



The sudden outbreak has left individuals and businesses with many pressing questions that need answers.

Through this FAQ our lawyers provide answers to a wide range of legal questions which may arise as a result of the impact of COVID 19 on businesses. Should you require legal advice in respect of the impact of COVID 19 on your business do not hesitate to contact any of our lawyers listed below.

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A. EMPLOYMENT

	Questions	Answers
1.	Can an employer be legally compelled to notify the local health ministry, either proactively or in response to a request from the ministry or other government agency in case an employee is infected with the COVID-19 virus?	The employer is not legally compelled to notify the health ministry in case an employee is infected by the COVID-19 virus, unless in response to a request from the relevant ministry or authority. The Employer will only be able to state that the employee has symptoms but will not be able to ascertain that the employee is infected with Covid-19 as the test is only being carried by the officers of the Ministry.
2.	Is an employer legally obligated to notify employees if any of their employees is infected with the COVID-19 virus?	An employer is not legally obligated to notify employees if any of their employees is infected with the COVID-19 virus but the employer should appropriately disclose that someone in the workplace has been exposed to COVID-19, without disclosing the identity of that employee in order to protect their privacy. The employer should advise employees to self-quarantine in such event and seek medical advice or contact the Ministry of Health if they have any symptoms of the virus.
3.	Is there an obligation to close a place of work if an employee is infected? At what stage can the employer reopen the place of work?	The Occupational Health and Safety Act 2005 (OSHA) imposes a duty on employers to ensure the safety, health and welfare at work for all employees. The OSHA states that employers must, as far as practicable, provide and maintain a working environment that is safe and without risks to health. Given the gravity of the COVID-19, the employer may have no other option to close down until the premises can be thoroughly cleaned in accordance with WHO standards.
4.	Are there any issues with forcing employees to work from home?	Employment contracts often provide that the employee's place of work shall be [x] or such other place as the employee may be notified. In such case, an employer may require its employees to work from home. Even without such a provision, if the reason is to ensure the health and safety of the employees, an employer would have good grounds for requiring employees to work from home. The prevailing situation in Mauritius, in the light of the directives and orders issued by the relevant authorities, call for employees to work from home (unless the services provided by the employers are deemed essential) is clearly good reason in the current circumstances.

	Questions	Answers
5.	How can employers cut wages for employees? For example, can employees be asked to stay away from work in exchange for reduced pay without triggering redundancies?	An employer may require an employee to stay away from the workplace as explained above. However the reduction of wages unilaterally without triggering a redundancy would require the consent of the employee. However the employer may require a worker to work temporarily for a time shorter than that specified in the agreement at a reduced remuneration subject to the approval of the supervising officer of the Ministry responsible for the subject of labour and employment relations.
6.	Can employers force employees to go on forced paid leave?	For employees whose monthly basic salary is MUR 50 000 or less, the law provides that where an employer and an employee are unable to agree as to when the leave is to be taken, half of the leave period shall be fixed by the employer and the other half by the Worker. Hence the Employer can force the employee to take half of their leaves entitlement. For those employees whose basic salary is more than MUR 50 000 a month, it will be contractual and subject to the terms of the employment agreement
7.	Can employers force employees to go on forced paid leave or unpaid leave during this time?	The answer provided to question 6 will not be applicable in the current situation. In the current context where there is a curfew or even in a situation of a lock down where businesses are closed, it would not be possible for employer to force employees to take their leaves entitlement by virtue of the fact that given the nature of the job, the employees cannot work from home.
8.	Can the quarantine period be deducted from an employee's annual leave or sick leave? What if the period exceeds the employee's sick leave entitlement?	It would be on case-to-case basis as to whether the quarantine would be considered as sick leave. If the employee by way of precautionary measure has decided to self-quarantine, then it may not be considered as sick leave but will have to take his annual leave. In the event the Employee has exhausted his annual leave or sick leave entitlements, then it would be leave without pay.
9.	Can terms of employment be renegotiated during this period of the pandemic?	Any terms renegotiated will have to be with consent of the employee
10.	Can employees be asked to reduce the number of hours they work so that they are paid based on the number of hours worked (salary is reduced accordingly)?	In the absence of mutual consent, the employer may require the employee to work temporarily for a shorter time than specified in the employment contract at a reduced pay, subject to the approval of the supervising officer of the Ministry of Labour.

	Questions	Answers
11.	Do employers still need to pay full salaries to employees if the nature of their job is that they are unable to work remotely but need to stay home to be safe from the virus?	Yes, employers still need to pay full salaries to employees if the nature of their job is that they are unable to work remotely but need to stay at home to be safe from the virus as a result of the confinement/curfew.
12.	What duty of care does an employer owe to their employees during this time? Accordingly, what liabilities arise on an employer if an employee is infected at the place of work?	The Occupational Health and Safety Act, 2005 (OSHA) imposes a legal obligation on employers to take various measures to ensure that the workplace is safe for all employees. Employers must therefore put in place measures to protect their employees from the spread of COVID-19 at the workplace. A breach of the OSHA may result to a fine of not exceeding MUR 75 000 and imprisonment not exceeding one year.
13.	Can employees who cannot work remotely be forced to take annual leave during this period?	It will not be possible for employers to force employees to take annual leaves in the situation of a curfew/confinement.
14.	Can employers make employees redundant merely due to the fact that a pandemic exists?	Employers may terminate employees' employment contracts on account of redundancy provided that they believe that it is for a reasonable cause and that they are able to demonstrate that there is a valid justification for the proposed redundancy subject to strict compliance to the statutory process laid down in the Workers' Rights Act 2019.
15.	What is an employee entitled to when they are working remotely? What are the benefits an employee is entitled to when working remotely?	Employees are entitled to their usual employment benefits as stipulated under their employment contracts (such as salaries and leave entitlements etc.) when they are working remotely. They would not, however, be entitled to benefits that require that they are physically present at the workplace such as transport if there is a clear provision in the employment agreement to the effect that the transport allowance is for attending work.
16.	Should an employer have a written COVID-19 policy?	Yes, it is recommended for employers to have a written COVID-19 policy as a measure to help protect workers from infection and protect employers from liability.

	Questions	Answers
17.	Would directors and officers be held liable for not doing enough if someone caught the virus and spread to other staff members?	Any person who, at the time of the commission of the offence, was concerned in the management of the body corporate may be held liable unless he shows that the offence was committed without his knowledge and/or that he took all reasonable steps to prevent the commission of the offence.
18.	Can an employer make an employee perform other jobs when their core functions are down (for examples, if sales are down)?	An employer may make an employee perform other jobs when their core functions are down but must consult and obtain consent with the employee prior to making any amendment to his duties and responsibilities.
19.	What should an employer do if an employee doesn't want to come at work because he/she is afraid of being infected at the workplace?	Employees are not allowed to be away from the workplace without cause. If the employee is afraid to be infected, the employee shall take his leave entitlements. In the event that the employee does not have any leave entitlements and the employer refuses to provide employees leave without pay, the employer may initiate disciplinary actions.

