

The Finance Act 2021 Series

Part 4 – Regulatory and Compliance

Key legislative amendments

axis
TRUSTED FIRST

BLC ROBERT ALN 

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01 | Introduction

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The Finance (Miscellaneous Provisions) Act 2021 was gazetted on 05 August 2021 and it brings into force a number of amendments to the legislations in Mauritius. The fourth segment of the joint Axis and BLC Robert Finance Act series will be covering the legislative amendments implemented to the “Regulatory and Compliance” sector, highlighting the key amendments made to the Bank of Mauritius Act, Banking Act, Economic Development Board Act, Financial Intelligence and Anti-Money Laundering Act, Financial Reporting Act, Financial Services Act, Information and Communication Technologies Act, Insurance Act, Interpretation and General Clauses Act, Local Government Act, Merchant Shipping Act, Prevention of Corruption Act, Prevention of Terrorism Act and United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019.

02 | Bank of Mauritius Act

Functions and powers of the Bank of Mauritius

The amendments to the Bank of Mauritius Act 2004 follow the themes laid in the Banking Act 2004 with enhanced powers and supervisory role of the central bank.

Section 5 relating to the functions of the central bank has been amended to enlarge the ambit of the regulatory and supervisory powers of the central bank to any financial institutions and other institutions which the central bank may licence or authorise under the banking laws. Furthermore, the Bank of Mauritius is now the macroprudential authority of Mauritius.

The central bank has been granted additional powers to open accounts for, accept deposits from and pay interests on such deposits to licensees under the National Payment Systems Act.

Sustainable bonds

In the line with the recent guidelines on sustainable bonds, the central bank has been empowered to issue guidelines, directives, rules or instructions regarding the framework for the issue of sustainable bonds, including blue and green bonds in Mauritius.

Digital currency

Under the Finance Act 2020, the Act was amended to allow the Bank of Mauritius to issue digital currency, the amendments brought by the Finance Act 2021 go a step further with additional measures.

The central bank is now empowered to make rules to provide for the framework under which digital currency may be issued by the central bank, held and used by the public. The central bank is further authorised to open accounts and accept deposits of digital currencies issued.

Making, altering or using counterfeited digital currencies have been added as a criminal offence under the Act with a fine not exceeding one million rupees and to penal servitude.

Central KYC and Accounts Registry

The existing Central KYC Registry created under section 52A of the Act will now be known as the Central KYC and Accounts Registry with the main existing functions of collecting KYC records submitted to KYC institutions by their customers and now to also collect information on accounts maintained by customers, other than the balance and amount held in the accounts.

The following new terms have been added in the light of the enlarged powers of the Registry:

1. “accounts” is defined as:
 - (i) accounts maintained in Mauritius by a financial institution for its customer;
 - (ii) IBAN account maintained in Mauritius by a financial institution for its customer;
 - (iii) safe deposit box leased by a bank or (iv) any account maintained by financial institution as the central bank may specify.
2. “customer” means:
 - (i) the owner of an account
 - (ii) the lessee of a safe deposit box leased by a bank
 - (iii) a person who acts on behalf of (i) or (ii), (iv) the beneficial owner of an account.

Credit Scoring

Section 52B of the Act has been amended to enable the Credit Information Bureau to provide credit scores, defined as numbers which represent the credit exposure of customers.

03 | Banking Act

Fintech, Regtech and other innovative driven financial services

Key definitions were amended as follows:

- (i) Fintech means technologically-enabled financial innovations which could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services.
- (ii) Regtech or regulatory technology means the innovative technology solutions utilised by financial institutions and other regulated entities to facilitate compliance with regulatory rules and requirements.

a. Regulatory sandbox authorisation

The Bank of Mauritius (“BOM”) will be entrusted with the authority to regulate and supervise financial institutions, licensees under the National Payment Systems Act 2018 and other body corporates (“Applicants”), willing to provide Fintech, Regtech and other innovative financial services under a regulatory sandbox authorisation.

The aim of the regulatory sandbox is to provide for a controlled testing environment which allows an Applicant, authorised by the central bank, to conduct experiments of the proposed services under the supervision of the central bank for a period of time which can be renewed. Authorisations under the regulatory sandbox will be subject to terms and conditions to be determined by the BOM to contain the consequences of failure and to maintain the overall safety and soundness of the Mauritian financial system. As part of its supervisory powers of the sandbox licensees, the central bank is authorised to examine the operations and affairs of the holders of regulatory sandbox authorisation.

Upon the BOM being satisfied with the successful experimentation period, the Applicant will be authorised to submit an application to the central bank for the relevant activity licence under the Act or the National Payment Systems Act 2018.

