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COVID-19 BILL MAURITIUS

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MAURITIUS' NEW COVID-19 BILL AMENDS KEY ACTS OF PARLIAMENT

Mauritius has so far been in lockdown since 23 March 2020: a short time perhaps when measured by the calendar, but endlessly long to gallop through for barristers whose feet have become accustomed to courts. When the whole world was forced to come to a halt, it would have been naïve to think that Mauritius would be spared. People were excited at first at the thought of being forced to stay indoors. However, that excitement quickly vanished and left something squeezed in its place, something like doubt or fear, where more questions were being raised than answers found. The meditative activity I then favoured was a review of the forthcoming law and the new vision of the judicial system in Mauritius.

We bear in mind our valued clients while writing this article and hope this article could be the hunting ground for them to better understand the forthcoming laws. We are by no means providing a review of the current laws. We are enumerating the provisions being potentially envisaged.

The Mauritian Government is in the process of enacting the Covid-19 (Miscellaneous Provisions) Act 2020 (henceforth, the "Act")– still a Bill, and awaiting promulgation by Parliament as early as Wednesday 13 May 2020 – to amend a number of enactments to cater for the impact of the COVID-19 infectious disease , and for matters connected, consequential or related thereto. Consequently, with the advent of the Act, a number of Acts of Parliament, which have been under constant review over the past years, will be amended to cater for the consequences that this unprecedented pandemic has prevailed over the average citizen. Reason and rationality appears to be the main coat of paint used by the legislator to cover the ragged surface left behind by the pandemic.

CenturionPlus Mauritius lawyer Rubesh Doomun shares in exclusivity the major amendments envisaged by the Act.

Amendments to the Companies Act 2001

A new section 20A is being introduced in the Companies Act 2001 to cater for temporary measures during the COVID-19 period which is meant to enable the Registrar of Companies to issue such Practice Directions, guidelines or such other instructions as may be necessary for the proper administration of the Act, either during or after COVID-19 period lapses.

This provides a wider discretion to the Registrar of Companies to grapple with the ever-increasing queries of companies.



Another issue which might have been bothering shareholders during this lockdown period is under review: the legislator is altering the timeframe regarding the holding of annual meeting of shareholders (currently provided by section 115 of the Companies Act 2001) from 6 months to 9 months or such further period, as the Registrar of Companies may determine, after the COVID-19 period lapses. On the other hand, the duty of directors of a company during insolvency (which is catered for by section 162 of the Companies Act 2001) will not be applicable during the COVID-19 period and such further period, as the Registrar of Companies may determine. The timeframe within which the board of a company is to prepare financial statements which has been altered from 6 months to 9 months or such further period, as the Registrar may determine. Finally, the timeframe for registration of financial statements of a company will be altered from 28 days to 3 months or such further period, as the Registrar may determine.

Amendments to the Financial Services Act

For those who have a particular penchant towards global business, it is noteworthy that the Financial Services Act is being amended to cater for meetings of the Board of the Financial Services Commission to be held by means of audio and/or visual communication by which all the members participating and constituting a quorum can simultaneously hear each other without the need for the members to assemble at any particular place. This brings some relaxation to the otherwise rigid provisions stipulating the need for the Chairperson to convene a meeting, albeit not physically, at least once a month at a place he thinks fit.

Amendments to the Courts Act 1945

Courts have so far been dispensing information on a need-to-know basis such that only litigants whose cases which fell during the lockdown period were being heard, through the various logistics put in place. Additionally, applications requiring the urgent intervention of courts, like urgent injunction applications, bail hearings and applications for protection against domestic violence, have been scheduled by Visio conference. This has prompted the legislator to pen down some provisions in the forthcoming Act in view of enabling the smooth hearing of the aforesaid matters.

The Courts Act 1945 will be amended to include new sections (sections 197G and 197H) in order to enable the Chief Justice, during and after the COVID-19 period, to determine that such judicial services as he deems essential shall be provided by any court. The Chief Justice will also be able to make such rules to regulate the practice and procedure before any Court as he considers appropriate during and after the COVID-19 period. Therefore, he may limit the number of persons who may be present

in chambers or in a courtroom, or call or hear a matter remotely by means of a telephonic, an electronic or any other communication facility as the Chief Justice may approve in writing.

Just to dot the i's and cross the t's for the pedantic still doubtful about the logistics of Mauritian courts, I have been involved in the online hearing of my cases, and the online system has lived up to its expectations.