B. REAL ESTATE AND CONSTRUCTION

	Questions	Answers
1.	What are the obligations of landlords and tenants in relation to minimising the spread of the COVID-19 virus at the building or the leased premises?	<p>The duty is on employers under the section 5 of the Mauritian Occupational Safety and Health Act 2005 to provide and maintain a working environment that is safe and without risks to health. The employer should also provide information, instruction, training and supervision as is necessary to ensure the safety and health at work of employees, and ensure that any person not in his employment is not exposed to any risk of safety or health.</p> <p>Where sanitary conveniences, washing facilities, facilities for the taking of meals or mess are used in common by several tenants, the owner of the building shall be responsible for their cleanliness and maintenance.</p>
2.	Can the Government order the closure of the whole or a part of a building?	<p>The Public Health Act contains provisions for the closure of a dwelling house which is unfit for human habitation. The Permanent Secretary of the Ministry of Health may, with the approval of the Minister order the destruction, evacuation, burning or disinfection by steam or any other means, of any house, hut, building, or premises and its appurtenances or ground, or the houses or buildings adjacent thereto – (i) in which he believes that any person suffering or suspected to have been suffering from plague has been residing; (ii) which he has been occupying permanently or temporarily; or (iii) which he believes to be infected.</p> <p>Under regulation 16 of the Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020, where it appears to the Minister of Health that premises are being used for any purpose or in any manner which may lead to the spread of coronavirus, he may, by General Notice, order that the premises be closed or remain closed or not to admit customers therein as may be reasonably necessary to prevent the spread of coronavirus.</p>
3.	Can a landlord unilaterally decide to close the whole or a part of a building to help stop the spread of the COVID-19 virus?	<p>Subject to the express provisions of the lease and in the absence of a Government directive under the Prevention and Mitigation of Infectious Disease (Coronavirus) Regulations 2020, if a landlord unilaterally decided to close the entire or a part of the building that affects the ability of the tenant to use the leased premises, the landlord could potentially be liable for the breach of the landlord's obligation to allow the tenant quiet and peaceful possession of the leased premises. In such</p>

	Questions	Answers
		<p>instances the tenant would be entitled to exercise the remedies provided under the lease and under the law.</p> <p>Any such closure to the extent that it affects the tenant’s use of the leased premises should ideally be done in consultation with and with the agreement of the tenant.</p>
4.	<p>Can a tenant unilaterally decide to shut its premises to help stop the spread of the COVID-19 virus</p>	<p>The tenant cannot unilaterally do so, unless contractually agreed in the lease agreement. Currently, given the prevailing curfew order and complete lockdown, buildings are mandatorily closed by law.</p>
5.	<p>What is the effect on co-tenancy clauses where the Government directs the closure of the whole or part of a building or where the other tenants in the building unilaterally decide to close their leased premises and cease trade?</p>	<p>The position would depend on whether provisions about co-tenancy have been made in the lease agreement. Currently, in view of the prevailing curfew and complete lockdown, buildings are mandatorily closed by law.</p>
6.	<p>Can a tenant suspend the payment of rent claiming that the Covid-19 gives rise to a force majeure event?</p>	<p>If the contract has provided for suspension of payments, e.g. as a result of a curfew or lockdown ordered by Government to prevent the spread of Covid-19, the tenant can avail itself of that clause. In the absence of such a clause, the tenant can rely on force majeure as a concept under the Civil Code but would have to prove that the curfew/lockdown is something that was unforeseeable and irresistible which has prevented it from paying the rent; it may be difficult to establish that in respect of a payment obligation however.</p>
7.	<p>What happens if there is failure to provide building services, including maintenance, cleaning, sanitation, and security due to COVID-19?</p>	<p>Responsibility for the provision of services for a multi-tenant building, including maintenance, cleaning, sanitation and security for the common areas are normally set out in the lease.</p> <p>Landlords may, in the lease agreement, exclude liability for failure to provide services where the cessation of the services is due to factors out of the control of the landlord or due to no fault on the part of the landlord. This is recognised on the basis that the landlord is not personally providing the services and that the landlord has no direct control over the third party service vendors.</p> <p>Practically, however, the landlord would take all reasonable steps necessary to restore the relevant services to the extent practicable as it is not in the best interest of the landlord to let its entire building deteriorate. This is because the landlord’s interest in the entire building is much greater than any one individual tenant’s interest in a portion of the building.</p>

	Questions	Answers
8.	If an individual tenant or an employee of the tenant contracts COVID-19, can a landlord prohibit the tenant or its employee from accessing the building/premises?	The landlord would have no such power or entitlement. It would be up to the tenant, as employer, to take steps to protect the health of its employees and third parties, as per section 5 of the Occupational Safety and Health Act.
9.	What alternative remedies can I consider if my contract/lease does not entitle me to suspend my obligations on account of force majeure?	One may rely on force majeure as a civil law concept, namely an event which is unforeseeable and irresistible which is such that it prevents performance of contractual obligations during the period while the force majeure event is ongoing.
10.	What should real estate developers with development loans do in view of the looming slowdown in house purchase uptake?	<p>On 13 March 2020, the Bank of Mauritius announced a series of measures that would alleviate economic operators impacted by Covid-19, namely:</p> <ul style="list-style-type: none"> (a) A special facility of Rs 5 billion to be available through commercial banks at interest rate of 2.5% per annum payable over 2 years. The facility is available between 24 March and 31 July 2020, and a moratorium of 6 months is available on capital and interest repayments. Operators can contact their banks to avail themselves of such facility; (b) Reduction of the cash reserve ratio of commercial banks from 9% to 8%; and (c) Commercial banks to provide a six-month moratorium on capital repayments of existing loans of operators impacted by Covid-19. <p>On 20 March 2020, the Bank of Mauritius announced further measures:</p> <ul style="list-style-type: none"> (a) households affected by Covid-19 may request their commercial banks for a 6-month moratorium on capital repayments; (b) the Bank of Mauritius will bear interest repayments of outstanding household loans from 01 April to 30 June 2020, for households earning up to Rs 50,000 a month; the Bank of Mauritius will make a USD 300 million foreign currency line available through commercial banks to operators with foreign currency earnings. Such facility will bear interest at USD 6 month LIBOR, be available between 24 March 2020 and 30 June 2020, and repayment will be over 2 years; and (c) introduction of a swap arrangement through commercial banks, for an initial amount of USD 100 million to assist import-oriented businesses. The arrangement is available between 24 March 2020 and 30 June 2020.

