

Workers' Rights Act ("WRA")

❑ Leaves

- The amendments to WRA will see the introduction of a new provision regarding leave afforded to a worker for the purposes of caring for a sick child. The worker may avail himself to up to 5 days from his paid leave entitlement for such purposes.
- The ceiling set at 90 days for the accumulation of untaken sick leaves will be abolished.

❑ Proceedings for charges levied against a worker

- An oral hearing may now be held to afford the opportunity to a worker to answer a charge, in addition to a written explanation provided by the latter.
- A worker must also be afforded the opportunity to answer of a charge, despite knowledge by the employer of a conviction before a court of law relating to criminal proceedings.

❑ Contributions and payments

- Amendments will be brought to the WRA to ensure that the administration of the PRGF is improved. In effect a worker shall be paid in the first instance 90 % of his retirement benefits on the date of his retirement. The balance is to be paid after completion of the benchmarking exercise.
- Payment of lump sum in respect of past services shall be paid directly to the worker or the heirs of the deceased worker.
- The amendments will also clarify the notional calculation for a part time worker for the purpose of computation of retirement gratuity.

EMPLOYMENT

❑ Proceedings before the Redundancy Board

- Where a worker makes an application to the Redundancy Board for reinstatement or for payment of severance allowance, the discretion to make such payment shall rest with the Board.
- The WRA will further clarify that where a notification of intended reduction of workforce or closure has been made to the Redundancy Board, the Board can make an order for the employer not to reduce his workforce or close his enterprise where the Board considers that the reasons for such decision is unjustified.

❑ Other measures

- The process for application for a protective order as awarded by a Judge in Chambers will be broadened and will include gratuity on retirement.
- The definition of receivership as utilised under the WRA will be harmonised with the concept of insolvent in so far as it relates to the Wage Guarantee Fund Account.
- The WRA will be amended to provide a clear categorization of workers eligible to the payment of additional remuneration.
- A definition of 'sexual harassment' will be introduced.
- A worker shall be allowed to retire voluntarily before the age of 60 years where the latter has completed 436 months' service.
- A worker who has sustained an injury out of and in the course of his work shall not be dismissed on the ground of performance where it has been certified by a Government Medical Practitioner that he has not fully recovered from the injury.
- Injury allowance shall be aligned with the rate specified in the Social Contribution and Social Benefits Act.

EMPLOYMENT

Amendment to the Employment Relations Act (“ERA”)

- ❑ The following amendments are considered by the Annex to the Budget Speech 2022-23:
- ❑ The ERA will be amended to allow for the improvement of the process for collective bargaining. The terms and conditions of workers shall be recognised by trade unions.
- ❑ The dispute resolution process will be facilitated by the provision of a referral of disputes to the Commission for Conciliation and Mediation.
- ❑ The ERA will clarify the circumstances in which a worker, whose employment has been terminated, may report a labour dispute for the purposes of claiming reinstatement
- ❑ The ERA will reinforce the definition of discrimination. In this respect the terms ‘gender’, ‘place of origin’, ‘age’ and ‘impairment’ will be introduced.
- ❑ The post of conciliators will be redefined to ‘conciliators and mediators’ with the advent of the amendments.

GAMBLING REGULATORY AUTHORITY

Amendments to the Gambling Regulatory Authority Act (“GRA”)

The Annex to the Budget Speech 2022-23 brings numerous changes to the gambling regulatory framework, with a specific emphasis on the regulation of horse racing activities.

❑ Testing requirements and veterinary services

The responsibility for provision of laboratory testing for equine blood, urine and other samples now rests on the horse racing committee, contrary to what was previously provided under the GRA whereby the horse racing organiser was responsible for such testing. The costs ancillary to the relevant tests carried out will be borne by the Horse Racing Division.

With the advent of the amendments to the GRA, the horse racing organiser will now be under the obligation to provide assistance to the Horse Racing Committee in respect of veterinary services for out of competition, pre and post sampling and testing of horses.

