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BANKING & FINANCE INSIGHTS
by BLC ROBERT

Welcome to this new edition of Banking & Finance Insights!

*Technology has played a key role in the financial sector for decades. But in recent years, technology has permeated almost every segment of financial services and has transformed the behavior of customers. Startups and other new market participants develop new technologies and bring innovative products and services to the market which have the potential to disrupt more and more segments of the traditional banking industry. Yet, this is only one facet of the relationship between technology and financial services. More and more financial institutions engage with fintech startups to explore the synergies that result from the use of technology in financial services. In this edition Ammar Ozeer, fintech specialist at BLC Robert identifies in **Apartes** the challenges that traditional financial institutions face with the rise of fintech and discusses the regulatory framework in Mauritius.*

*In our May 2018 edition, we provided an overview of the Central Bank's guideline on the issuer of commercial paper licence. This regime has recently been replaced by the money market instrument regime. In **Locus** we outline the main features of this new regime under the draft guideline of the Central Bank.*

*The Mauritius Parliament has been very active for the past months with the adoption of the Finance (Miscellaneous Provisions) Act 2019 and the Business Facilitation (Miscellaneous Provisions) Act 2019 which amend different legislations. **Legislative Updates** will give you an overview of the key legislative changes that affect the banking and financial services industry.*

*We continue our series **5 things to Know**, this time we have identified five significant features of the Mauritius Deposit Insurance Act assented earlier this year which establishes the Mauritius Deposit Insurance Scheme and the Mauritius Deposit Insurance Corporation Ltd to enhance the protection of insured depositors by providing a compensation mechanism for losses of insured deposits with financial institutions.*

*Finally, in the **F.A.Q** section we have provided some practical legal information about the erasure of the fixed and floating charges in Mauritius.*

Wishing you an enjoyable reading!

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BLC ROBERT ALN

APARTES

FinTech… is Mauritius on the information highway?

INTRODUCTION

FinTech is a global phenomenon. Cities such as London, New York, San Francisco, Shenzhen and Singapore have already positioned themselves as a leading FinTech Hubs. Near us, South Africa, Nigeria and Kenya are already at the forefront in the FinTech sector. According to a recent Global Fintech Hub Report, 'The Future of Finance is Emerging: New Hubs, New Landscapes', 2018[1], Nairobi and Cape Town are the leading African emerging Fintech hubs. Globally, the FinTech ecosystem continues to mature with FinTech companies expected to create about $638bn in revenue in the next 5 years, according a latest forecast by Juniper Research.

We caught up with Ammar Oozeer, BLC Robert's FinTech specialist, who will take us through this exciting industry development.

What is FinTech?

Financial technology—FinTech for short—describes the evolving intersection of financial services and technology.

Who are the players in the FinTech environment?

Well established financial institutions, big technology companies, companies that provide infrastructure or technology that facilitates financial services transactions. The past years have also seen the emergence of "challengers" or "disruptors" who are small banks and other financial services start-ups which compete with the big banks by proposing services in areas underserved by traditional banks such as mobile payment, peer to peer lending.

What are the challenges and opportunities for the traditional financial institutions?

The rise of FinTech is changing the banking landscape with traditional financial institutions having to rethink of new innovative solutions, especially B2C business models. FinTech improves financial inclusion. For example, it creates opportunities for the hitherto unbanked communities to affordable financial services. Micro-financing can help getting emerging business off the ground.

Collaboration with FinTech companies allows traditional financial institutions to use the comparative advantage which FinTech companies have. For example, data analytics allow for the individualization of financial services by making them more consumer-oriented. Big data and machine learning can be used to analyse and better understand customers, including determining their creditworthiness.

One of the challenges that traditional financial institutions face is to collaborate with non-financial institutions in this new landscape because traditionally financial institutions have always collaborated with others in their own industry. For the consumers, lack of trust in technology can impede the success of FinTech, in particular about security of the new financial channels. Confidence in the FinTech

[1] The contributors include the Cambridge Centre for Alternative Finance, University of Cambridge Judge Business School and the Academy of Internet Finance, Zhejiang University.

products/services will need to be instilled in consumers.

How does FinTech sit within the Mauritian regulatory framework?

Given the numerous opportunities which FinTech provide, Mauritius is keen to harness the benefits of the FinTech revolution, in particular to become a FinTech Hub for Africa. Budget Speech 2017-18 identified FinTech as one of the key economic drivers: a Regional FinTech Association will be established which will act as a think-tank and advise on the regulatory changes to ensure a conducive environment for FinTech start-ups. The association will have tie-ups with international institutions such as Innovate Finance London and the FinTech Circle. Recently, the Honourable Prime Minister reiterated the country's aim to become a FinTech hub in the region when he announced specific measures to achieve this aim. For example, a new licence will be introduced for FinTech service providers. In addition, a regime for robotics and AI enabled financial advisory services will be implemented.