The requirements and eligibility criteria of the authorisation under the regulatory sandbox remain to be determined under guidelines or directives of the central bank.

b. Fintech innovation hub and digital lab

The BOM may establish a Fintech innovation hub and a digital lab:

- (i) to foster innovation and the use of emerging technologies to facilitate the provision of banking and payment solutions and other related services falling under the purview of the central bank;
- (ii) to identify critical trends in technology affecting the banking and payment services sectors and develop in-depth insights into these technologies;
- (iii) to provide a testing environment for fintech to develop, test, prototype and operate products or services;
- (iv) to establish an international networking platform for experts on innovative technologies related to the banking and payment services sectors to promote research, exchange of views and knowledge-sharing; and
- (v) for such other purposes as the central bank may determine.

Financial institutions, public or private sector agencies may be called to collaborate with the central bank for the establishment of the fintech innovation hub and a digital lab.

The central bank will determine the necessary requirements applicable to this initiative and will define who can enter, participate or operate in the fintech hub and digital lab.

Conditions for an application for a banking licence

Section 7(4A) (a) of the Act relating to the conditions for the granting of a banking licence provides that the central bank would refuse the licence to a financial institution which has no physical presence in the country in which it is incorporated or licensed and which is unaffiliated with

03 | Banking Act (Cont'd)

a regulated financial group which is subject to effective consolidated supervision. The section has been amended by replacing the terms “financial institution” by the word “applicant” with the effect of enlarging the conditions applicable to any type of applicant for a bank licence.

Exemptions to duty of confidentiality of financial institutions

New exemptions to the duty of confidentiality of financial institutions have been incorporated under Section 64(3) of the Act. As from now, the duty of confidentiality provided under the Act shall not apply where the disclosure is necessary to:

- (i) Enable the financial institution to make a complaint or to lodge a report to an officer authorised under any enactment to:
 - (A) Receive a complaint or report; or
 - (B) Carry out an investigation or prosecution;
 - (C) In relation to a person involved or suspected to be involved in an offence;
- (ii) Any Court.



04 | Economic Development Board Act

New scheme

The Economic Development Act (the “EDB Act”) has been amended to introduce the Premium Investor Scheme (“PIS”).

An investor with a minimum investment of 500 million rupees in emerging sectors, pioneering industries and first movers, innovative technologies and industries or any other targeted economic activity, in relation to the manufacture of pharmaceuticals and medical devices, may apply for a Premium Investor Certificate under the PIS. Holders of a certificate under the PIS may benefit of:

- (i) rebates, exemptions and preferential rates with respect to taxes, duties, fees, charges and levies under any enactment; and
- (ii) facilities, grants and exemptions in relation to land and building, infrastructure and public facilities, utilities and labour requirements including foreign labour.

The names of holders of a certificate under the PIS as well as the benefits conferred to them, will be disclosed on the website of the Economic Development Board (“EDB”).

04 | Economic Development Board Act (Cont'd)

Registration and Deregistration

Applicants for Occupation Permits, Family Occupation Permits and Residence Permits under the Immigration Act, as well as holders of certificates issued under the schemes provided under the new EDB Act, are required to register with the EDB through the prescribed process. The circumstances and procedures under which the EDB may deregister a permit holder or suspend or revoke a licence (including a Regulatory Sandbox Licence) have been clarified and may be on the grounds that the permit/licence holder:

- (i) has given any fake or misleading information, document or particulars;
- (ii) no longer satisfies the criteria and conditions;
- (iii) has breached any condition;
- (iv) has ceased the economic activity for which he/it has been registered/licensed;
- (v) is acting or has acted in a way to tarnish the good repute of Mauritius; or
- (vi) is acting, or has acted, in contravention of any Mauritius laws.

Governance and administration

The Board composition of the EDB will be reviewed to include representatives of the Prime Minister's Office as well as from the relevant Ministry responsible for finance

and housing and land use planning. The EDB is also allowed to exchange information with any public sector agency and its mandate has been extended, to support, coordinate and cooperate with public sector agencies on the review of systems, procedures and guidelines with a view to facilitating the ease of doing business.

A Business Regulatory Review Council shall be set up with the objective of (i) developing a national business-related regulatory reform policy on the licensing, permits and authorisations system in Mauritius; (ii) reviewing the existing system; (iii) making recommendations for any reform; and (iv) providing advice for matters generally relating to business regulation.

