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Intercontinental Trust Ltd



**THE FINANCE
(MISCELLANEOUS PROVISIONS)
ACT 2020**

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Introduction

The Finance (Miscellaneous Provisions) Act 2020 (referred hereinafter interchangeably as the “Finance Act 2020” or the “Act”) was gazetted on 7 August 2020 and provides for the implementation of most of the measures presented by the Minister of Finance, Economic Planning and Development, Dr. the Honourable Renganaden Padayachy in his budget speech delivered on 4 June 2020.

Our newsletter provides a curated version of the main changes made to the regulatory framework and which, in our opinion, are of relevance and 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/plans, please get in touch with your usual contact person at ITL or write to us on info@intercontinentaltrust.com



Financial Services

Changes made under the Financial Services Act 2007

- i. Moneylending business, which was previously under the purview of the Bank of Mauritius, is now licensed under the Financial Services Act 2007 (FSA). Under the FSA, "Moneylender" is defined as "a person, other than a bank or a non-bank deposit taking institution, whose business is that of moneylending or who provides, advertises or holds himself out in any way as providing that business, whether or not he possesses or owns property or money derived from sources other than the lending of money, and whether or not he carries on the business as a principal or as an agent". Loans made by or provided by the following persons do not fall within the ambit of the Moneylending business:
 - a. Any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having as its primary object the lending of money, in the course of which and for the purposes of which he lends money
 - b. Any body corporate, incorporated or expressly empowered, or any other person expressly empowered, by any other enactment to lend money
 - c. Any organisation whose operations are of an international character and which is approved by the Minister
 - d. Any society registered under the Co-operatives Act
 - e. Any licensed broker in the performance of his duties as a public officer
 - f. Any licensed pawnbroker in the performance of his duties as a pawnbroker
 - g. Mauritius Housing Corporation Ltd
 - h. Development Bank of Mauritius Ltd
 - i. State Investment Corporation Ltd
 - j. Mauritius Investment Corporation Ltd
 - k. Any specialised financial institution licensed by the central bank to engage in lending activities
 - l. Any trustee in the exercise of his functions under the Trusts Act
 - m. Any person lending money through a peer-to-peer lending platform operated by a person licensed by the Commission to operate that platform

As at the date of this writing, the application forms as well as the licensing criteria for this activity are yet to be published by the FSC.

- ii. Peer-to-Peer Lending is now defined as "a financial business activity which enables a person to lend funds through an online portal or electronic platform which matches lenders and borrowers". As at the date of this writing, the application forms as well as the licensing criteria for this activity are yet to be published by the FSC.
- iii. The FSC may request statistical information on unregulated group entities from the relevant competent authorities or from the ultimate and intermediate financial holding companies licensed by the FSC.
- iv. The process for the surrender of a license by a licensee has been revised as follows:
 - A notice period of 30 days has to be provided to the FSC and the licensee must specify the date on which termination is to be effective as well as specify the measures taken by the licensee to discharge his liabilities
 - Prior to giving notice, the licensee/transferor must have made arrangements for the transfer of its business to another licensee – an undertaking must be provided by the transferee in that respect
 - After the surrender of the licence, the licensee/transferor must certify to the FSC that all his client accounts have been transferred

- v. The FSC may extend the filing deadline (which is within 6 months of the financial year end) for audited financial statements during an emergency period (public emergency/natural disaster/curfew order). It may also provide exemption from the requirement of filing audited financial statements where the FSC is of the opinion that it is not practicable to do so.
- vi. Auditors of licensees now have to report any serious irregularities to the FSC such as licensees' inability to continue as a going concern, contravention of the FSA, FSC Rules or practice directions, involvement in financial crime as well as non-compliance with laws of Mauritius.

Work & Live in Mauritius

OPs allow foreigners to both work and live on the island. Prior to the Finance Act 2020 (the "Act"), OPs were issued for an initial period of 3 years but this has now been extended to 10 years for both the Investor OP and Self-employed OP. For the Professional OP, the validity period remains unchanged i.e. it will still be issued for an initial period of 3 years. At the expiry of their OPs, non-citizens can either renew their OPs or consider applying for a Permanent Residence (PR), subject to meeting the required conditions. The validity of the PR has been doubled to 20 years.

The changes are effective as from 1 September 2020.