	Questions	Answers
11.	<p>How are payments under the sale agreement affected if the completion date falls during a period when the lands registries are closed?</p>	<p>This will vary from one agreement to another depending on the specific terms of the agreement:</p> <ul style="list-style-type: none"> a) For a cash transaction, a purchaser’s obligation to pay the balance of the purchase price is normally pegged to the completion date in exchange for the release of the completion documents. In some circumstances, parties agree that the entire purchase price or a portion of it can be released to the vendor on the completion date upon release of the completion documents to the purchaser. However, it is market practice for the deposit and the balance to be held in escrow pending the registration of the transfer. b) In a financed transaction, the purchaser normally pays the deposit into escrow and on the completion date procures a financial undertaking from its financier to make payment of the balance of the purchase price to the vendor on the registration of the transfer in favour of the purchaser and the charge in favour of the purchaser’s financier. The vendor would not be entitled to the entire purchase price until the transfer and the charge have been registered. c) The closure of the offices of the Registrar-General and Conservator of Mortgages in both instances has the effect of delaying the stamping and registration of the transfer and the charge (if applicable) and consequently the receipt by the vendor of the purchase price and the granting of possession of the property to the purchaser. Both the vendor and the purchaser should have a discussion on how best to manage each party’s expectations and timelines for completing the transaction as the closure and the reopening of the lands registries is not in the control of either party. d) The provisions of the agreement for sale on time prescribed for registering the transfer should also be reviewed so as to provide for additional time if required.

	Questions	Answers
12.	<p>How does the current closure of the lands registries and various governmental offices affect completion in various sale and purchase transactions?</p>	<p>The following issues should be considered when bearing in mind completion for a property sale transaction:</p> <ol style="list-style-type: none"> i. in a financed transaction, the completion period should give sufficient time for the bank to complete its due diligence (if this has not already been done) once the lands registries reopen; ii. the completion period should also give sufficient time for the vendor to procure the various completion documents once the offices of the Registrar-General and Conservator of Mortgages reopen; iii. whether any of the completion documents that may have already been procured would expire prior to the re-opening of the offices of the Registrar-General and Conservator of Mortgages; and iv. time prescribed for registering the transfer <p>If the agreement for sale has already been executed and the completion date will occur prior to the reopening of the offices of the Registrar General and Conservator of Mortgages, then parties will need to discuss providing an extension of time to a more realistic date so as to allow each party to comply with its completion obligations.</p>
13.	<p>How does closure of registries affect the handover of possession of the property on a sale transaction?</p>	<p>It is market practice for possession of the property to be granted by the vendor to the purchaser on completion of the registration of the transfer and release of the purchase price to the vendor.</p> <p>As mentioned above, the closure of the offices of the Registrar General and Conservator of Mortgages has the impact of delaying the stamping and registration formalities on the transfer and consequently the release of purchase price to the vendor and grant of possession of the property to the purchaser.</p> <p>Should the purchaser wish to take possession of the property prior to the registration of the transfer then this may be made conditional on the release of the purchase price and the purchaser would take the risk on the registration of the transfer.</p> <p>Alternatively, the purchaser may occupy the property prior to the registration of the transfer as a tenant and pay rent to the vendor. In this situation, while the vendor enjoys an additional revenue stream (for what is hoped to be a short period), the vendor takes on the risk of vacating the purchaser if the transaction is not completed due to no fault on the part of the vendor.</p>

	Questions	Answers
14.	What steps if any is the Ministry of Housing and Lands taking to help with the registration of documents that may have statutory or contractual timelines?	No such measures have as yet been communicated.
15.	Is COVID-19 covered by business interruption insurance and what is the threshold for recovery?	<p>The closure of a commercial building/mall by the Government pursuant to a public health/quarantine order may trigger an insurance claim.</p> <p>However, this would be subject to the terms of the individual insurance policy and one would need to review their insurance policy and check with their insurers or insurance brokers on whether the insurance policy includes losses caused by pandemics or closure of businesses due to a public health quarantine order.</p> <p>Landlords and tenants may need to review their business interruption cover to confirm that it will allow them to recover losses (including loss of rent and profit) suffered due to buildings/commercial centres/malls being closed.</p>

C. CORPORATE

	Questions	Answers
1.	Is the COVID- 19 pandemic an event which is a force majeure or is it an Act of God?	It depends on how the contract is drafted and what is included as within the categories of “force majeure” and “act of God”. If the contract is silent, the Civil Code recognises the concept of force majeure as a defence which excuses a contracting party from performing its obligations. Force majeure then prevents the party who has been prevented from performing from being liable to the other contracting parties. For an event to amount to force majeure under the Civil Code, it must be unforeseeable (at the time of conclusion of the contract) and irresistible and so as to prevent the affected party from performing its obligations. It only exonerates the contracting party from performance during the period for which the event lasts.
2.	What if my contract does not have a force majeure clause?	The position would be governed by articles 1147 and 1148 of the Civil Code, which have been summarised above.
3.	Can a contract be set aside if a party cannot deliver goods or services on time because of the pandemic?	<p>Given the prevailing curfew which is restricting the movement of people and goods within the territory of Mauritius, this would likely be a force majeure event which prevents a supplier from delivering goods.</p> <p>The court would not set aside such a contract if, after the curfew, the supplier is ready and willing to perform its delivery obligations, and it is still possible contractually to perform those obligations.</p>
4.	Can a party suspend its non-monetary obligations under a contract in light of COVID-19?	<p>If the contract is silent, the provisions of the Civil Code on force majeure, as interpreted by case law, will apply. The mere occurrence of Covid-19 would not be sufficient to justify a suspension of non-monetary obligations, as the affected party would need to show how an unforeseeable and irresistible event has caused it to be unable to perform its obligations. Rather, Government imposed measures such as regulations on quarantine, lockdowns and curfews would in most cases physically prevent the performance of contractual obligations.</p> <p>It is open to contracting parties to have provided more detail in their contracts on how an epidemic or outbreak of disease can, if at all, temporarily excuse performance of obligations by a contracting party.</p>
5.	Can a party suspend its monetary obligations under a contract in light of COVID-19?	A party would need to rely on the circumstances mentioned in Q.1 above in order to suspend its obligations under a contract.