A Trusted Trader Committee shall also be set up to consider and provide approval of trusted trader certificates to be issued under the Dangerous Chemicals Control Act, the Fisheries and Marine Resources Act, the National Agricultural Products Regulatory Office Act, the Pharmacy Act, the Plant Protection Act and such other enactment as may be prescribed.

The composition and modus operandi of the above council and committee have been provided in the EDB Act. The CEO of the EDB has also been empowered to refer the monitoring and supervision of a Regulatory Sandbox Licence holder to any other regulatory or competent authority.



05 | Financial Intelligence and Anti-Money Laundering Act

The important amendments to FIAMLA are listed as follows:

Definitions

The Finance (Miscellaneous Provisions) Act 2021 brings important changes to the definition sections. A licensee under the National Payment Systems Act 2018 will now be construed as “Bank” under the FIAMLA. Definition of “Financial Institution” has been amended to repeal sub paragraph (iii) and replaced with new paragraph to clarify that it includes an institution or a person licensed, registered or authorised under the Securities Act 2005, other than an entity registered with that Act as a reporting issuer and which does not conduct any financial activities. It has been clarified that a financial institution includes a Qualified Trustee by repealing sub paragraph (v) to replace it by the Trusts Act as Qualified Trustee. A licensee under section 12 of the Private Pension Schemes Act has now been added to the definition of a financial institution. “The Registrar of Companies” now forms part of the definition of “Registrars”. Some new definitions have also been added to include “Core Group” and “Member Firm”.

Procedure

A new subsection has been added to section 6 of the FIAMLA. Section 6(4) brings in the possibility of lodging a single information in cases where different investigatory authorities have conducted investigations into a money laundering offence and the offence which generated the proceeds alleged to have been laundered.

Amendments related to National Committee and the Core Group

The new title of Part IV(A) is ***Core Committee for Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation and National Committee for Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation***. Prior to the amendments, the title used to be National Committee for Anti-Money Laundering and Combating the Financing of Terrorism.

Amendments have been brought to section 19(A)(2) to clarify the composition of the National Committee and

now shall also consist of:

- The supervising officer of the Ministry who shall act as Chairperson instead of the supervising officer of the Ministry responsible for the subject of finance or his representative;
- Director AML/CFT of the Ministry or his representative instead of a representative of the Ministry;
- A representative of the Registrar of Companies; and
- A representative of the Mauritius Institute of Professional Accountants.

The Finance (Miscellaneous Provisions) Act 2021 has also provided for the establishment of a new Core Group to ensure effective implementation, by the relevant competent authorities of FATF standards on AML/CFT. Further functions will include making recommendations to the PMO on strategy and international developments related to AML/CFT, deciding on matters pertaining to the implementation of AML/CFT standards which a relevant competent authority may refer to and ensuring effective coordination between the National Committee and other competent authorities. Provisions related to the structure and meetings of the Core Group have also been added.

To provide a link between the National Committee and the Core Group, a new subsection (g) has been added to section 19(B) such that the National Committee is now also required to keep the core Group informed on regularly of matters related to its functions.

Another provision has been inserted as section 19(C)(3) to provide that in discharge of its functions, the National Committee shall be assisted by a Secretariat which shall be constituted with the approval of the Minister.

Amendments to related Regulatory Body (ies)

Section 19FA (1) has been altered to clarify that any regulatory body may seek information from any person listed in Part 1 of the First Schedule.

Barrister, attorney and notary have been now brought under the purview of section 19(H)(1)(d) entailing that such professional can now be subject to administrative

05 | Financial Intelligence and Anti-Money Laundering Act (Cont'd)

sanctions such as issue of private warning and/or public censure; administrative penalty; ban to conduct the business or profession for a period not exceeding 5 years; and/or revoking or cancelling of license, approval or authorisation.

partners or employed professionals within member firms. Member firms under the FRA have been added as a separate item (2) to reflect MIPA as regulatory body for such firms.

Part II of the First Schedule provides for the list and manner of transactions in connection with the members of relevant profession or occupation. Amendments have been done to this Part to bring clarity about the transactions undertaken by real estate agent, land promoter and property developer. Earlier, the functions of real estate agent were also inclusive of a land promoter and property developer. The kind of transactions that a real estate agent undertakes has now been separated from that of a land promoter and property developer.

First Schedule

Part I of the First Schedule which lists the members of relevant profession or occupation has been amended to clarify that the Mauritius Institute of Professional Accountants (“MIPA”), established under the Financial Reporting Act (“FRA”), will be the Regulatory Body for professional accountant and public accountant under the FRA only where they are sole practitioners,

06 | Financial Reporting Act

No audit firm shall within a period of 10 years from its appointment as auditor of a listed company, audit the accounts of that company for an aggregate period of more than 7 years.