The main amendments introduced by the Act to the Immigration Act, the Non-Citizens (Employment Restriction) Act and the Non-citizens (Property Restrictions) Act are tabled below:

Occupation Permit (OP) / Residence Permit (RP)	Prior to Finance Act 2020	Finance Act 2020
Permanent Residence Through OP/RP	Validity 10 years	Validity 20 years
OP - Investor		
Duration of OP	3 years	10 years
Minimum Investment	USD 100,000	USD 50,000
Turnover/Gross income Criteria	Minimum turnover of MUR12m over the 3 years with a minimum of MUR 2m in each year	Minimum gross income of MUR 4m as from year 3
Eligibility for PR	Turnover exceeding MUR45m for 3 years preceding application	As from 1 Sept 2020: Gross income must exceed MUR 45m for 3 years preceding application Before 1 Sept 2020: Cumulative turnover exceeding MUR12m during the 3 years preceding application

Occupation Permit (OP) / Residence Permit (RP)	Prior to Finance Act 2020	Finance Act 2020
<p>OP – Professional</p> <p>Duration of OP</p> <p>Minimum Salary</p> <p>Eligibility for PR</p> <p>Eligibility to invest in Mauritius</p>	<p>3 years</p> <p>For professionals working in the Information, Communication and Technologies sector (ICT): MUR30,000 per month</p> <p>Other professionals: MUR60,000 per month</p> <p>Monthly salary of at least MUR150,000 for 3 years preceding application</p> <p>No</p>	<p>No Change</p> <p>In addition to ICT professionals, those working in the Business Process Outsourcing (BPO), pharmaceutical, manufacturing and food processing: MUR30,000 per month</p> <p>Other professionals: No change</p> <p>As from 1 Sept 2020: No change</p> <p>Before 1 Sept 2020: For professionals working in the ICT and Business Process Outsourcing: MUR30,000 per month for 3 years preceding application</p> <p>For other professionals: MUR60,000 per month for 3 years preceding application</p> <p>Yes, provided that he/she: (i) is not employed in the business (ii) does not manage the business (iii) does not derive any salary or employment benefits from the business</p>
<p>OP - Self employed</p> <p>Duration of OP</p> <p>Minimum Investment</p> <p>Business Income Criteria</p> <p>Eligibility for PR</p>	<p>3 years</p> <p>USD 35,000</p> <p>Minimum business income of MUR2.4m over the 3 years with a min of MUR600,000 per year</p> <p>Minimum business income of MUR3m for 3 years preceding application</p>	<p>10 years</p> <p>No Change</p> <p>Minimum business income of MUR800,000 as from year 3</p> <p>As from 1 Sept 2020: No Change</p> <p>Before 1 Sept 2020: Minimum business income of MUR2.4m for 3 years preceding application</p>

Occupation Permit (OP) / Residence Permit (RP)	Prior to Finance Act 2020	Finance Act 2020
OP – Young Professional Duration of OP Eligibility Criteria	3 years The student must have completed a degree at an institution recognised by the Tertiary Education Commission i. Artificial Intelligence ii. Biotechnology iii. Fintech iv. Robotics v. Financial services vi. Information technology vii. Such other field as the Minister may approve	No Change No Change
RP - Retired non-citizen Duration of RP Initial funds transfer Eligibility for PR Eligibility to work Eligibility to invest in Mauritius	3 years Minimum transfer of USD1,500 Thereafter a monthly transfer of at least USD1,500 A minimum amount transferred totalling USD54,000 during the 3 years No (unless an OP was applied) No	10 years No Change As from 1 Sept 2020: No Change Before 1 Sept 2020: No Change Yes - once PR has been obtained Yes, provided that he/she: (i) is not employed in the business (ii) does not manage the business (iii) does not derive any salary or employment benefits from the business
RP – Investment in property schemes* Duration of RP Minimum Investment Amount Eligibility to work	As long as the property is held by investor USD500,000 No (unless an OP was applied)	No Change USD375,000 Yes

* include: Property Development Scheme, the Real Estate Scheme, the Integrated Resort Scheme and the Smart City Scheme

What about existing OPs?

Investor and Self-employed OPs issued for a period of 3 years and valid on 1 September 2020 will be extended for a period of 10 years as from the date of the issue of the OPs.

Further clarifications with regards to the procedures in relation to the above extension are yet to be issued by the authorities.

What about the dependants of OP and RP Holders?