	Questions	Answers
		<p>To rely on a force majeure event, the event must prevent performance of the specific obligation. Since the funds transfer system remains operational (albeit subject to fewer bank staff working), it is generally difficult to rely on force majeure provisions to suspend payment obligations. Parties should therefore consider the wording of the force majeure clause to confirm if the clause exempts obligations relating to payment of money.</p> <p>In addition, the party should also consider if the provision exempts any unpaid financial obligations incurred prior to the event being relied on. For instance, if the clause only relates to obligations arising on or after the relevant force majeure event, the clause cannot be relied upon to avoid unfulfilled obligations that arose prior to COVID-19.</p> <p>Lastly, the party should check if the force majeure clause covers both parties or one party as this will help establish which obligations are covered.</p>
6.	<p>In what circumstances can a party rely on force majeure in order to suspend its obligations under a contract? What conditions need to be fulfilled?</p>	<p>Under the Civil Code, the affected contracting party must show that it was prevented by an event which was unforeseeable (at the time of conclusion of the contract) and irresistible, through no fault of its own, to perform its contractual obligations.</p> <p>That party is then excused for the duration of the force majeure event from any liability that accrues to the non-affected party as a result of the non-performance.</p>
7.	<p>Would COVID-19 constitute force majeure? What are the thresholds for force majeure?</p>	<p>The occurrence of Covid-19 itself would not be a force majeure event, as it would not be an irresistible event which prevents performance of a contract (unless the contracting party is an individual who is himself laid up with the infection). However, Government measures taken to prevent the spread of the disease such as lock down and curfews may be sufficiently serious to meet the thresholds of unforeseeability and irresistibility to amount to force majeure events.</p>
8.	<p>In what circumstances can a party rely on the principle of frustration of a contract with respect to COVID-19 and if so on what basis?</p>	<p>There is no concept of frustration of contracts in Mauritius. If the contract is silent and a force majeure event lasts for a long time, or (even if it lasts for a relatively short time) is such as to have rendered the performance of a contract nugatory, any one of the contracting parties can apply to court for the termination of the contract under article 1184 of the Civil Code.</p>
9.	<p>If a counterparty to a contract refuses to meet its obligations under the contract because of COVID-19, what recourse does the other party have?</p>	<p>In such a case, the disgruntled party can sue the other party for breach of contract and claim damages or specific performance (depending on the nature of the contract), or exercise any other remedies available under the contract or under law.</p>

	Questions	Answers
10.	<p>With respect to registration of documents under the Companies Act:</p> <p>(i) What happens to the requirement to register documents with the Registrar of Companies (where offices are closed);</p>	<p>So far, the Registrar of Companies has issued a communique extending the deadline by which companies with year end of 30 September can file their financial statements and financial summaries to 27 April 2020.</p>
	<p>(ii) Are penalties applicable for late payment of stamp duty during the period of COVID-19 and can one get a waiver of penalties under applicable legislation ?</p>	<p>So far, no communique has been issued by the Registrar General about waiver of penalties. In due course, representations can be made to the Minister of Finance and Registrar-General to apply such a waiver in respect of the lockdown period.</p>
11.	<p>If one has entered into a commercial contract (e.g. a Share Purchase Agreement) that is pending completion, would the outbreak of COVID-19 be deemed to constitute a material adverse change (MAC) entitling a party to terminate the agreement/ delay completion? What other recourse would you have?</p>	<p>A MAC clause is a provision in a contract that allows a party to either rescind a contract or vary the contractual terms if there is a material adverse change in the business or prospects of the relevant asset in question (be it shares in a company, property or even entry into of a joint venture). Rarely does the MAC clearly and specifically define the events that constitute a MAC or the amount of loss of value of a target business that would constitute a MAC. In the event of a dispute as to whether a MAC has arisen, the courts have to conduct an inquiry based on the facts of the event in question to determine if that event constitutes a MAC.</p>

	Questions	Answers
		<p>In order to rely on a MAC, this must be specifically included in the underlying contract.</p> <p>COVID-19 has been declared a pandemic by the World Health Organization. Many businesses have been adversely affected by the pandemic due to reasons such as lock downs and business supply disruptions and are experiencing or are anticipating financial downturns due to COVID-19. Despite the foregoing, the effects of the pandemic on the earning potential of businesses and industries in the long term is unknown. It is unknown how long the pandemic will last and its long term effect on the global economy. The ability of a party to successfully claim that COVID-19 constitutes a MAC will need to be assessed on a case-by-case basis taking into account the individual circumstances of the particular matter and the effect that COVID-19 will have had on their business, assets or operations.</p> <p>In the event that a party was aware of the COVID-19 outbreak when entering into the relevant contract, it would be even more difficult for such a party to rely on the MAC clause.</p>
12.	<p>What are the effects of COVID-19 on delays to obtain regulatory approvals that are condition precedent (CP) to completion?</p>	<p>It should be noted that as result of COVID-19 and the various directives that have been issued by the Government in response to COVID-19, a lot of the Government offices (including regulators’ offices) are closed and a lot of the normal services are unavailable at this time. This is likely to result in delays in procuring regulatory approvals required in order to consummate transactions.</p> <p>Please refer to our response to Q.1 above. A party could rely on force majeure in order to suspend its obligations under a contract or to extend the timeline for completion (if this right exists under the contract). A party can terminate the contract if a right of termination has been provided for in the contract; otherwise, termination can only be ordered by the Court under Article 1184 of the Civil Code.</p> <p>The parties to the contract could also mutually agree in writing to delay completion of the transaction and extend the timelines for the fulfillment of the CPs awaiting further developments on the measures that government will take to contain COVID-19.</p> <p>In addition, contracting parties need to act in good faith. A contracting party who unreasonably refuses to extend the date for compliance of a condition precedent because of the lockdown could be regarded as not having acted in good faith (which is potentially a breach of contract in itself) or in abuse of its rights (which is a potentially a tort under Mauritian law).</p>

13.	For purposes of interpreting a <i>force majeure</i> clause that includes an “epidemic” as an event, can it be argued that there is currently an “epidemic” in Mauritius?	Section 78 of the Public Health Act provides that where any part of Mauritius appears to be threatened with, or is infected by any dangerous epidemic, endemic, infectious or communicable disease, the Minister of Health may by notice published in the Government Gazette, direct that sections 79 to 83 of the Act shall be applicable to Mauritius or such area of Mauritius as may be specified in the notice. The Minister gave such notice on 19 March 2020, applicable to the whole of Mauritius.
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D. INSURANCE

