

Finance Act 2019



INTRODUCTION:

The Finance (Miscellaneous Provisions) Act 2019 (the "Finance Act 2019") was enacted on 25 July 2019 to provide for the implementation of measures announced in the Budget Speech 2019-2020, presented by the Honourable Mr Pravin Kumar Jugnauth, Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development on 10 June 2019.

This edition of our newsletter encompasses the salient measures, handpicked by us and that we believe will be of interest to our valued client base. If you have any questions or concerns on how these measures will impact on your current or upcoming structures, please get in touch with your usual contact person at ITL or drop us an email on info@intercontinentaltrust.com.

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1. Amendments to Companies Act 2001

Small Private Company

The definition of a small private company has been updated such that a company specified in the First Schedule to the Financial Reporting Act cannot be classified as a small private company.

As per the provisions of the Companies Act, a company shall be a “small private company” where:

- (a) it is a private company the turnover of which in respect of its last preceding accounting period is less than 50 million rupees; and
- (b) it is not a company holding a Global Business Licence; and
- (c) it is not an entity specified in the First Schedule to the Financial Reporting Act.

Private Company

The maximum number of shareholders a private company can have has increased from 25 shareholders to 50 shareholders.

Board of Public Company

The Companies Act has been updated to include a requirement for a public company to have at least one woman appointed on its Board.

Beneficial Ownership

Prior to the amendment of the Companies Act, the term “Beneficial owner” or “ultimate beneficial owner” related to a “natural” person who holds by himself or his nominee, a share or an interest in a share which entitles him to exercise not less than 25 per cent of the aggregate voting power exercisable at a meeting of shareholders.

This definition has now been repealed. The definition of the term “beneficial owner” or “ultimate beneficial owner” has been broadened to:

- (a) mean any natural person who ultimately owns or controls a company or the natural person on whose behalf a transaction or activity is being conducted in relation to a company;
- (b) include –
 - (i) the natural person who ultimately owns or controls a company through direct or indirect ownership of such shares in such percentage as may be prescribed or voting rights or ownership interest or control by other means;
 - (ii) where no natural person under paragraph (i) is identified, or if there is any doubt that the person identified is the beneficial owner, the natural person who controls the company in the manner one company controls another company as defined under *Section 5 – Meaning of “Control”* of the Companies Act;
 - (iii) where no person under paragraphs (i) and (ii) is identified, the natural person who acts as executive director or has equivalent executive powers.

Where the shares of a company are held by a nominee, information on the names and the last known addresses of the beneficial owners and ultimate beneficial owners have to be lodged with the Registrar within 14 days from the date on which any entry or alteration is made in the share register.

Further to the Finance (Miscellaneous Provisions) Act 2019, over and above the requirement to lodge the information with respect to beneficial owners and ultimate beneficial owners with the Registrar, there is also an onus on the company to keep an updated record of the said information and of action taken to identify a beneficial owner or an ultimate beneficial owner. Where a company ceases to carry on business, the last directors of the company shall keep the information of its beneficial owners for a period of at least 7 years from the date of such cessation of business. Failure by a company or a director or former director of a company (other than a small private company) to comply with the above shall constitute an offence, which can lead to a fine not exceeding 300,000 rupees.

2. Amendments to Financial Services Act

“Officer” to include MLRO and Compliance Officer

The term “Officer” has been extended to include a money laundering reporting officer, a deputy money laundering officer and a compliance officer.

Officer now means:

- A member of the board of directors,
- A chief executive,
- A managing director,
- A chief financial officer or chief financial controller,
- A manager,
- A company secretary,
- A partner,
- A trustee,
- A money laundering reporting officer,
- A deputy money laundering officer,
- A compliance officer, or
- A person holding any similar function with a licensee

It is to be noted that under Section 24 of the Financial Services Act, no person shall be appointed as an officer of a licensee without the prior approval of the Financial Services Commission (“FSC”).

Protection of whistle blowers

Provisions have been made in the Financial Services Act to protect any person who makes a report or disclosure in good faith to the FSC. No criminal or civil action shall lie against that person and the FSC shall not, without the consent of the person making the report or disclosure disclose the identity of the person except where it is necessary to do so.