OP and RP Holders can apply for residence permits for their dependents. The definition of "Dependents"* has been broadened under the Finance Act 2020 to include the parents of the OP and RP Holders.

* "Dependents" is now defined as the spouse, dependent child, parent or other dependent of a person

More details on the above measures will follow once the updated guidelines are issued by the authorities – stay tuned for our upcoming newsletter on same.

Taxation

Changes made under the Income Tax Act 1995

A. 1. Solidarity Levy on individuals

As from 1 July 2020, the rate of Solidarity Levy increased from 5% to 25% subject to a 10% cap and will have to be paid monthly under the PAYE system.

The threshold of leviable income also decreased from Rs 3.5 million to Rs 3 million, such that where the monthly emoluments of a resident exceed Rs 230,769, solidarity levy will apply. A cap of 10% of total emoluments will apply when calculating the monthly solidarity levy.

Any balance of solidarity levy payable or excess solidarity levy paid will have to be settled at time of submission of the annual tax return.

Leviable income means chargeable income and includes Mauritian sourced dividend income but excludes any lump sum by way of commutation of pension or by way of death gratuity or as consolidated compensation for death or injury.

Individuals with leviable income closer to the Rs 3 million threshold will be more impacted than higher income earners.

The higher tax burden will not only encourage residents to relocate overseas but will also provide room for tax planning which may be perceived as aggressive.

A. 2. Contribution Sociale Généralisée (CSG)

It was announced in the budget speech that the CSG will be introduced to replace the National Pension Fund (NPF). The CSG is an uncapped contribution which aims to aid the low earning, including self-employed individuals as well as SMEs.

It is noted that the CSG will apply as from September 2020. Although the applicable rates are not confirmed in the Finance Act 2020, these will be provided by way of regulations which are yet to be issued.

Participants of the CSG have been defined as:

- a. an employee of such category as may be prescribed;
- b. a self-employed of such category as may be prescribed; or
- c. a person of such category as may be prescribed, who is liable to pay CSG.

The following penalty and interest will apply on unpaid CSG:

- Penalty of 10%
- In addition to the above, an interest of 1% per month or part of the month

B. Income Exemption Threshold

As every year, IET has increased for each category of individuals and for year of assessment 2020/2021 the increase ranges between Rs 15,000 and Rs 80,000 as follows:

Category	Before	After
A. Individual with no dependent	Rs 310,000	Rs 325,000
B. Individual with one dependent	Rs 420,000	Rs 435,000
C. Individual with two dependents	Rs 500,000	Rs 515,000
D. Individual with three dependents	Rs 550,000	Rs 600,000
E. Individual with four or more dependents	Rs 600,000	Rs 680,000
F. Retired/disabled person with no dependent	Rs 360,000	Rs 375,000
G. Retired/disabled person with dependents	Rs 470,000	Rs 485,000

A new category of dependent which is “bedridden next of kin” has been added effective from 1 July 2020, which is highly welcomed.

“bedridden next of kin” means a bedridden father, mother, grandfather, grandmother, brother or sister of that person or of his spouse, provided that the bedridden next of kin is –

- i. eligible to the carer’s allowance payable under the National Pensions Act; and
- ii. under the care of that person.

C. Tax Deductions for companies

- Accelerated annual allowance of 100% is available on capital expenditure incurred on electronic, high precision or automated machinery or equipment as from 1 July 2021.
This measure will enable companies to recover the cost of their investments within one year.
- Double deduction on expenditure incurred on medical research and development carried out in Mauritius, as from 1 July 2021, provided no annual allowance is claimed.
- Double deduction on the costs of acquisition of patents and franchises and costs to comply with international quality standards and norms, that were incurred as from 1 July 2021, provided no annual allowance is claimed.
- To support companies which are adversely affected by the Covid-19 pandemic, 100% investment allowance will be provided on capital expenditure incurred on new plant and machinery, excluding motor vehicles, acquired during the period 1 March 2020 to 30 June 2020.

The investment allowance will be in addition to the normal annual allowance that the company may claim and will help alleviate the tax burden of companies in financial difficulties. However, clarity is required on the benchmark/criteria that the Mauritius Revenue Authority will use to determine that a company is adversely affected by the pandemic.