	Questions	Answers
1.	Is business interruption covered in insurance policies in Mauritius?	This will depend on the specific contents of each specific insurance policy.
2.	Would the cover extend to interruption caused by the COVID-19 pandemic?	The terms of each policy have to be examined, policy-by-policy. It is not possible to give a general answer.
3.	What should businesses do/consider in relation to their insurance policies in light of the COVID-19 pandemic?	<p>Businesses should do the following:</p> <ul style="list-style-type: none"> a) Carefully review along with their advisers the terms of their existing coverage to establish whether business interruption relating to COVID-19 or epidemics generally would be covered or excluded from cover and whether, even if there may be no exclusion from cover, whether proof of physical loss may affect the ability to recover from insurance. b) Going forward, businesses should avoid generic policies and carefully think through the practical risks and losses they are likely to face in an environment where such epidemics and disease outbreaks are no longer 'black swan' events and structure their insurance coverage so as to effectively respond to these risks. c) Insurers, insureds and brokers should work together to evaluate whether the present industry standard forms of commercial property and business interruption cover are 'fit for purpose' and to consider developing products that address the practical risks that businesses are facing at present and are likely to face in the future. d) For instance, consideration could be given to cover endorsements that extend cover to a contingent business interruption, that is, cover is extended to a business where its key suppliers (rather than the business itself) suffer physical losses to their property that impairs the supplier's ability to deliver contracted goods or materials. e) Consideration could also be given to extension of cover to situations where although there has been no physical damage, governmental action such as a lockdown orders as part of epidemic containment measures, affects access to or use of the insured's business premises.

	Questions	Answers
4.	In the case of Insurance Premium Financing Arrangements, if the client does not meet his monthly payments, would the insurers be called upon to cancel the policies and refund the premium due?	The Mauritius Civil Code provides for a mechanism to cancel policies. A first notice requesting payment has to be sent, and it is only if this first notice is not complied with that the insurance policy can be cancelled for non payment.

E. COMPETITION

	Questions	Answers
1.	What happens to mergers being evaluated by the Competition Commission of Mauritius (the 'CCM') in the event of a lock down/ closure of the CCM?	<p>As at 26th March, 2020, the CCM had not issued any statement providing guidance on how merger assessments will be conducted in the event of a lockdown. However, parties should envisage the possibility of merger evaluations by the CCM being delayed or completely stalled as a result of the ongoing lockdown in Mauritius as a precautionary measure against COVID-19 pandemic.</p> <p>Fortunately, the Competition Act 2007 (the 'Act') does not provide for notifications or approvals to be obtained from the CCM prior to a merger. The Act enables a party to a merger to apply for guidance as to whether the proposed merger will result in a substantial lessening of the market.</p> <p>Although not mandatory, notifying before completion of the transaction brings several benefits like certainty to the transaction, the transaction can be tailor made taking into account concerns of the CCM, if any, the cost of implementing remedies of the CCM is lower before completion of the transaction and following the guidance of the Commission informed decision can be taken.</p> <p>The CCM is expected to complete its merger assessment within 30 working days after the receipt of the notification; and in the case of a detailed assessment it should not exceed six months. However, the response of the CCM may be delayed due to the lockdown in Mauritius.</p> <p>Note that the CCM has power to investigate completed mergers and has its own mechanism to detect mergers which have not been notified.</p>
2.	How will merger applications be submitted to the CCM in the event of a lock down/ closure of the CCM?	The CCM is yet to issue a statement providing guidance on how merger guidance will be submitted in the event of a lockdown.
3.	What kind of conduct is business is prohibited and is likely to attract investigations or imposition of sanctions by the CCM during this period of COVID-19?	<p>Restrictive Business Practices</p> <p>(a) Horizontal Agreements: Section 41 of the Act prohibits agreements or a provision of such agreements between enterprises that supply goods or services of the same description, or acquire goods or services of the same description, which have the object or effect of significantly preventing, restricting or distorting competition.</p>

	Questions	Answers
		<p>(b) Bid Rigging: Under section 42 of the Act, an agreement shall be prohibited and void where one party to the agreement:</p> <ol style="list-style-type: none"> i) agrees not to submit a bid or tender in response to an invitation for bids or tenders; or ii) agrees upon the price, terms or conditions of a bid or tender to be submitted in response to such a call or request. <p>(c) Vertical Agreements Involving Resale Price Management: According to section 43 of the Act, a vertical agreement between enterprises shall, to the extent that it involves resale price maintenance, be prohibited and void.</p> <p>(d) Non-Collusive Horizontal Agreements: A horizontal agreement that is not collusive under section 41 of the Act may be reviewed by the CCM where -</p> <ol style="list-style-type: none"> (i) the parties to the agreement together supply 30 per cent or more, or acquire 30 per cent or more, of goods and services of any description on the market; and (ii) the CCM has reasonable grounds to believe that the agreement has the object or effect of preventing, restricting or distorting competition. <p>(e) Other Vertical Agreements: Section 45 of the Act provides that a vertical agreement that does not involve resale price maintenance may be reviewed where the Commission has reasonable grounds to believe that one or more parties to the agreement is or are in a monopoly situation that is subject to review under section 46 of the Act.</p> <p>(f) Monopoly Situation: Under section 46 of the Act, a monopoly situation exists when the supply of goods or services of any description are supplied or acquired on the market by</p> <ul style="list-style-type: none"> • one enterprise supply 30% or more of those goods and services or • 3 or fewer enterprises supply 70% or more of those goods and services. <p>The Act empowers the CCM to review a monopoly situation, where the conduct of an enterprise or group of enterprises is likely to prevent, restrict or distort competition or in any other way constitute an exploitation of the monopoly situation. The CCM can impose structural and behavioural remedies against the abuse of a monopoly situation.</p> <p>Being in a monopoly position is not a breach in itself. It is the abuse of the monopoly situation that constitutes to be a breach of the Act. The CCM can intervene if:</p>