Relaxation of the delays prescribed for judicial proceedings

The legislator has catered for a mild relaxation of the delays pertaining to judicial proceedings: the new provision is intended to provide that where, under an enactment, a time is imposed to institute or lodge judicial proceedings and the time expires, or falls wholly or partly, during the COVID-19 period, or a period of 30 days after the COVID-19 period lapses, the judicial proceedings may, notwithstanding the time imposed, be instituted or lodged not later than such period as may be prescribed by regulations under that enactment. A similar provision is directed towards the service of a notice or any other document.

Public Procurement

The scope of the Public Procurement Act 2006, which caters for the regulation and basic principles and procedures to be applied in the public procurement of goods, public works, consultant services, and other services in Mauritius is being widened: henceforth, the opening of the bids submitted may be made through technological means, subject to such guidelines as the Central Procurement Board may issue.

Amendments to the Workers' Rights Act 2019

The Workers' Rights Act 2019, which is itself a new piece of legislation, having replaced the previous Employment Rights Act 2008 last year, is under scrutiny for obvious reasons. Unseen but evident from the number of rising patients being detected on a daily basis across the world, this pandemic has constrained the Mauritian workforce to work from home. Against this backdrop, how things would evolve was at first beyond comprehension for the employers as well as for the working class. In view of settling the dust, the legislator is bringing amendments to its newly promulgated Workers' Rights Act on numerous fronts.

A new section (section 17A) with regard to work from home is being envisaged whereby employers may require their workers to work from home provided a notice of at least 48 hours is given to the worker.

A novelty that the legislator brought in the Workers' Rights Act was the possibility for worker having to care for their child to work on flexitime.

The existing provision pertaining to flexitime will be amended such that its application will no longer be restricted to a worker having to care for his child where the child is below school age or the child has an impairment but will be applicable to any worker generally provided a notice of at least 48 hours is provided by the employer.

A new provision (section 24A) pertaining to overtime in connection with Covid-19 period is being contemplated in addition to the existing provision in relation to the performance of overtime. The new aforesaid new provision, which also provides the rate at which such workers will be remunerated, will apply to any worker, other than a watchperson, working in blockmaking, construction, stone crushing and related industries as well as the manufacturing sector governed by the Factory Employees (Remuneration) Regulations 2019.

However, there is a new provision enabling an employer to withhold a prescribed number of a worker's annual leave entitlement with respect to the Covid-19 period.

Furthermore, the protection afforded under the current provision of the Workers' Rights Act against termination of an employment agreement is being extended to an agreement in respect of which the employer is in receipt of a financial assistance under the Wage Assistance Scheme or such other financial assistance which is paid to an employer by the State or an agent of the State, as the case may be, under any other enactment or otherwise.

The provisions pertaining to reduction of workforce under the Workers' Rights Act will be amended to include a new section (section 72A) to provide for reduction of workforce in certain enterprises in the services sector.

Under that section, the Minister will have the possibility, by regulations, to exempt an employer who provides services in the sectors specified in the Third Schedule to the Employment Relations Act from the application of the existing provision (section 72 – Reduction of Workforce). Where an employer, who has been exempted pursuant to the aforesaid provision, intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, the employer shall give written notice to the Redundancy Board, together with a statement showing cause for the reduction or closure at least 15 days before the intended reduction or closing down, as the case may be.

However, what may not be so welcome by the worker is where the Redundancy Board finds that the reasons for the reduction of the workforce or the closing down are justified, the Board shall, in lieu of the termination of employment, at the request of the employer and subject to the consent of the worker concerned, order that the worker, or such category of workers as the employer may designate, shall proceed on leave without pay for such period as the employer may specify in his notification subject to the condition that the resumption of employment be on such new terms and conditions, including pension benefits, as the employer may, prior to resumption of work, offer to the worker.

Mauritius' judicial system remains resilient and competitive

Mauritius has undoubtedly lived, like many other countries, a pandemic which intended to sway the economic as well as the judicial systems of Mauritius. However, the judicial system remained resilient. The above new provisions are proof of the legislator's intention to hit some reasonable mid-point between pre-COVID-19 period and post-COVID-19 period. There will surely be new provisions and developments in the near future. We remain confident that we shall continue giving our clients the best legal advice in order to deal with the sequelae that the pandemic has left on them.

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