Mauritius must not adopt a prescriptive approach to regulation if the country is to position itself as a FinTech Hub in Africa.

In 2016[2], the country introduced the regulatory sandbox regime introduced to stimulate disrupters in the financial services industry to invest in innovative projects.

On 25 May 2017, the Board of Investment (now known as the Economic Development Board)[3] issued the first Regulatory Sandbox licence with respect to a crowdfunding platform.

In September 2018, the Financial Services Commission ("FSC") issued its first Guidance Note in its FinTech series on the recognition of digital assets as an asset-class for investment by sophisticated and expert investors. Securities tokens offerings (STOs) conducted in or from Mauritius are regulated by the provisions of the Securities Act and the rules published by the FSC, including the requirement for a prospectus, if applicable. STOs to sophisticated investors, expert investors, expert funds, professional collective investment schemes and specialised collective investment schemes do not require the prior approval of the FSC. In other cases, the prior approval of the FSC is required.

Last but not least, the provision of custodian services for digital assets is regulated by Financial Services (Custodian services (digital asset) Rules 2019 made by the FSC on 28 February 2019 and which came into operation on 1 March 2019. A custodian is limited to the carrying out of the safe-keeping of digital asset and operations arising directly from it.

> ***"Mauritius must not adopt a prescriptive approach to regulation if the country is to position itself as a FinTech Hub in Africa."***

What are in your views the challenges which Mauritius is facing?

The adoption of internet technology and innovation in financial activities such as payment, peer-to-peer lending, insurance, wealth management and virtual currency pose significant regulatory challenges – for example, in the areas of consumer protection, data protection, cyber threats, money laundering and terrorism financing which institutions and regulators will have to address to ensure reliable and stable platforms for the consumers.

[2] The Investment Promotion Act was amended by the Finance (Miscellaneous Provisions) Act. Act No. 18 of 2016

[3] http://www.edbmauritius.org/

Data protection **-** Other regulatory concerns relate to data protection and privacy and cyber threats. Technology shortcomings relating to privacy and confidentiality could be daunting roadblocks to the emergence of FinTech. Mauritius has however an adequate data protection law regime[4] conducive for the uptake of FinTech start-ups in the country. With the adoption of the new Data Protection Act 2017 which, to a large extent, incorporates the principles contained in the EU General Data Protection Regulation, the privacy issues arising out of the provision of custodian services and the operation of a digital market platform are, in my view, adequately addressed. For example, the Data Protection Act 2017 imposes a data breach notification obligation on both the controller and the processor.

Cybersecurity **-** It is undisputed that the future of FinTech and Cybersecurity are interlocked. Cyber threats are a major concern for consumers and business alike. The 'National Cyber Security Strategy 2014-2019' (Guidelines) set out strategic guidelines for cyber security. The development of effective public-private-partnership is identified to ensure the security of the cyberspace. Dealing with cyber threats is a complex challenge. Both the public and private sectors are aware of the threats. A culture of information security is emerging. However, in order to facilitate cross-border collaboration in the area of enforcement, the existing law[5] on cybercrimes which is modelled on the Council of Europe Convention on Cybercrime must, in my view, be strengthened and fine-tuned.

Compliance framework **-** With the rapid growth of FinTech, regulators will have to consider new tools to facilitate the delivery of risk and compliance functions to make informed decisions based on real time information and powered by Artificial Intelligence (AI). Regulatory Technology (RegTech) helps firms better understand and manage their risks. Two areas where RegTech plays a prominent role, in particular in the FinTech industry, are customer identity (KYC) and anti-money laundering (AML). The use of technology to address compliance issues is slow. As the Financial Action Task Force (FATF) pertinently remarked at its November 2017 Plenary, stakeholders must have a better understanding of how the existing AML/CFT obligations apply to new technologies, products and services. Regulators must ensure that AML/CFT measures and regulations are up-to-date. The impact of financial innovations and technologies has on the financial system and the impact of money laundering and financing of terrorism vulnerabilities that may arise with the adoption of financial innovations and technologies must be fully understood.

Licensing **-** Following on the announcement made in the Budget 2017-2018, the Financial Services Act was amended last year to add custodian services and digital asset market place as regulated financial business activities. The carrying out of custodian services for digital asset is regulated since 1 March 2019. Hence, a person who wishes to carry out custody services for digital asset in Mauritius will need to obtain a licence issued by the FSC. A custodian must, at all times, have an office in Mauritius from which it performs its core functions. 'Core functions' are those functions which are related to operational and governance protocols, safekeeping of digital asset and transaction management. The rules also impose a series of obligations on the custodian which are aim at preserving the integrity of the sector and the consumers. According to industry information, rules governing the operation of digital asset marketplace will probably be published by the end of this year.