	Questions	Answers
		<ul style="list-style-type: none"> • market share thresholds are met, • the enterprise(s) has (have) a position of dominance, • the conduct of the enterprise restricts, prevents or distorts competition or otherwise exploits the monopoly situation, • the conduct has or is likely to have “an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or are likely to be detrimental to the interests of consumers.
4.	<p>Will coordinated or even unilateral efforts by entities to mitigate and suppress the COVID-19 pandemic prompt competition law scrutiny? Example: information sharing of competition sensitive information such as future prices, volume of stock available, co-operation in delivery of supplies to remote areas if shops are closed down etc.</p>	<p>The Act generally prohibits agreements, concerted practices or decisions by undertakings which have as their object or effect the prevention or lessening of competition in trade. Certain particularly harmful agreements, such as agreements among competitors to fix prices, share markets, rig bids, or allocate markets, are unlawful <i>per se</i>. Others are evaluated based on their effects on competition. In terms of exemption, the Act does not apply to petroleum products and the liquid petroleum gas.</p>
5.	<p>Can undertakings unilaterally refuse to deal with a firm that fails to adopt adequate measures to protect workers and customers, or a firm that promotes misinformation that may exacerbate the public health risks?</p>	<p>As mentioned above, the Act generally prohibits decisions by undertakings which have as their object or effect the prevention or lessening of competition in trade. Certain particularly harmful agreements, such as agreements among competitors to fix prices, share markets, rig bids, or allocate markets, are unlawful <i>per se</i>. On a strict reading of the law, undertakings unilaterally refusing to deal with a firm may constitute a restrictive business practice and parties should therefore proceed with caution prior to imposing measures such as a refusal to deal.</p>
6.	<p>Would hoarding of products with the subsequent intention of increasing prices and/or collusive increase of prices in light of increased demand (commonly known as price gouging) during the COVID-19 crisis be permissible?</p>	<p>Price fixing can occur when there is a demand or supply shock as a result of a natural disaster such as an earthquake or a public health crisis such as the Covid-19 pandemic. When entities act in concert or collude to fix price, share market or restrict supply of goods, the same may be deemed a restrictive business practice in violation of the Act.</p> <p>It is also worth noting, that agreements between a supplier/distributor and its reseller in respect of the selling price of the reseller (resale price) is also prohibited under the Act. A reseller/retailer must be free to independently set its own price at which it will resell/retail to consumers (resale price).</p>

	Questions	Answers
		<p>In this context only non-binding price recommendations (so-called recommended retail prices, RRP) and maximum retail prices (MRP) are admissible.</p> <p>Entities should therefore be careful to ensure that any increase in the price of a product or service is reasonable and is not part of a concerted practice with other undertakings to drive up the price of product.</p>
7.	Will the CCM hold meetings and carry out site visits during this period?	At this time, the CCM is yet to issue a statement providing guidance on how the current COVID-19 pandemic will impact the CCM's capacity to hold meetings and carry out searches during this period. However, parties should envisage the possibility of the ongoing COVID-19 pandemic disrupting the normal day to day functioning of the CCM.
8.	How does COVID-19 impact investigations where the CCM requires responses to queries to be provided within a certain period?	At this time, the CCM is yet to issue a statement providing guidance on how the current COVID-19 pandemic will impact investigations. However, parties should engage with the CCM on a case by case basis for directions on how to proceed and also to request for extensions of time to submit information or respond to enquiries by the CCM in the event that they are constrained from being able to respond to the CCM in a timely manner as a consequence of COVID-19. Such requests can be made with written communication.

F. GENERAL QUERIES

	Questions	Answers
1.	What is the extent of the President's powers to declare a State of Emergency in Mauritius and what this means?	<p>The President may, by Proclamation, declare that a state of public emergency exists. The Proclamation:</p> <ul style="list-style-type: none"> (a) shall, when the National Assembly is sitting or where arrangements have been made for it to meet within 7 days of the Proclamation, lapse unless within 7 days the Assembly by resolution (i.e. majority of all its members) approves the Proclamation; (b) shall, when the National Assembly is not sitting and no arrangements have been made for it to meet within 7 days, lapse unless within 21 days it meets and approves the Proclamation by resolution (majority of all its members); (c) may be revoked at any time by the President or by resolution of the National Assembly. <p>Where the National Assembly approves the Proclamation by resolution, the resolution shall remain in force for a period not exceeding 12 months, as the Assembly may specify in the resolution, and may be extended for a further period not exceeding 12 months by resolution of the Assembly (again, requiring a majority of all its members).</p>
2.	Will I have to refund registration fees for conferences that are postponed rather than cancelled?	<p>This depends on the interpretation of the contract. If the conference is postponed, the <i>cause</i> and object of the contract are still in existence, it can still be performed and the reason for postponement can be justified as a force majeure event. A refund would then not be required. If the conference is cancelled, then the contract is terminated and payments made under it need to be refunded.</p>
3.	What does the gatherings prohibition mean for companies and shareholder meetings?	<p>For the duration of the prevailing curfew, initially scheduled to last until midnight on 02 April 2020, any gathering outside dwellings are prohibited. Shareholder and board meetings can take place by audio or video conferencing if permitted in the constitution of the company.</p>
4.	Can a customer who looks sick be refused entry?	<p>The occupier of premises has the right to allow or refuse entry to any person.</p>

G. DATA PROTECTION

	Questions	Answers
1.	<p>Do companies need to consider privacy and security laws when collecting data from employees as part of an effort to monitor and prevent the spread of COVID-19?</p>	<p>Many of the steps to monitor and prevent the spread of COVID-19 will involve the processing of “personal data” (such as a data subject’s name) and “sensitive data” (which would include the health status of a data subject) and therefore companies will need to consider privacy and data protection laws and their implications.</p> <p>Under new Data Protection Act 2017, “sensitive personal data” are referred to as “special categories of personal data”. For consistency, the expression “sensitive personal data” will be used throughout these FAQs.</p> <p>In light of COVID-19, the following should be taken into consideration:</p> <ol style="list-style-type: none"> Companies have a legal obligation to protect their employees under occupational health and safety laws (duty of care) and maintain a safe work place; Companies can process sensitive personal data of an employee who has a medical condition without the latter’s consent if this is necessary for preventive medicine; Companies should request employees and/or visitors to inform them if they have visited an affected area or if they are experiencing symptoms in order to allow the employer to take any necessary steps in the workplace that are required; Companies should not name or disclose the identity of an affected individual in order to maintain confidentiality. However, the identity of the affected individual may be disclosed to the health authority in the interests of the individual concerned and for contact-tracing purposes provided that such disclosure is made in confidence and the employee is made aware of such disclosure; Companies should ensure that any sensitive personal data that is processed is adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed and that the data is retained for the shortest time possible. <p>The Information Commissioner (the ICO) in the United Kingdom confirmed that organisations should keep staff informed about cases of COVID-19 in their workplace and reminded organisations to avoid naming individuals. The Data Protection Commissioner in Mauritius has not taken any position on this. In our view, however, the Data Protection Commissioner would likely take a similar approach in that the identity of affected employees should not be disclosed, except where the employer is liaising with the health authorities and any disclosure is made in confidence and the employee concerned is made aware of the disclosure.</p>

	Questions	Answers
2.	Are there any local employment or privacy laws relating to employer disclosure (internal or external), on handling or storage of the affected employee's medical data?	Yes, the Data Protection Act 2017 contain provisions relating to employer disclosure (internal or external) on handling or storage of the affected employee's medical information.