D. Tax holidays

In a view to boost the blue economy, the educational and nutraceutical sectors, an 8 years tax holiday will be provided to companies which have started operations on or after 4 June 2020 and engaged in the below:

- i. inland aquaculture in Mauritius;
- ii. a company approved as a branch campus by the Higher Education Commission ("HEC") and which is part of an institution which ranks among the first 500 tertiary institution worldwide; or
- iii. manufacturing of nutraceutical products.

E. Manufacturing companies

- 15% tax credit will be available to manufacturing companies on the costs of new plant and machinery, excluding motor vehicles, acquired during the period 1 July 2020 to 30 June 2023. The tax credit will be extended over 3 years as from the year in which the assets were acquired.
- Existing provisions under the ITA 1995 provides for a reduced tax rate of 3% to freeport operators or private freeport developers engaged in the manufacture of goods meant for local market in whole or in part.

The definition of "manufacture" has been extended to include:

- i. assembly of parts into a piece of machinery or equipment or other product;
- ii. retreading of used tyres; and
- iii. recycling of waste.

The new definition takes effect from 1 July 2021.

F. Taxation of Life Insurance businesses

Effective from 1 July 2021, companies carrying out life insurance business will be liable to income tax at the higher of:

- normal tax calculated in accordance with the Regulations; or
- 10% of Relevant Profit, where Relevant Profit means profit attributable to shareholders adjusted for any capital gains or losses attributable to shareholders.

This change imposes a minimum tax on Life Insurance businesses and put such businesses at a disadvantage.

More guidance should also be provided on how the profit attributable to shareholders is calculated.

G. Tourism industry

The tourism sector is one of the main contributors to the Mauritian economy and has been heavily impacted by the Covid-19 pandemic.

To support the sector, the deadline for payment of annual income tax for companies with accounting year end falling between 1 September 2019 to 30 June 2020 has been extended as follows:

- 50% of tax payable will be due by 29 December 2020; and
- Remaining tax payable will be due by 28 June 2021.

Where such companies have tax payable under the Advance Payment System (“APS”) and the due dates fall during the period from 1 January 2020 to 31 December 2020, the deadline has been extended as follows:

- 50% of tax payable under APS will be due by 29 December 2020; and
- Remaining tax payable under APS will be due by 28 June 2021.

H. Solidarity levy on telephony service providers

The existing solidarity levy on telephony service providers has been extended to the years of assessment 2020-2021 onwards.

Changes made under the Value Added Tax Act

A. Reverse Charge

The existing provisions covering reverse charge on the supply of services received from abroad has been restricted to services supplied by a person who does not belong to Mauritius and who is not VAT registered and which has been supplied to a VAT registered person only.

As such, only VAT registered consumers will have to apply reverse charge and make as if he supplied the services (taxable supply) himself and make a corresponding claim for input tax.

B. VAT on Digital or Electronic Services

The Finance Act 2020 has introduced VAT on digital or electronic services supplied over the internet or an electronic network or which is dependent on information technology.

This will apply on supplies by a foreign supplier to a person in Mauritius, where a foreign supplier is defined as a person who:

- has no permanent establishment in Mauritius;
- has his place of abode outside Mauritius; and
- supplies, in the course of his business, digital or electronic services to a person in Mauritius.

Although this measure seeks to tax resident suppliers and foreign suppliers the same way in Mauritius, it may also give rise to double taxation for Mauritian customers in the event where the country of residence of the foreign suppliers also imposes VAT on the supply.

The Finance Act 2020 mentioned that the VAT will be charged in accordance with sections 10 and 12 of the VATA. However, more clarity is required on whether 15% VAT rate will apply, who will bear the burden of collecting the VAT and which type of digital or electronic services will be within scope.

This new provision also raises the question of whether the supply of digital or electronic services by a foreigner will be within the scope of the new reverse charge provision.

C. Construction Industry

The time of supply of services, under a construction work contract, provided to a Ministry, Government department, local authority or the Rodrigues Regional Assembly, shall be deemed to be at payment date instead of the earlier of invoice date or payment date.

This extension will apply for the period from 1 October 2020 to 30 September 2022.

D. Value of taxable supplies

The Finance Act 2020 has introduced the concept of arm's length principle to the VAT Act, such that where a supply is not made in the course of an arm's length transaction, the Director-General may determine the value of the supply as the open market value or such other amount.

Clarity is required on how the market value is determined and we hope that the arm's length value for VAT purposes will be consistent with the arm's length value determined under the ITA 1995 and in accordance with the OECD's Transfer Pricing Guidelines.