07 | Financial Services Act

The evolution of technology and new businesses cannot go unnoticed. The definition section of the Financial Services Act has been amended to include the following new terms:

- “fintech” which shall mean technologically enabled financial innovations which could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services;
- “regulatory sandbox” shall mean a controlled testing environment which allows a licensee or a body corporate authorised under section 14B to conduct experiments, whether simulated or live, under the supervision of the Commission;
- “regulatory sandbox authorisation” shall mean an authorisation granted under section 14B.

In the spirit of the above, the financial services part of the Act will now include a separate provision for regulatory sandbox authorization. A licensee or body corporate will be able to apply for an authorisation in such form and manner as the Commission may determine. The Commission may grant a regulatory sandbox authorization where it is satisfied that an applicant is of good standing, proposes to conduct an activity which in the opinion of the Commission is viable, does not present a risk to the stability and soundness of the financial system of Mauritius and complies with such conditions as may be prescribed. The authorization may be subject to a specified time period whereby at the expiry, the Commission may revoke or renew the authorisation or issue to the holder, a licence under the Act or any other relevant Act where it is satisfied that conditions for holding such licence are satisfied.

07 | Financial Services Act (Cont'd)

The Commission may cause an inspection of the operations and affairs of a holder of such authorization to be conducted in order to assess compliance with the terms and conditions. Any person who is in breach shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

The Commission may issue such guidelines, instructions or directives as it deems fit.

With respect to technological advancement, the amendment to the Act provides for the establishment of a fintech innovation hub and digital lab by the Commission. The objectives are:

- (a) to foster innovation and the use of emerging technologies by financial institutions and other financial services providers;
- (b) to identify critical trends in technology affecting the financial sector and develop in-depth insights into these technologies;
- (c) to provide a testing environment for fintech to develop, test, prototype and operate their products or services;
- (d) to establish an international networking platform for experts on innovative technologies related to the financial sector to promote research, exchange of views and knowledge-sharing; and
- (e) to facilitate such other purposes as the Commission may determine.

The Commission shall determine the requirements for a person to enter, participate or operate in the fintech innovation hub and digital lab. Any person who enters, participates or operates in this initiative shall comply with such terms and conditions as the Commission may determine. The Commission may seek the collaboration of any financial institution or any public or private sector agency for the establishment of the fintech innovation hub and digital lab.



The following changes were also brought to the Act:

1. A licensee of financial services shall no longer be required to seek the approval of the Commission in the event of an issuance of shares of less than 5% to an investor unless such issuance will result in a change of control in the licensee. There is, however, a requirement to notify the Commission. Of note, the exemption is already applicable to transfer of shares or legal or beneficial interest of less than 5% in a licensee.
2. The holder of a licence including the holder of a Global Business Licence or An Authorised Company, or a law practitioner or an accounting firm acting on behalf of and on written of the holder of a licence issued by the Commission, shall be eligible to make a request for a certificate of good standing.

08 | Information and Communication Technologies Act

The main amendments brought to the Act relate to (i) the prohibition on the importation, possession and use of devices in the GMPCS system, (ii) the creation of new offences associated with the use of a telecommunication equipment or an information and communication service, and (iii) the issuance or renewal of a licence conditional to the payment of the licence fee.

According to information published by the International Telecommunication Union, a GMPCS (Global Mobile Personal Communication by Satellite) is a personal communication system providing transnational, regional or global coverage from a constellation of satellites accessible with small and easily transportable terminals. Whether the GMPCS satellite systems are geostationary or non-geostationary, fixed or mobile, broadband or narrowband, global or regional, they are capable of providing telecommunication services directly to end users. GMPCS services include two-way voice, fax, messaging, data and even broadband multimedia.

The new section 45B prohibits a person from using, possessing or importing or causing to import a phone, a router or any other device that may be connected to a GMPCS system, unless that person has obtained the authorisation of the telecoms regulator to use, possess, import or cause to import such phone, a router or any other device. With coming into operation of the amendment, a person must apply for the appropriate licence from the telecom's operator.

The amendment also expands on how the transmission of a message using a telecommunication or an information and communication services constitutes a criminal offence. In addition, a person who uses a telecommunication equipment, an information and communication service, a telecommunication service or information and communication technologies to impersonate, or by other means impersonates any other person which is likely to cause or causes harm to the person who has been impersonated, commits a criminal offence. The legislator sets out a list of factors which the Court may consider determining whether harm was caused or was likely to be caused. For example, the Court may consider the extremity (may be, the nature) of the language used, the context in which the message appeared or whether the message would cause harm or would likely to cause harm to an ordinary reasonable person in the position of the alleged victim.