However, any person who knowingly makes a false, malicious or vexatious disclosure shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

Global Business Companies

As per Section 71(3)(a) of the Financial Services Act, Global Business Companies were required to carry out their Core Income Generating Activities ("CIGA") in or from Mauritius by:

- Employing directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities; and
- Having a minimum level of expenditure, which is proportionate to their level of activities

Section 71(3)(a) of the FSA has now been repealed and amended such that Global Business Companies shall now be required to carry out their CIGA in, or from, Mauritius, **as required under the Income Tax Act**.

Currently, there is no provision related to the requirement with respect to the CIGA in the Income Tax Act or in the amendments brought to the Income Tax Act by the Finance (Miscellaneous Provisions) Act 2019. It is anticipated that Income Tax Regulations, expected to be released soon, will bring the relevant amendments and more clarity with regard to the conditions associated to core income generating activities in or from Mauritius.

Authorised Companies

The Financial Services Act has been amended to provide that authorised companies will be required to have their **central management and control** outside Mauritius.

Previously, under Section 71A(1)(b) of the Financial Services Act, authorised companies were required to demonstrate their **place of effective management** outside Mauritius.

Single Window System

In a move to expedite submissions for relevant permits and certificates such as occupational permits and certificates of incorporation, a Single Window System will be implemented and administered by the FSC.

Financial Business Activity

The definition of "financial business activity" in the Second Schedule of the Financial Services Act has been updated to include activities such as Crowd funding, Fintech Service Provider and Robotic and Artificial Intelligence Enabled Advisory Services.

Extension of Statutory Deadlines

The FSC has been provided with the power to entertain applications for extension of deadlines, either prior to or after any specific deadline, with respect to compliance requirements of licence holders.

4. Amendments to Economic Development Board Act

The Economic Development Board ("EDB") will introduce an e-Commerce Scheme (the "Scheme") under which successful applicants will be granted an e-Commerce certificate. Companies setting up an e-commerce platform in Mauritius before 30 June 2025 and holding an e-commerce certificate issued by the EDB are eligible to benefit from a tax holiday of 5 years subject to meeting certain prescribed conditions (see section on Income Tax Act).

More details will be provided on the Scheme once this has been finalized by the EDB.

5. Amendments to Freeport Act

For recall, Manufacturing companies which were issued with a Freeport certificate before 14 June 2018 are entitled to continue their operations indefinitely provided that their activities remain unchanged. Post that date, no Freeport certificates are being issued for manufacturing activities in the Freeport.

The Freeport Act has now been amended to allow manufacturing companies operating in the Freeport and which were issued with a Freeport certificate before 14 June 2018, subject to approval from the EDB, to build, develop and manage their own infrastructural facilities as a private Freeport developer assuming that they are carrying out the same manufacturing activities.

6. Amendments to Income Tax Act

Definition of non-resident companies for tax purposes

Effective as from 1 July 2019, companies which are incorporated in Mauritius but are being centrally managed and controlled outside Mauritius will be considered to be non-resident for tax purposes. The provision defining non-resident companies by reference to their place of effective management has been repealed.

Partial Exemption regime

The partial exemption regime which was introduced on 1 January 2019 has been extended to include the following, provided that the relevant prescribed conditions relating to substance are met:

- 80% of income² derived by a company from reinsurance and reinsurance brokering activities
- 80% of income² derived by a company from leasing and provision of international fibre capacity
- 80% of income² derived by a company from the sale, financing arrangement, asset management of aircraft and its spare parts and related aviation advisory services.

The partial exemption regime will also extend to interest¹ derived by a person from money lent through a Peer-to-Peer Lending platform operated under a licence issued by the FSC.