E. Credit for input tax

VAT registered persons making both taxable and exempt supplies and engaged in projects spanning over several years may be required to apply an alternative basis of apportionment for input tax, upon request from the MRA.

Guidance on the methodology of the alternative basis of apportionment is required and the MRA needs to apply a consistent treatment among VAT registered persons.

F. Exempt persons

The list of exempt bodies or persons has been extended to include the below:

Category of person	Activity
Any person engaged in medical research and development and registered with the Economic Development Board ("EDB");	<ul style="list-style-type: none"> Construction of purpose built building for medical research; and plant and equipment (excluding vehicles)
Any person engaged in inland aquaculture under the Inland Aquaculture Scheme and registered with the EDB;	<ul style="list-style-type: none"> Equipment (excluding office equipment, furniture and vehicles) for the exclusive use of, or in furtherance of, the inland aquaculture project, as the Ministry responsible for the subjects of marine resources and fisheries may approve
Any person approved by the HEC as being, at the time of its setting up, a branch campus of an institution ranked among the first 500 tertiary institutions worldwide; and	<ul style="list-style-type: none"> Information technology system and information technology related materials and equipment, for the purpose of online education at the time of the setting up of the branch campus in Mauritius
Any holder of a Smart and Innovative Mauritius Development Certificate issued by the EDB.	<ul style="list-style-type: none"> Construction of a purpose built building and related infrastructure; and plant, machinery, equipment and materials (excluding vehicles)

Changes made under the MRA Act

A. Hearing of representations

Failure to attend or be represented before the Assessment Review Committee at 2 consecutive sittings, will result in the aggrieved party being struck out unless absence is due to illness or other reasonable cause.

More guidance is required on what “reasonable cause” means and we hope that aggrieved parties are treated fairly and equitably.

B. E-tax account

To digitise its services, tax payers and tax representatives will each be allocated an E-tax account that will be used to file tax returns or other documents or make payment to the MRA.

Other Legislative Changes

The Companies Act 2001

- i. Public companies are henceforth required to have at least 2 independent directors on their board. An independent director is defined as an individual who:
 - a. is not an employee;
 - b. does not have material business relationship with the company either directly or as a partner, shareholder, director or senior employee of an organisation that has such relationship with the company;
 - c. does not receive remuneration from the company except remuneration or any other benefit given to him as a director in accordance with section 159;
 - d. is not a nominated director representing a substantial shareholder;
 - e. does not have close family ties with any of the advisers, directors or senior employees of the company;
 - f. does not have cross directorships or significant link with other directors through involvement in other companies or other organisations; and
 - g. has not served on the Board for more than 9 continuous years from the date of his first election.
- ii. In addition to their existing duties, directors are now required to act in a manner that is not oppressive, unfairly discriminatory or unfairly prejudicial to shareholders.
- iii. When restoring a company, the Registrar of Companies is now required to give notice of same in the Gazette and by any electronic means instead of publishing in 2 daily newspapers.

The Economic Development Board Act 2017

- i. The Economic Development Board (EDB) has introduced the Smart and Innovative Mauritius Development Scheme for persons intending to engage in smart and innovative-driven projects listed below:
 1. Additive manufacturing
 2. Data economy
 3. High tech farming and smart agriculture
 4. Life sciences and biotechnology
 5. Smart manufacturing and assembly of electric vehicles
 6. Virtual economy
 7. Technical education and training programmes in any of the above fields

Application in respect of 1-6 above shall be made in accordance with the guidelines issued by the EDB. At the time of writing, no such guidelines have been issued yet.

It is further noted that under the Value Added Tax Act, a holder of a Smart and Innovative Mauritius Development Certificate issued by the EDB shall be exempted from the payment of VAT in respect of construction of a purpose built building and related infrastructure and plant, machinery, equipment and materials (excluding vehicles).

- ii. The EDB may now deregister persons including those who were granted an occupation permit or a residence permit if it has reason to believe that they have ceased the economic activity for which they were registered.
- iii. To further enhance business facilitation, a Business Obstacle Alert Mechanism will be introduced and its main functions will be to:
 - a. enable an enterprise to log in any bottlenecks in relation to delays in the determination of licences, permits, authorisations or other clearances;
 - b. enquire about any issue and make recommendations to public agencies; and
 - c. report and publish any remedial action taken.