Finally, the Minister responsible for the subject of telecoms is given the power to make regulations for the registration of SIM cards. It is worth mentioning that before a SIM card is used, such card is registered with the operator and information. This information is confidential and can only be disclosed in the context of a criminal investigation upon an Order of the Judge. It remains to be seen what sort of regulations will be made concerning SIM cards.

09 | Insurance Act

Introduction of the National Insurance Claims Database

One of the noteworthy additions which has been enacted is the introduction of a National Insurance Claims Database concerning motor insurance business. This Database will be kept by the Commission and will contain information pertaining to insurance business on insurers, policy holders, beneficiaries or third-party claimants.

The information collected will be kept confidential by the Commission and will only be disclosable for the processing of insurance claims, the administration or the settlement of claims.

09 | **Insurance Act** *(Cont'd)*

Further obligations with regards to insurance agents

A further change brought about to the Insurance Act is the obligation under section 71(1A) for insurers to now ensure that their insurance agents are in good standing in terms of fees and reporting obligations. Moreover, insurance agents who are natural persons or small private companies now also have to submit financial summaries within 3 months of expiry of each balance sheet date. The format of these financial summaries has been included as the new Fifth Schedule to the Insurance Act.

A new section 122A has been included in the Insurance Act, which empowers the Commission to exempt any classes of persons from section 72 of the Insurance Act which include the obligation to file financial statements and returns by insurance managers, insurance agents and insurance brokers.

10 | **Local Government Act**

Interestingly, the Local Government Act now exempt businesses from paying trade fees in the first 2 financial years after their registration, and the exemption availed by businesses whose annual trade fees do not exceed 5,000 rupees, has been extended from 6 to 11 years. Furthermore, holders of a certificate, licence or permit issued by the Tourism Authority and a Global Business Licence issued by the Financial Commission and not having physical office in Mauritius, are exempted from paying the trade fees.

11 | **Prevention of Corruption Act**

The Prevention of Corruption Act is amended to extend the validity period of an attachment order from 60 days to 180 days. It is recalled that an attachment order is granted by the Judge in Chambers upon an application made by the Independent Commission Against Corruption (“ICAC”) has reasonable ground to suspect that a person has committed an offence under this Act or the Financial Intelligence and Anti-Money Laundering Act. Prior to the amendment, the ICAC had to renew the validity period of the attachment before the expiry of 60 days from the date the attachment order is made. With the extension of the validity period, there is a less pressure on the ICAC to rush to make an application for the renewal of the order.

With the amendments brought by the Finance (Miscellaneous Provisions) Act 2021, the ICAC is given to power to realise the assets attached or seized. However, the ICAC may do so only with the consent of the owner of the asset and on terms and conditions agreed between the owner and the ICAC. The amount received following the realisation of the asset and deduction of any costs incurred in the realising of the assets must be credited into a separate bank account opened in the name of the ICAC for the purpose of assets realised and thereafter dealt with in accordance with any Court order or enactment.



12 | Prevention of Terrorism Act (“POTA”)

To further combat terrorism financing, the Commissioner of Police is vested with the power to make an application for the monitoring of an account held at a financial institution where the account is the subject of a terrorist investigation and the person specified in the application appears to hold the property. However, the account information must be of substantial value to the investigation and it is in the public interest that the account information is provided. The Order which is granted by the Judge takes the form of an Account Monitoring Order. A financial institution which is served with an Account Monitoring Order must provide the account information that is specified in the Order. An Account Monitoring Order which is initially valid for a period of 90 days from the date the Order is made may be extended for an additional period not exceeding 180 days.

13 | United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019

The UN Sanctions Act has been amended to provide for the definition of the term ‘investigatory authority’ to have the same meaning as in the Financial Intelligence and Anti-Money Laundering Act 2002. Prior to this amendment, the term was used several times in the UN Sanctions Act, however, no definition was provided for same.

The National Sanctions Committee can now act on its own initiative or upon the request by a person to determine the involvement of a party in terrorism and direct the Secretary for Home Affairs to declare that party as a designated party.

Another significant change to the UN Sanctions Act is the express inclusion that where a person is required to make a report and submit information in respect of listed or designated parties, the report must be made notwithstanding any confidentiality provision in any enactment.

Lastly, the Secretary for Home Affairs is now required to give public notice of any freezing order granted under the UN Sanctions Act by electronic means and in a daily newspaper. Previously, the requirement was that of publishing the notice in two newspapers.