[4] The country passed the Data Protection Act (DPA) in 2004

[5] The Computer Misuse and Cybercrime Act, Act No. 22 of 2003

South Africa, Kenya and Nigeria are already three main hubs in the region. The demand for FinTech in Africa is tremendous because of the unbanked population. If Mauritius wishes to be the next hub in the FinTech landscape in the region, it must adopt a regulatory regime which is conducive to promoting local start-ups and to attracting foreign investors and service providers in the country.

What are the upcoming developments in the FinTech environment which you see?

We shall hear more regulatory and supervisory responses to FinTech, RegTech[6] and SupTech[7]. Regulators will increasingly identify how they can be part of FinTech instead of just responding to risks such environment may pose. With advancement in data science, Big Data will play a more prominent role. Machine Learning (ML)[8] has the potential to drive robust performance in the financial services sector. ML will be more and more used to predict financial trends, market risk and reduce frauds.

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[6] Innovative technology in financial regulation
[7] Innovative technology in financial supervision
[8] Machine Learning is one of the two branches of Artificial Intelligence, the other one being Natural Language Processing.

LOCUS

RE-VISITING THE SOLUTION TO EXCESS LIQUIDITY IN MAURITIUS

In December 2018, the Bank of Mauritius revisited the topic of excess liquidity in the Mauritian financial system. The Bank of Mauritius is the central bank and supervisory authority overseeing the stability of the financial system in Mauritius. It introduced a draft guideline[9] on the issue of money market instruments on 18 December 2018 (the "**draft guideline**") for the purposes of carrying out a consultation process which ended on 31 December 2018. The draft guideline is set to replace the regulatory framework on commercial papers established in January 2018. The latter created a licence for the issue of commercial papers. The proposed reforms to the regime extend to (i) the definition of the instrument, (ii) the criteria for qualification as issuer, (iii) the use of money market instruments, (iv) the requirements applicable to issuers and investors, (v) the procedures for issue, and (vi) the duties and obligations of the parties.

This article follows our earlier publication from May 2018 in which we discussed the details of the commercial paper regulations. Through this article, we aim to outline the main features of the new money market instrument regime.

Definition and features

The draft guideline has brought a few key changes to the definition and features of money market instruments, all of which indicate an intention to capture a larger amount of short term debt within the scope of the regime. For instance, money market instruments are now defined as secured or unsecured instruments issued in materialized or dematerialized form with a maturity of 12 months or less. This broadens the definition which, under the commercial paper regime, was limited to unsecured short term debt. The minimum size of the issue has also been reduced from MUR 100 million to MUR 50 million. The draft guideline has not introduced any changes on the maximum size of the issue. This remains limited to the amount approved by the board of directors of the issuer and in accordance with the credit rating assessment made by the external credit assessment institution.

Participants

The draft guideline maintains the role of various parties involved in the issue of money market instruments. The issuer is still required to appoint an issuing and paying agent to facilitate the issue of money market instruments and carry out the various payments due to the investors throughout the term of the money market instruments. In addition, there is no change to the requirement for the issuer to appoint an external credit assessment institution recognised by the Bank of Mauritius who will be responsible to provide a credit rating for the money market instruments. The money market instruments must also be deposited (in materialized or non-materialized form) with a custodian who

[9] A link to the draft guideline can be found on the website of the Bank of Mauritius at *https://www.bom.mu/markets/guidelines/draft-guideline-issue-money-market-instruments*

will hold such instruments on behalf of the investors.

The rules applicable to eligible issuers under the commercial paper regime have been re-looked at by the Bank of Mauritius in the draft guideline. Under the rules for commercial paper, the criteria to determine the eligibility of an issuer was based on the number of years that the issuer was in existence as well as the number of years during which the issuer made a profit. This is no longer taken into consideration; instead, the draft guideline emphasizes the net asset value and operating cash flow of the issuer. For an issuer to be eligible to issue money market instruments, the draft guideline requires that its operating cash flow be at least equal to the size of the issue of the money market instruments. It also requires that the issuer has a net asset value exceeding MUR 300 million at any point in time not earlier than 12 months prior to the proposed issue.

Procedure for issuance

The process for the issue of a money market instrument starts off with the issuer's board of directors approving the size and term of the money market instruments to be issued. The money market instruments may either be issued pursuant to an annual programme or on a discretionary basis. Once the size and term are established, the issuer can apply for a credit rating from a recognised[10] external credit assessment institution. In a departure from the rules relating to commercial paper, the draft guideline no longer requires the external credit assessment institution to analyse the impact of the issue of money market instruments on the financial situation of the issuer.