H. LITIGATION

	Questions	Answers
1.	<p>Can I obtain interim reliefs from the courts during this period in light of the closure of the courts and registries in the event I have an urgent matter?</p>	<p>Matters change almost every day, and we can only guarantee the correctness of what is contained therein at the time when this report is being drafted. All what is related below is inserted with this comment and qualification. It is better to seek advice at the time when any interim relief is to be applied for, to know the latest position.</p> <p>As a general rule, we are of the view that only exceptionally urgent and really solid interim orders will be issued, and that the burden of proof will be higher than in normal circumstances, even though this is not stated in the law or anywhere but only reflects our impression in view of the contents of the circulars which are being issued.</p> <p>It is possible to obtain interim reliefs during the suspension period, however only subject to the following procedure:</p> <p>District Courts</p> <p>a) all applications are done through the Police Prosecutor or the Police Station where the Applicant resides.</p> <p><u>Intermediate and Industrial Court</u></p> <p>All applications must be done through the Secretary of the Law Society or the Secretary of the Bar Council, who will send the application by email to the relevant Court.</p> <p>Supreme Court (Judge in Chambers)</p> <p>a) Family Court</p> <p>The Application is made through the Presiding Judge’s secretary or the Court Manager. Phone numbers have been given. The two said persons must be contacted by phone and they will then advise as to how to proceed, after liaising with the relevant Judge. The Court Registry is closed, and no e-mail address has been given for the sending of any application.</p> <p>b) Commercial Division</p> <p>The e filing remains accessible as usual</p> <p>c) Other divisions</p> <p>The Application is made through the secretary of the Senior Puisne Judge or the Acting Master and Registrar of the Acting Deputy Master and Registrar.</p>

	Questions	Answers
		<p>Once again, the Court is closed, and only phone numbers have been given. No rules have been issued as to whether documents can be sent via e-mail or not, and as most Attorneys work from home without scanner or printer, whether unsigned applications will be entertained or not.</p> <p>No party will appear before the said judge or magistrate for the hearing of the application.</p>
2.	<p>Will you be able to file or serve documents/pleadings following the closure of courts, registries and most offices?</p>	<p>The court buildings will not be accessible to members of the public as they shall be closed. Accordingly, all court registries will be closed.</p> <p>However, please note that only parties with urgent matters will be allowed to file their matters as described above.</p> <p>With regard to cases before the commercial division of the Supreme Court, Attorneys can file their pleadings electronically through the e-filing system. As per the Supreme Court, Electronic Filing Rules, applications filed through the e-filing system have to be signed. There is a general lockdown and going to the office is prohibited. It is not known whether unsigned applications filed from home will be admitted or not. The Court has issued a circular to the effect that all milestones for the filing of documents as per the Rules are waived.</p> <p>It may not be possible to physically serve any documents. However, one could agree with their counterparts to accept electronic service of documents or pleadings. Service of initial proceedings on Defendants is very difficult if not impossible as this cannot be done via e-mail and we in almost all the cases do not have the e-mail addresses of the opponents, if ever the opponents are ready and willing to accept e-mail service.</p>
	<p>If not, will I be penalised for failing to do so?</p>	<p>The Courts will be lenient concerning deadlines and in the case of e-filing cases, there is an official circular from the Court to the effect that all milestones and deadlines are waived.</p>
3.	<p>Can I execute a court order during this period of suspension of court activities?</p>	<p>All execution proceedings are suspended. The Ushers, who execute Court Orders, are not allowed (like all citizens) to go out unless they have a permit, and such permits are not easily obtainable and several applications have not been entertained.</p>
4.	<p>How will new dates be obtained for the matters that were to be heard or mentioned during the suspension period?</p>	<p>New dates will be issued by circular once judiciary operations normalise.</p>
5.	<p>What will happen to interim orders that were set to lapse during the suspension period?</p>	<p>This period will be extended subject to further guidance by the Chief Justice of Mauritius.</p>

	Questions	Answers
6.	What is the status of operations at the Court of Appeal and the Magistrates Court during this period?	All hearings and mentions in both civil and criminal cases have also been suspended at the Court of Appeal. Further guidelines may be issued with regard to operations at the Court of Appeal.
7.	Can a witness be excused from attending court if their date falls outside the period when court activities have been suspended but the witness is reluctant to travel owing to COVID-19?	It will be subject to the discretion of the Court but if there is no official lockdown or curfew, our view is that the witness will have to attend Court.
8.	Will I be able to obtain an early date for my matter, in light of the backlog of cases that will arise owing to matters that were taken out during the suspension period being prioritised?	Allocation of court dates will depend on the directives issued by the Chief Justice or the directions given by the Presiding Magistrates of each lower Court after the suspension period.

I. BANKING AND FINANCE

	Questions	Answers
1.	Are there any statutory protections available to a borrower in the face of a pandemic?	<p>Currently there are none under our laws. For these reasons, the Government of Mauritius announced a series of measures on the 13 and the 23 March 2020 in support of enterprises and individuals in view of the impact of COVID-19 on business, including moratorium on capital repayments of housing loans, the restructuring of loans and the provision of extension of periods of repayment of loans (see section 8 below).</p> <p>In addition, a lender may be requested to agree to defer payment of the principal/interest on loans but the lender is not obliged to do so subject to the support measures mentioned above.</p>
2.	What are the permissible default charges including interest in the event that the lender declares a default?	<p>This will be in accordance with the provisions of the relevant loan agreement and subject to the moratorium measures announced by the Government of Mauritius to support businesses and individuals during this period (see section 8 below).</p>
3.	How do the current circumstances surrounding COVID-19 affect perfection of the following formalities? Stamping and registration of securities;	<p>Under Mauritian law, only fixed and floating charges have to be registered and inscribed with the Registrar General/Conservator of Mortgages for perfection purposes. Since the lockdown, the office of the Registrar General/Conservator of Mortgages is not operating.</p> <p>Documents can still be lodged for registration on the online registration platform but are not being processed (taxed and inscribed in public registers) by the Registrar General/Conservator of Mortgages.</p>
4.	Does the impact of COVID-19 affect the enforcement of securities?	<p>The COVID-19 pandemic has a direct bearing on enforcement of securities. In the event that COVID-19 does not constitute a force majeure event or another excuse event under the financing arrangement and the borrower defaults under the terms of the agreement, the lender can proceed to enforcement as provided in the relevant security document.</p> <p>On the 22 March the office of the Chief Justice announced that the courts will remain closed, but a minimum staff will still be operating for urgent applications. Lenders may be forced to resort to other enforcement mechanisms permitted by law that do not involve courts, government agencies and offices or auctioneers such as private sales or any other mechanism set out in the finance document that does not involve the land registries, the courts or any of the government agencies.</p> <p>The above remain subject to the support measures announced by the Government, see section 8 below.</p>