❑ Broadcasting of live racing

The GRA as currently in force does not provide for a framework regulating the broadcasting of live racing. The amendments proposed shall provide that any authorised broadcasting agent will be compelled to use a broadcasting station or website for the coverage of live racing. This dissemination will come at a fee which shall be determined from time to time by the Gambling Regulatory Authority.

It is also proposed that an exemption from payment of a broadcasting fee will be introduced and shall be applicable to all operators.

❑ Use of social media

The GRA will be empowered to regulate promotional activities conducted on the internet, including social media outlets and messaging platforms.

GAMBLING AUTHORITY

❑ Additional powers under the GRA

- The powers of the Gambling Regulatory Authority will be reviewed with an aim to better implement the objectives of the Authority. In this respect, the licensing provisions and conditions as currently applicable will be reviewed and will endeavour to ensure a better regulation in respect of the issue of licenses.
- The Gambling Regulatory Board will now be vested with a discretionary power to issue Personal Management Licences.. This measure seeks to further regulate the management of entities licensed under the GRA.

❑ New legal requirements

The amendments proposed to the GRA will see the introduction of new legal requirements regulating the following matters:

- The importation of gaming machines, Limited Pay Out Machines, Amusement Machine will be restricted. Only duly licensed persons will be authorised to conduct the importation of such products.
- The obligation on a horse racing organiser to have a functional race track at its disposal for the whole racing season. The race track must be duly approved by the Horse Racing Division.

❑ Other notable changes

- The definition of 'jockey' under the GRA will be amended to exclude persons qualified to ride as apprentice or track riders.
- To promote competition, the GRA will see amendment to allow any trainer/stable to field horses with any horse racing organiser of his choice.
- A fee payable to the Horse Racing Organiser by remote operators will be introduced and shall be levied as an additional percentage over the normal rate in respect of race meetings held in camera.
- Up to a maximum of 20 outlets shall be approved by the GRA in respect of fixed odd betting on football matches taking place outside Mauritius.
- The concept of 'fit and proper' person will be introduced.

AML - CFT

Upon the successful exit from the FATF list of jurisdictions under increased monitoring, this year's Budget Speech marks a stark departure from last year's standpoint, bringing few amendments to the AML/CFT framework. The following changes are proposed:

❑ Amendments to the Financial Intelligence and Anti-Money Laundering Act ("FIAMLA")

No details were provided in the Budget Speech nor its Annex on the precise amendments to be brought to the existing framework.

❑ Amendments to the Prevention of Corruption Act ("POCA")

- The scope of corruption offences captured under POCA will be expanded to include offences relating to foreign bribery. It is expected that the POCA will provide for new definitions notably those of foreign bribery and foreign public official
- It is also proposed that POCA will cater for offences regarding the non-deductibility of bribes from turnover or income upon the submission of tax returns with the Mauritius Revenue Authority.

❑ Amendment to the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act ("UNSA")

The UNSA will be amended to now provide a definition to 'international terrorism' .

CIVIL STATUS ACT

- ❑ The Civil Status Act will now allow for the tardy registration of Muslim religious marriages with the Muslim Family Council with a view to extending the basic widow pension to Muslim widows. This measure will encompass Muslim religious marriages up to 2022.
- ❑ It will now be made mandatory for intending spouses to be present at the publication of their marriage made in the office of the district where the marriage is to take place.
- ❑ In relation to marriages celebrated between non-citizens, it will now become mandatory for such non-citizens to produce duly apostilled certificates from the country of origin of the documents. Where the apostille of such documents is not feasible by reason of war or unforeseen circumstances, it is proposed that the Civil Status Act will be amended to cater for such cases. The precise amendments and new process to be adopted has not been set out in the Budget Speech 2022-23 nor its associated Annex.
- ❑ The Civil Status Act will provide for new definitions namely:
 - 'private residence'
 - 'non-private residence'
 - 'sufficient means'

Disclaimer

The information provided in this legal alert is for general information purposes only. It is not intended to provide legal advice or opinion of any kind. Please refer to your professional advisors for specific advice.

About Prism Chambers

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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