A credit rating is valid for two months and as a result, obtaining the ratings letter sets the timetable during which the issuance should take place. Once the ratings letter is obtained, the issuer will appoint an issuing and paying agent and a custodian before applying to the Bank of Mauritius under section 14E of the Banking Act 2004 for a money market instrument licence. The licence will be valid for one year.

The draft guideline also places increased responsibility on the issuing and paying agent. While it was always responsible to notify the investors, the external credit assessment institution and the Bank of Mauritius of a default, the time period of 3 working days under the previous regime no longer applies. Instead, the issuing and paying agent must do so immediately upon the default having occurred.

The objectives of the rules on commercial papers were to provide the opportunity for larger companies to diversify their source of funding and to provide a supply of short term and liquid financial instruments for investors. The expectation from the Bank of Mauritius was that larger companies would soak up the excess in liquidity that has recently been a concern in the Mauritian economy. Yet, the commercial paper regime that the Bank of Mauritius introduced was not adopted by large companies as anticipated. Instead, it was seen as introducing additional layers of regulation which would increase transactional costs. The consultation process open to all stakeholders closed on 31 December 2018, so the Bank of Mauritius is due to publish the guideline on money market instruments in its final form. It will remain to be seen whether the new regime of money market instruments can address the concerns of issuers generally.

[10] A list of recognised external credit rating institutions is set out in the Bank of Mauritius Guideline on the Recognition and Use of External Credit Assessment Institutions revised in October 2017.

LEGISLATIVE UPDATES

The Budget Speech 2019/2020 was delivered to the National Assembly by the Prime Minister and the Minister of Finance and Economic Development on 16 June 2019. The legislative framework giving effect to the measures announced in the Budget Speech 2019/2020 were given effect through the Finance (Miscellaneous Provisions) Act 2019 and the Business Facilitation (Miscellaneous Provisions) Act 2019. These acts were assented to by the National Assembly on 25 July 2019 and gazette on the same day. Some of the amendments will come into operation on a date to be fixed by proclamation. The Finance (Miscellaneous Provisions) Act 2019 and the Business Facilitation (Miscellaneous Provisions) Act 2019 amend various acts, including:

(a) The Bank of Mauritius Act 2004;

(b) The Banking Act 2004;

(c) The Companies Act 2001;

(d) The Courts (Civil Procedure) Act 1856.

(e) The Financial Services Act 2007;

(f) The Income Tax Act 1995;

(g) The Insolvency Act 2009;

(h) The Limited Liability Partnerships Act 2016;

(i) The Limited Partnerships Act 2011;

(j) The Ombudsperson for Financial Services Act 2018; and

(k) The Registration Duty Act 1804.

In the first section of this article, we address the significant changes affecting the banking industry. We examine some of the changes relevant to the non-banking financial services industry in the second section. The third section of this article highlights various changes aimed at facilitating business in Mauritius and the fourth section addresses changes to the taxation regime.

BANKING

Several important changes have been brought to banking laws having an impact both at the level of the Bank of Mauritius as well as at the level of the bank licensees.

Bank of Mauritius Act 2004

At the level of the Bank of Mauritius, the significant amendments to the Bank of Mauritius Act 2004 are as follows:

(a) to require the Bank of Mauritius to publish its report on monetary policy at least twice a year, instead of once a year;

(b) to provide for the Bank of Mauritius to determine the investment policy regarding the management of the official foreign reserves of Mauritius;

(c) to allow the Bank of Mauritius to appoint external consultants to manage the official foreign reserves of Mauritius on its behalf;

(d) to allow use of funds from the Special Reserve Fund to repay external debt obligations of the Central Government if this does not have an adverse impact on the efficient discharge of its functions under the Bank of Mauritius Act by the Bank of Mauritius;

(e) to allow crowd lending platforms to have access to and become participants of the Mauritius Credit Information Bureau; and

(f) to allow the Bank of Mauritius to seek the collaboration of the Financial

Services Commission for the establishment of a central KYC registry.

Banking Act 2004

At the level of the licensees, significant amendments brought to the Banking Act are as follows:

(a) the addition of a regime for the suspension of a banking license to the extent that the Bank of Mauritius is of the view that the licensee bank is not meeting its legal obligations under the Banking Act;

(b) the provision of circumstances where a director of a bank will be under an obligation to report certain transactions directly to the Bank of Mauritius – these would be in instances where the director of the view that there has been breaches of the banking or company laws, there may be instances of money laundering, there has been a breach of the banking regulatory regime, certain types of criminal offences would be committed, instances of conflict of interest or other instances of irregularity that would have an impact on the security of the depositors and creditors of the bank; and

(c) the addition of a whistleblower regime allowing for directors, senior officers, employees and agents of financial institutions to disclose to the central bank that the financial institution or its customers may have been involved in an act amounting to a breach of the banking laws. The amendments provide that a whistleblower will be faced with no criminal or civil liability and shall in no event be victimised.