¹ effective as from 1 July 2019

² effective as from 1 July 2020

Tax Holidays

Activities	Income	Tax Holidays	Effective Date
Innovation-driven activities	Income derived by companies from intellectual property assets developed in Mauritius on or after 10 June 2019	8 years	1 July 2020
Development of marina	Companies set up on or after 10 June 2019 and engaged in the development of a marina	8 years	1 July 2020
E-commerce activities	Companies setting up an e-commerce platform in Mauritius before 30 June 2025 and a holder of an e-commerce certificate issued by the EDB	5 years	1 July 2020
Peer-to-Peer Lending platform	Companies starting operation before 31 December 2020 and licensed by the FSC	5 years	1 July 2020
Bunkering of low sulphur heavy fuel oil	Companies with an income year ending 30 June 2019 or newly set up companies after 1 July 2019	4 years	1 July 2020

Controlled Foreign Company (CFC) Rules

- a CFC is defined as a company which:

- (i) is not resident in Mauritius; and
- (ii) where more than 50% of its participation rights are held either directly or indirectly by a resident company or together with its associated enterprises*; and
- (iii) includes a permanent establishment of the resident company

* associated enterprise means an individual or entity in which the company holds directly or indirectly at least 25% of the participation rights/capital ownership or is entitled to receive at least 25% of its profits.

- Where the non-distributed profits of a CFC are deemed to have arisen from non-genuine arrangements which have been put in place for the main purpose of obtaining a tax benefit, that income shall be accounted as part of the chargeable income of the resident parent company

- Arrangement(s) will be regarded as non-genuine if the CFC would not have owned the asset or would not have undertaken the risk associated with all or part of its income generation if it were not controlled by a company where the people functions, relevant to the assets and risks, are carried out and are instrumental in generating the CFC's income

- CFC rules will not apply in the following instances, where:

- (i) accounting profits do not exceed EUR750,000 and non-trading income is less than EUR 75,000;
- (ii) accounting profits represent less than 10% of its operating costs for the tax period. Note that operating costs exclude the cost of goods sold outside the country where the foreign entity is tax resident and any payments to associated enterprises
- (iii) the tax rate in the in the country of residence of the CFC exceeds 50% of the Mauritian tax rate (i.e. where the headline income tax rate is more than 7.5%)

- Effective date: 1 July 2020

Real Estate Investment Trust (REIT)

REIT is a collective Investment Scheme or a closed end fund authorized as a REIT by the Financial Services Commission. Salient amendments are as follows:

- It will not be subject to income tax subject to meeting certain conditions
- REIT is exempted from paying Corporate Social Responsibility (CSR) tax
- Beneficiaries and/or participants of a REIT are liable to pay income tax on their earnings but individual beneficiaries and/or participants benefit from an exemption for the first MUR 50,000 received
- Effective date: 1 July 2020

Freeport Companies

- Freeport companies involved in the manufacturing activities will be subject to income tax at the rate of 3%
- Freeport companies will continue to benefit from exemption from CSR tax on the income derived from export. However, CSR tax will be applicable on income generated from the sales of goods on the local market and will be calculated as follows:

$$A/B \times C \times 2\%$$

"A": gross income generated from sales of goods from the local market for the preceding year

"B": gross income generated from all the activities of the Freeport Company for the preceding year

"C": total chargeable income for the preceding year

- Effective date: 1 July 2020

Presumptive tax on small enterprises

- Small Enterprise is defined as a company that is involved in the following activities:
 - Agriculture, forestry and fishing
 - Manufacturing excluding restaurants
 - Wholesale of goods
 - Retail of goods, including sale of food to be consumed off premises

And, whose gross income is below MUR 10 million in an income year and income generated from activities other than the ones mentioned above does not exceed MUR 400,000

- A Small Enterprise may by irrevocable notice elect to pay presumptive tax at the rate of 1% on its gross income
- A Small Enterprise having made the above election cannot claim any deduction, income exemption threshold, relief and allowances
- Penalties and interests would be applicable at the relevant rate for failure to pay the presumptive tax
- The Mauritius Revenue Authority may impose presumptive tax on Small Enterprises where the latter has underdeclared its gross income and the aggregate undeclared and declared amount does not exceed MUR10 million

Personal Income tax

Income exemption thresholds

The revised income exemption threshold of individuals resident in Mauritius is as follows:

Category	Income threshold (MUR)
Category A (no dependent)	310,000
Category B (one dependent):	420,000
Category C (two dependents):	500,000
Category D (three dependents):	550,000
Category E (four or more dependents):	600,000

Retired individuals (i.e. those who are aged 60 and above prior to 1st day of an income year) and persons with physical and/or mental disability are entitled to an additional amount of MUR 50,000 to the above categories.