Insolvency Act 2009

The Insolvency Act 2009 has been amended to bestow upon the Bankruptcy Division of the Supreme Court (the “Court”) the power to cram-down i.e. in the instance that at least one class of creditors has not approved the deed of company arrangement, the Court may do so and order that same be binding on the company and all classes of creditors intended to be bound by the deed of company arrangement. However, in order to exercise the cram-down provision, at least 75% of creditors, representing at least in value of all creditors, must have voted in favour of the deed of company arrangement and the Court is satisfied that the arrangement is not oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors or is contrary to the interests of the company as a whole.

Land (Duties and Taxes) Act 1984

- i. Land transfer tax will not apply on the transfer of freehold land during the period 1 July to 31 December 2020 to a company registered with the local authorities for the construction of housing estates, comprising at least 5 residential units, intended for sale.
- ii. Exemption of land transfer tax will be granted on the sale of a residential unit belonging to a housing estate registered between the period 1 July 2020 to 31 December 2020, if:
 - it is made to a Mauritian citizen;
 - it does not exceed Mur 7 million; and
 - the transfer is made on or before 30 June 2022.
- iii. The transfer of shares, assets or property to a subsidiary of the Bank of Mauritius will be exempted from Registration Duty, Land Transfer Tax and Tax on transfer of leasehold rights in state land.

Registration Duty Act

- i. A subsidiary of the Bank of Mauritius will be exempted from administrative fee applicable for registration
- ii. Registration duty will not apply on the transfer of freehold land during the period 1 July to 31 December 2020 to a company registered with the local authorities for the construction of housing estates, comprising at least 5 residential units, provided that the construction is completed by 31 December 2020.
- iii. Exemption of Registration Duty will be granted on the sale of a residential unit belonging to a housing estate registered between the period 1 July 2020 to 31 December 2020, if:
 - it is made to a Mauritian citizen;
 - it does not exceed Mur 7 million; and
 - the transfer is made on or before 30 June 2022.
- iv. Prior to the Finance Act 2020, a person was eligible to benefit from the first-time buyer registration duty* if he or his spouse is or was the co-owner of any immovable property which was acquired by inheritance and where the area did not exceed 422 square metres (i.e. 10 perches). Now a person will be able to benefit from this exemption if he or his spouse is or was the owner or co-owner of an immovable property acquired by inheritance and their share in the property is less than 844 square metres (i.e. 20 perches)

* Exemption of registration duty for first-time buyer is as follows:

- A reduction of the amount of the duty leviable or MUR 125,000 whichever is the lesser for:
 - a. a portion of freehold bare land; or
 - b. the right to construct a residential building on top of an existing building (droit de surélévation) on a freehold land together with his quote-part.
 - A reduction of the amount of the duty leviable or MUR 250,000 whichever is the lesser for:
 - a. a residential lot which is the subject of a duly registered and transcribed deed witnessing a 'règlement de copropriété' in accordance with articles 664 and 664-1 to 664-118 of the Code Civil Mauricien;
 - b. a portion of freehold land with a residential building thereon of a value not exceeding MUR 5 million; or
 - c. An ex-CHA residential unit or a residential unit originally acquired from the National Housing Development Company Ltd
- v. A deed witnessing the purchase of immovable property or lease of land intended for the construction of a building to be used as a Life Science Research Centre* as approved by the Economic Development Board will be registered for free

* Life Science Research Centre is an organization/institution/laboratory or centre engaged in research and development in: biotechnology, pharmaceutical, biomedical technologies, nutraceuticals, cosmeceutical & medical research

The Financial Report Act 2004

It has been clarified that the National Committee on Corporate Governance (NCCG)* shall be a body corporate.

* The objects of the NCCG are to:

- a. establish principles and practices of corporate governance;
- b. promote the highest standards of corporate governance;
- c. promote public awareness about corporate governance principles and practices;
- d. act as the national coordinating body responsible for all matters pertaining to corporate governance.