Ombudsperson for Financial Services Act 2018

Complaint against financial institutions: Multiple changes have been made to the Ombudsperson for Financial Services Act 2018 to ease the process of making complaints against financial institutions.

The time period for a financial institution to respond to the initial representations made by a complainant has been reduced from 3 months to 10 days. Once the financial institution has made a decision concerning a grievance, the complainant now has 6 months to lodge a complaint with the Ombudsperson if that complainant is aggrieved by the decision of the financial institution. Where the complainant does not receive a response from the financial institution within 10 days, the time period for that complainant to lodge a complaint with the Ombudsperson has also been extended to 6 months after the expiry of the 10-day period. In both instances, the time period for filing a complaint with the Ombudsperson has been extended from 3 months.

The Act has also been amended so that a complaint to the ombudsperson no longer needs to be accompanied by a confirmation that the complainant has a sufficient interest in the subject matter of the complaint. In addition, the Ombudsperson or the officers of his office are now allowed to enter the premises of a financial institution to ensure that the instructions, guidelines or requirements he has issued are complied with.

NON-BANKING FINANCIAL SERVICES

Financial Services Act 2007

The definition of 'officer' has been extended to include 'money laundering reporting officer, a deputy money laundering reporting officer, a compliance officer' to the existing list which comprised of officers such as a members of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a company secretary or a partner. This amendment results in the FSC regulating a money laundering reporting officer, deputy money laundering reporting officer and a compliance officer in a similar manner as a

director of a person licensed by FSC to conduct regulated activities. For instance, the appointment of the new 'officers' will require the prior approval of the FSC and to satisfy the 'fit and proper test'.

Whistleblowing: A new section has been introduced to afford protection against any criminal or civil action to a person who reports in good faith to the FSC on a matter which the FSC has functions under the applicable laws. The identity of the reporting person will not be disclosed by the FSC without such person's consent unless it is necessary for the FSC to do so. Any act of victimization or retaliation against a person who makes a report is an offence. Further any false, malicious or vexatious disclosure by a person is an offence.

Power of chief executive to give directions in certain cases without opportunity to make prior representations: Where the Chief Executive of the FSC considers that any delay in giving a direction may cause severe prejudice to the clients of a licensee, the public or any part of the financial services industry, he may issue a direction which will take effect immediately and shall give the licensee an opportunity to make representations as soon as practicable (no later than 7 days from the date the direction was given).

Power to appoint administrator when conditions of licence not met: The FSC may appoint an administrator where conditions of a licence are no longer being met by a licensee.

Amendments to the licensing conditions under the Global Business licence to refer to the Income Tax Act: The requirement for a Global Business licence has been amended to impose that such entity carries out its core income generating activities in, or from, Mauritius as required in the Income Tax Act. The amendments to the Income Tax Act contemplates that a company will be treated as non-resident if it is centrally managed and controlled outside of Mauritius and availability of certain partial tax exemptions is subjected to conditions relating to substance of its activities as may be prescribed. The new substance requirements have not yet been prescribed.

Prior to such amendment, such entity had to, in addition to other conditions, carry out its core income generating activities in, or from, Mauritius by employing, either 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 its level of activities.

Central management and control outside of Mauritius for Authorised Companies: A company approved by the FSC to operate as an Authorised Company is required to have its central management and control outside of Mauritius.

Power to extend time periods: The FSC is empowered to extend the time period where a person is required to do a particular thing and an application may be before or after the period has ended.

Single Window System: The FSC will offer and administer a facility known as the Single Window System which will act as a centre and channel for expeditious submission of any relevant permits (such as occupational permits and certificates of incorporation).

New licences: The list of licences to be issued by the FSC now includes Crowdfunding, Fintech Servicers Provider and Robotic and Artificial Intelligence Enabled Advisory Services.

Administration of e-commerce has been included as an activity under a Global Headquarters Administration licence.

Courts (Civil Procedure) Act 1856

The Courts (Civil Procedure) Act has been amended so as to increase the number of instances in which leave will be granted by the court to file and serve Mauritian proceedings outside the jurisdiction, namely by adding that such leave may be

granted where any action, relief, dispute, third party claim in which a corporation holding a Global Business Licence, an Authorised Company, a collective investment scheme or a protected cell company is one of the parties. This is a welcome change to cater for instances where the Mauritian proceedings do not fall squarely within one of the pre-existing categories.

CORPORATE

Companies Act 2001

The Companies Act has been amended to provide that the board of a company must ensure that dividend is paid within 12 months from the date on which the dividend was declared. The instances where the Court may disqualify a person from being a director or promoter of a company have been extended to include a director of a company who has caused prejudice to the company which has resulted in a successful claim by a shareholder.