Tax credit for employees

An individual deriving a basic salary, including compensations, not exceeding MUR 50,000 in the first month of an income year and whose total net income during that year is below MUR 700,000, shall be entitled to a tax credit equivalent to 5% of his chargeable income attributable to net income arising from emoluments.

Since an individual earning not more than MUR 650,000 is taxed at 10%, the above credit will not apply for this income threshold category.

Solidarity Levy

- Effective as from 1 July 2019, the definition of "leviable income" has been extended to also include the share of dividends received by a resident société or succession and attributable to an individual as an associate in a société or a heir in a succession
- Effective as from 1 July 2017, "Leviable income" does not include any lump sum received by a person as pension, death gratuity or compensation for death or injury

Current Payment System (CPS)

As from 1 July 2019, individuals whose gross income for the preceding year is below MUR 10 million and is engaged in the following activities, are exempted from submitting a CPS statement:

- Agriculture, forestry and fishing
- Manufacturing excluding restaurants
- Wholesale of goods
- Retail of goods, including sale of food to be consumed off premises

Voluntary Disclosure of Income Scheme – Foreign Assets (the “Scheme”)

- The Scheme applies to undisclosed income derived from Mauritius but held in foreign bank accounts and/or used to purchase foreign assets
- A person making the voluntary disclosure on or before 31 March 2020 for any years of assessment prior to 30 June 2020 will be taxed at 15% on the disclosed chargeable income but will not be subject to penalties and interests failing which;
- Unpaid tax on foreign assets will carry a monthly interest rate of 0.5%
- The Scheme does not apply to persons who have been convicted on or after 1 July 2001 or who are being enquired for illicit transactions or offences

7. Amendments to Mauritius Revenue Authority Act

Voluntary Disclosure of Income – Small and Medium Enterprises (SMEs)

- No penalties and interests for SMEs with turnover under MUR 50 million which will pay all tax due on the following income, on or before 29 November 2019:
 - any undeclared or under-declared income for the year of assessment 2017/2018 and any preceding years of assessment; or
 - Taxable supplies for the taxable period ended 30 June 2018 and any preceding taxable period.
- Where a SME has been assessed but has objected to the MRA / made representations to the Assessment Review Committee / appealed to the Supreme Court, the SME may still consider the voluntary disclosure for:
 - the year of assessment 2018/2019 and prior years; or
 - Taxable supplies for the taxable period ended 30 June 2018 and any preceding taxable period

The above does not apply to SMEs which have been convicted on or after 1 July 2001 or which are being enquired for illicit transactions or offences

8. Amendments to Value Added Tax Act

Special levy on Banks

As from 2 January 2018:

- Special levy will not be charged on net interest income and other income generated from companies holding a Global Business Licence.
- Special levy liability has been revised as follows:

Leviable Income (MUR)	Special levy %	Remarks
< MUR 1.2 billion	5.5%	Unchanged
>MUR 1.2 billion	4.5%	Increase of 0.5%

- For banks in operation as at 30 June 2018, the special levy is capped at 1.5 times of the levy payable for the year of assessment 2017-2018

Services exempted from VAT

- Services provided by a person operating a Peer-to-Peer Lending platform licensed by the FSC are VAT exempt

Exempt bodies or persons

- Any persons engaged in the development of a marina and who is registered with the EDB will be exempted in relation to the construction of a marina

9. Amendments to Limited Partnerships Act

The Limited Partnerships Act has been amended to align the definition of "beneficial owner" or "ultimate beneficial owner" with the new definition included in the Companies Act.

10. Amendments to Limited Liability Partnerships Act

The Limited Liability Partnerships Act has also been amended in the same respect.

11. Amendments to Securities Act

The Securities Act has been amended to include "green bonds" in the definition of "securities".

For any additional information please contact us.

Mauritius Office

Email: mauritius@intercontinentaltrust.com

Website: www.intercontinentaltrust.com

Seychelles Office

Email: seychelles@intercontinentaltrust.sc

Website: www.intercontinentaltrust.sc

Singapore Office

Email: singapore@intercontinentaltrust.com.sg

Website: www.intercontinentaltrust.com.sg

South Africa Office

Email: sa@intercontinentaltrust.com

Kenya Office

Email: ke@intercontinentaltrust.com



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