The Securities Act 2005

The Securities Act 2005 has been amended to create an obligation on corporate finance advisory service providers to keep investor order book and determine the final assignment to each investor and maintain records of debts raised on behalf of issuers. The new definition of "corporate finance advisory" now reads as follows:

"Corporate finance advisory" means the provision of advisory services on:

- a. compliance with the listing requirements of any securities exchange;
- b. raising of funds through the issue of securities;
- c. arrangement or restructuring including takeovers, mergers and acquisitions, of a corporation, as far as it relates to securities transactions;
- ca. keeping the investor order book and determining the final assignment to each investor, and keeping all documentation related to debts raised on behalf of issuers; or
- d. any other matter specified in FSC Rules

The Banking Sector

The key amendments made to the Banking Act and the Bank of Mauritius Act 2004 are as follows:

Banking Act 2004

- i. The concept of Digital Banking is being introduced – those wishing to carry out banking business through digital means or electronically will need to apply for a Digital Banking Licence from the Bank of Mauritius (hereinafter referred to as “BoM” or “central bank”)
- ii. Moneylending business undertaken by a person, other than a bank or non-bank deposit taking institution, will no longer be licensed by the BoM – this activity is now under the purview of the Financial Services Commission
- iii. The definition of “Significant interest” which was previously defined as holding directly/indirectly at least 10% of the voting rights of the financial institution or exercising directly/indirectly significant influence over the management of a financial institution has been broadened to:
 - a. owning, directly or indirectly, alone or together with a related party, or otherwise having a beneficial interest amounting to, 10% or more of the capital or of the voting rights of a financial institution;
 - b. having the ability, directly or indirectly, alone or together with a related party or the power, to appoint 20% or more of the members of the board of a financial institution; or;
 - c. directly or indirectly exercising a significant influence over the management of a financial institution as the central bank may determine;
- iv. While the stated capital of any financial institution holding a banking licence remains unchanged (i.e. a minimum stated capital of at least MUR 400 million – circa USD 10.3 million), the capital adequacy ratio (i.e. the available capital in Mauritius) will be determined by the central bank – prior to the Finance Act 2020, the capital adequacy ratio was a minimum of 10%
- v. Auditors of banking institutions may now be appointed for a period of 5+2 years – BoM, on just and reasonable grounds, may approve an extension of 2 years on the appointment of auditors
- vi. The duty of confidentiality for financial institution is now waived for the purpose of providing credit scores on an applicant for credit through the Credit Scoring Services Agency which may subsequently be established by the BoM
- vii. Conservator is granted enhanced powers (i.e. it is conferred all the powers of the shareholders, directors and officers of the financial institution) – it will henceforth be able to execute any instruments, succeed all rights, titles and powers and privileges in the name of the financial institution and initiate, defend and conduct in its name any action or proceedings to which the financial institution may be a party
- viii. A financial institution cannot be placed under conservatorship for more than 180 days unless approved by the board of the central bank
- ix. If a reorganization plan has been put forward by the conservator and it is refused within a period of 30 days by persons holding at least one-third of the aggregate amount of deposits and creditors comprising at least one-third in value of the aggregate of the claims of creditors other than subordinated creditors, the conservator may propose another reorganization plan to all depositors and other creditors who shall not receive full payment under the plan

- vii. Any complaints received by a financial institution should be dealt with within the period as provided in the Ombudsperson for Financial Services Act 2018 i.e. within 10 days from the date of the written representations made to it
- viii. The central bank is now entitled to issue directives

Bank of Mauritius Act 2004

- i. The BoM is now able to issue digital currency
- ii. The BoM is entitled to raise loans directly or through its subsidiary on behalf of the government, which will be used for investment in projects or companies promoting sustainable economic development of the county including the blue and green economies. The type and form of the loans as well as the attached terms and conditions will be determined by the central bank
- iii. Any capital to provided to or invested by the central bank in any corporation or company set up for the purpose of facilitating economic development can be taken from official foreign reserves and these will be excluded from the computation of the said reserves
- iv. The BoM may establish the Credit Scoring Services Agency for the purpose of providing credit scores on the creditworthiness of applicants

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

South Africa Office

Email: sa@intercontinentaltrust.com

Singapore Office

Email: singapore@intercontinentaltrust.com.sg
Website: www.intercontinentaltrust.com.sg

Kenya Office

Email: ke@intercontinentaltrust.com



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If you do not wish to receive further information from Intercontinental Trust Limited, please send an email to news@intercontinentaltrust.com.

INTERCONTINENTAL TRUST LTD

Level 3, Alexander House 35 Cybercity
Ebene Mauritius

Tel: (230) 403 0800

Fax: (230) 403 0801

Email: info@intercontinentaltrust.com

Website: www.intercontinentaltrust.com



Intercontinental Trust Ltd