Insolvency Act 2009

A number of changes have been brought to the Insolvency Act, the most notable of which are the following:

(a) restriction of the qualification of insolvency practitioners to individuals ordinarily resident in Mauritius, which reflects the current practice;

(b) clarification that a body corporate may not act as liquidator of a company;

(c) where there is no agreement between a liquidator and creditors or a committee thereof, abolition of a remuneration based on a percentage of gross realization proceeds and replacement thereof with a prescribed fee. At the time of writing, such prescribed fee is yet to be published in regulations passed by the Ministry of Finance and Economic Development;

(d) by providing for a prescribed ranking of claims in the receivership of companies. Although the regulations prescribing such ranking are yet to be published at the time of writing, it is a welcome change that will end several uncertainties about the interplay between the Insolvency Act and the Civil Code on this issue;

(e) in the administration of companies, the introduction of a requirement for an administrator to hold meetings of classes of creditors at the watershed meeting at which creditors decide the fate of the administration. Regulations are awaited as to how the votes of different classes will be treated. Additional provisions have been introduced in order to ensure that dissenting creditors are not discriminated against and that creditors receive at least what they would receive in an insolvent liquidation of the company;

(f) in cross-border insolvencies, a welcome change is the abolition of a requirement of reciprocity before foreign insolvency proceedings can be recognized in Mauritius. The proclamation of the Ninth Schedule to the Act, which contains provisions based on the UNCITRAL Model Law, is awaited; and

(g) the Act has is also clarified to ensure that appeals from decisions of the Bankruptcy Division of the Supreme Court do not operate as an automatic stay of such decisions and it is the appellate court which will have a discretion whether to grant such stay. This amendment aims at ensuring that decisions of the Bankruptcy Division, which after all is a specialist division, are not unduly delayed or hampered simply by lodging an appeal.

Limited Liability Partnerships Act 2016

Definition of beneficial owner: The definitions of "beneficial owner" and "ultimate beneficial owner" have been aligned with the definition in the

Companies Act with such modifications and adaptations as may be necessary. The Companies Act essentially specifies that a beneficial owner or ultimate beneficial owner to be a 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, and sets out further provisions to ascertain the identity of the beneficial owner.

Limited Partnerships Act 2011

Definition of beneficial owner: The definitions of beneficial owner and ultimate beneficial owner in the Limited Partnerships Act have also been aligned with the definition of the Companies Act.

TAXATION

Income Tax Act 1995

A number of significant changes have been brought to the Income Tax Act, the key amendments being:

Tax residency in Mauritius: The place of effective management has been removed as a criterion for determining tax residency of companies. A company incorporated in Mauritius shall be treated as non-resident if it is centrally managed and controlled outside Mauritius.

Introduction of controlled foreign company (CFC) rule: The CFC rule has been introduced as an additional anti-avoidance provision. A CFC is defined as a non-resident company in which more than 50 per cent of its total participation rights are held directly or indirectly by a resident company or together with its associated enterprises and includes a permanent establishment of the resident company.

Under the CFC rule, where the Mauritius Revenue Authority considers that the non-distributed income of the CFC arises from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax benefit, that income shall be deemed to form part of the chargeable income of the resident company.

An arrangement or a series thereof shall be regarded as non-genuine to the extent that the CFC would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the CFC's income.

The CFC rule shall not apply to a CFC where in an income year:

(a) accounting profits are not more than EUR 750 000, and non-trading income is not more than EUR 75 000;

(b) accounting profits amount to less than 10 per cent of its operating costs for the tax period (the operating costs shall not include the cost of goods sold outside the country where the entity is resident for tax purposes and payments to associated enterprises); or

(c) the tax rate in the country of residence of the controlled foreign company is more than 50 per cent of the tax rate in Mauritius.

Extension of the partial exemption regime: The 80 per cent partial exemption regime has been extended to cover the following income:

(a) interest derived by a person from money lent through a peer-to peer lending platform;

(b) income derived by a company from reinsurance and reinsurance brokering activities subject to satisfying conditions as may be prescribed relating to the substance of its activities;

(c) income derived by a company from leasing and provision of international fibre capacity subject to satisfying conditions as may be prescribed relating to the substance of its activities; and

(d) income derived by a company from the sale, financing arrangement, asset management of aircraft and its spare parts and aviation advisory services related thereto subject to satisfying conditions as may be prescribed relating to the substance of its activities.

Tax holidays: Tax holidays have been introduced on the following income:

(a) Four-year exemption on income derived by a company from bunkering of low sulphur heavy fuel oil;

(b) Eight-year exemption on income derived by a company from intellectual property assets developed in Mauritius on or after 10 June 2019;

(c) Five-year exemption on income derived by a company set up on or before 30 June 2025 and issued with an e-commerce certificate by the Economic Development Board;

(d) Five-year exemption on income derived from licensed operation of a peer-to-peer lending platform provided operation starts before 31 December 2020 and the person satisfies the condition relating to the substance of its activities as specified by the Financial Services Commission; and

(e) Eight-year exemption on income derived by a company set-up on or after 10 June 2019 and engaged in the development of a marina.

Allowable deductions: The following expenditures can now be deductible from gross income:

(a) an amount equal to 150 per cent of any expenditure incurred by a company operating a hotel on cleaning, renovation and embellishment works in the public realm;

(b) an amount equivalent to 150 per cent on filing fees incurred by a company in respect of arbitration, conciliation or mediation for the settlement of a dispute before a recognised arbitration institution in Mauritius.

Interest from money lent through peer-to-peer Lending platform: Gross income derived from a business has been extended to include any interest derived by a person from money lent through any peer-to-peer Lending platform operated under a licence issued by the Financial Services Commission.

A person who derives interest from money lent through any peer-to peer lending platform may deduct the amount of the debt or interest arising from such amount lent and which is proved to have become bad from any interest received from money lent through the same peer-to-peer Lending platform. Where the amount of debt or interest cannot be fully relieved, the person may claim the unrelieved amount of debt or interest be carried forward and set off against interest received from money lent through the same peer-to-peer lending platform in the succeeding income years. No time limit shall apply for the setting-off of any unrelieved bad debt arising as such.

Payment of interest in a peer-to-peer lending platform is exempt from tax deduction at source.

Registration Duty Act 1804

Introduction of administrative fee: One of the main changes to the Registration Duty Act is the introduction of an administrative fee. An administrative fee at a prescribed rate shall now be levied on any deed deposited for registration at the Registrar-General. Where a deed is not presented to the Registrar-General within the prescribed time limit, in addition to the administrative fee, a surcharge equal to 50 per cent of the amount of the administrative fee shall be payable.

5 THINGS TO KNOW ON MAURITIUS DEPOSIT INSURANCE SCHEME

On 9 April 2019, the Acting President of Mauritius assented to the Mauritius Deposit Insurance Act (the "**Act**"). The Act establishes the Mauritius deposit insurance scheme (the "**Scheme**") and the deposit insurance fund (the "**Fund**") to strengthen the banking sector.

The Act has not yet come into operation and shall do so on a date to be fixed by proclamation. The provisions of the Act will have a major impact on the banking community and the way banks and non-banks deposit taking institutions are operating. We have identified five keys features of the Act which operators may keep in mind in anticipation of the coming into operation of the Act.

1. Purposes of the Scheme and the Fund: Firstly, they seek to protect depositors of a bank or non-bank deposit taking institution by providing for a safety net in case of the loss of their deposits and, secondly, they seek to contribute to the stability of the Mauritian financial system by ensuring that depositors have prompt access to their deposits in the event of a failure by a bank or non-bank deposit taking institution.

2. The Mauritius Deposit Insurance Corporation Ltd: The Act establishes the Mauritius Deposit Insurance Corporation Ltd (the "**Agency**") as the body responsible to administer and manage the Scheme. The Agency will collect contributions from member institutions, invest the assets of the Fund, educate the public on the Scheme and make payments of compensation to depositors when required. The Agency also has broad powers to recover contributions from members. For instance, any amount held by a member with the Bank of Mauritius may be applied towards the satisfaction of a payment of contributions owed to the Fund.

3. The member institutions and contribution: The Act places the burden of contributing to the Fund on member institutions which are made up of banks and non-bank deposit taking institutions that fall within the scope of the Banking Act 2004.

The contribution that member institutions will pay to the Fund will come in three phases. The **first phase** is the payment of initial contribution that will be determined in accordance with the third schedule of the Act. The third schedule of the Act provides that the initial contribution to be paid by all member institutions will constitute one tenth of the targeted fund of the Scheme. The Act does not specify the targeted fund size at this stage but identifies this as being the size of the Fund sufficient to meet the expected future obligations and the costs of the Agency. Once the targeted fund size is communicated by the Agency, the share that each member institution will contribute will be calculated as a pro rata share of that member institution's insurable deposits to the total insurable deposits of all member institutions. The **second phase** of contribution is a premium of 20 cents per hundred rupees of insurable deposits payable pursuant to section 18(2) of the Act. It is not currently clear that this fee relates to the annual premium referred to in section 18(4) of the Act. The **third phase** of contribution is the special premium set out in section 18(3) of the Act which may be imposed by the Minister of Finance and Economic Development in an emergency situation on a temporary basis. The purpose of the special premium is to replenish the Fund after compensation has been paid by

the Agency. Any amount payable by the members to the Agency should be paid within 21 days after the date of service of a notice from the Agency.

4. Insured deposits: Insured deposits are those in a savings or current account, time deposits and other deposits as determined by the board of the Agency. The insured deposits can be both in local and foreign currency, and will include interest accrued. The Act also provides a list of excluded deposits that will not be covered by any payment of compensation by the Agency.

5. Compensation: In the event of a failure of a member institution, depositors will receive compensation for insured deposits that are held with that member institution. Any compensation that the Agency will pay to depositors in the event of the failure of a member institution shall be paid out of the contributions made into the Fund. The Act places a threshold for compensation to be paid by the Agency in relation to deposits held with a failed member with a coverage limit set at MUR 300,000 per depositor or such amount as may be prescribed. The requirement for the Agency to pay compensation is triggered upon a liquidator, conservator or receiver being appointed for the member institution in accordance with the provisions of the Banking Act 2004. In addition, the obligation to pay compensation is triggered if a member institution is resolved through a purchase and assumption transaction provided that the Bank of Mauritius is satisfied that this method is more cost effective. As an alternative to paying compensation, the Bank of Mauritius may require that a financially sound institution assumes the deposits of a failed member. This power may be exercised by the Bank of Mauritius if it considers that the transfer of deposits facilitates the least costly resolution of a failed member and the cost to the Fund does not exceed the cost of compensating the depositors directly.

*Click **here** to read the full article on the Deposit Insurance Scheme published by BLC Robert & Associates in May 2019.*

F.A.Q

Erasure of fixed and floating charges

Once they are created, fixed and floating charges (each a "**Charge**") need to be perfected to become valid against third parties. This will allow the Charge to obtain the priority intended over competing creditors of the chargor. Perfection of a Charge involves registration and inscription in public registers, which is completed with the office of the Registrar General and the Conservator of Mortgages (the "**Registrar**"). Once a Charge is released, the corresponding entry in the public registers should be erased. We have set out below the key points to bear in mind when seeking to erase a Charge.

What are the documents required to erase a Charge?

Article 2202-15 of the *Code Civil Mauricien* provides that a Charge can be partly or fully erased upon a request in writing to the Registrar from the chargeholder (the "**Erasure Letter**") or upon a judge's order further to an application lodged by the chargor.

The Registrar will verify the identity of the chargeholder's signatory once it has received the Erasure Letter. Chargeholders not incorporated or represented in Mauritius must provide a power of attorney ("**PoA**") authorising its signatory to execute the Erasure Letter. A PoA executed outside Mauritius should be duly legalised in accordance with the laws of the country of execution.

The Erasure Letter should refer to the registration number and the amount of the secured liabilities of the Charge.

How to submit the documentation with the Registrar?

The Registrar has set up an online platform dedicated to the submission of all documents to be registered and/or inscribed. The Erasure Letter together with the PoA, if applicable, should be submitted to the Registrar via this platform.

How long does it take to erase a Charge?

It may vary from 3 to 10 working days for registration of the Erasure Letter to be processed. The formalities for discharge of the security is considered complete when the registration stamp is affixed to the Erasure Letter. It is recommended that a search be carried out after the Erasure Letter is registered to confirm erasure of the Charge.

How much does it costs to erase a Charge?

Fees relating to the erasure of a Charge stand in the region of USD 40. If however there are multiple Charges that are released in an Erasure Letter, the Registrar may take the view that there is more than one taxable transaction. In that event, the Registrar may tax the Erasure Letter on the basis of the number of Charges being released as opposed to considering the erasure of the Charges as a single transaction.

When is a Charge effectively erased?

The *Code Civil Mauricien* provides a statutory right for the benefit of the chargor for the security to be released once the secured liabilities have been repaid in full.

From the moment the secured liabilities are repaid, the chargeholder no longer has the right to enforce the security over the collateral. Any rank conferred upon the chargeholder in the collateral will also fall away.

However, as the perfection of the Charge involves registration and inscription in public registers, registration of the Erasure Letter and the subsequent erasure of the Charge in the public registers are important steps from the Chargor's perspective to ensure the complete discharge of the Charge.

OTHER RECENT PUBLICATIONS

We have a number of recent publications available which provide a high level overview of a range of topics

- **Mauritius further strengthens its anti-money laundering framework.** *Read more*
- **The Mauritius FSC issues Guidance Note on Securities Token Offering.** *Read more*
- **Major Transaction: Non-Compliance and recourse available to shareholders.** *Read more*
- **Mauritius FSC implements licensing framework for digital asset custodian services in March 2019.** *Read more*
- **The Finance Act & The Business Facilitation Act 2019 - Key legislative amendments.** *Read more*

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