	Questions	Answers
5.	Can COVID-19 constitute a force majeure event under a loan agreement?	<p>It depends on how the loan agreement is drafted and what is included as within the categories of “force majeure”. If the contract is silent, the Civil Code (articles 1147 and 1148) recognises the concept of force majeure as a defense, which excuses a contracting party from performing its obligations. Force majeure then prevents the party who has been prevented from performing from being liable to the other contracting parties. For an event to amount to force majeure under the Civil Code, it must be unforeseeable and irresistible.</p> <p>A “force majeure” only exonerates the contracting party from performance during the period for which the “force majeure” event lasts, once this period is over or its effects are over, the contract should be performed.</p> <p>If the effects of the “force majeure” event are such as to have rendered the performance of a contract nugatory, any one of the contracting parties can apply to court for the termination of the contract under article 1184 of the Civil Code. This recourse may be not be applicable to monetary obligations under a loan agreement.</p>
6.	Can COVID-19 constitute a material adverse effect (MAE) under a loan agreement?	<p>In some instances, it could be – but it is difficult to say with any certainty and may require court intervention. The precise phrasing of the MAE provision and the specific circumstances is important.</p> <p>When invoking a MAE clause, materiality will need to be demonstrated clearly and objectively. Given that MAE clauses tend to lack language that identify a particular event or loss as a MAE, determination of a claim for MAE relief often requires a detailed factual inquiry with an uncertain outcome. Invoking a MAE clause due to COVID-19 issues may be difficult given that the long-term effects of COVID-19 on financial and operational aspects are unknown but much turns on the actual language of the provision.</p>

	Questions	Answers
7.	I sold one of my properties and I wanted to use the purchase price to settle a bank loan I had taken. In the event the land registry is shut down, meaning registration cannot occur, will interest continue to accrue on my loan?	Yes, subject however to the moratorium proposed by the Ministry of Finance on certain type of loan (see section 8 below) and to a possible request the bank for a deferral of any payments that would be due during the period of closure of the registry.
8.	Is it possible to have governmental/regulatory intervention in private commercial transactions? For example, can the government require lenders to take certain action or inaction in light of the pandemic?	<p>The Government of Mauritius and the Central Bank of Mauritius, in consultation with commercial banks through the Mauritius Bankers Association and other stakeholders of the key economic sectors, announced a couple of measures to support businesses and employment during this period.</p> <p>Below are some of the key measures announced in favour of businesses as at the 20 March 2020:</p> <ul style="list-style-type: none"> - Reduction of the Key Repo Rate from 3.35% to 2.85% to support domestic activity. - Special Relief amount of MUR 5 billion to assist businesses whose cash flow and working capital have been adversely affected by COVID-19. The Special Relief amount will be available through commercial banks. Loans under this measure will be provided between 23 March until 31 July 2020 for a term of 2 years with an interest rate cap at 2.5% per annum and will be subject to a moratorium of 6 months for the payment of capital and interest. - A moratorium of 6 months on capital repayments will also be applied to existing loans to businesses, which have been impacted by COVID-19. These measures will be accompanied by a reduction from 9% to 8% in the Cash Reserve Ratio applicable to commercial banks. - Temporary suspension of the application of the Bank of Mauritius Guideline on Credit Impairment Measurement and Income Recognition with immediate effect. The suspension is intended to allow commercial banks to support businesses having cash flow and working capital difficulties. - Introduction of a 2020 Savings Bond to be issued by the Bank of Mauritius as from 23 March 2020. The savings bond will be issued for a total amount of MUR 5 billion with a coupon of 2.5% and maturity of 2 years. Subscription will be open to individuals who are resident of Mauritius and locally registered non-profit NGOs, and will be subject to a cap per investor. - Enterprise Modernisation Scheme (EMS) by DBM Ltd Interest rate under EMS will be reduced from 3.5% to 2.5%.

	Questions	Answers
		<ul style="list-style-type: none"> - The interest rate under SME Factoring Scheme will be reduced from 3.9% to 2.5%. - Corporate Guarantee ISP Ltd will issue corporate guarantee to banks to enable them to grant loans to companies affected by COVID-19. - The SME Equity Fund Ltd will reduce its minimum return requirement on equity financing from 6% to 3%. - DBM Revolving Credit Fund A Revolving Credit Fund of Rs 200 million will be established at the Development Bank of Mauritius Ltd to help companies with turnover of up to Rs 10 million to ease cash flow difficulties up to 31st December 2020. Under this scheme, the credit to companies will be free of interest, provided that it is repaid within 9 months - Double Tax Deduction on Investment Enterprises being affected by COVID-19 will be entitled to a double tax deduction on their investment in Plant and Machinery for the period 1 st March 2020 to 30th June 2020. - Households affected by Covid-19 may request their commercial banks for a 6-month moratorium on capital repayments. - The Bank of Mauritius will bear interest repayments of outstanding household loans from 01 April to 30 June 2020, for households earning up to Rs 50,000 a month. <p>Additional support measures have also been taken per sectors such as tourism, manufacturing and trade, agro-industry and health.</p>
8.	<p>What are the consequences of declaring a force majeure event under a finance transaction?</p>	<p>If a “force majeure” clause was provided under the loan agreement, the consequences will depend on what was expressly provided for in the contract. Contractual remedies for force majeure typically include an extension of time to perform those obligations or suspension of contractual performance for the duration of the force majeure event. If the force majeure event extends over a longer period (the period is typically specified), such clauses usually permit either party to terminate the agreement. Termination will result in the commitments made under the agreement being cancelled and all amounts becoming immediately due and payable.</p> <p>If “force majeure” events were not provided under the loan agreement please refer to comments under section 5 above.</p>

	Questions	Answers
9.	<p>In the event of a force majeure event, what would be the pertinent clauses that would need to be reviewed in the loan agreement?</p> <p>a) Financial covenants; b) EODs; c) Material adverse effect; and d) Notices (remedy periods, triggers?)</p>	<p>(a) Financial-covenants If a borrower anticipates breaches of their financial covenants, they may have contractual rights to cure by pre-emptive equity injections or be able to raise subordinated group debt to apply in partial prepayment. In addition, borrowers and lenders will need to scrutinise certain financial covenant related definitions to determine if any available add-backs could be utilised to limit the covenant impact resulting from decreased revenue.</p> <p>(b) EOD's Some finance documents allow financial covenant breaches to be cured which borrowers may wish to consider. In addition, agreements may be reached that waive breaches for a short period of time. Borrowers can also attempt to negotiate for applicable remedy periods for such events of default.</p> <p>(c) Material adverse effect (MAE) It is not possible to say at this stage how long the coronavirus and its consequences will last. Therefore, claiming an event of default by virtue of a breach of a MAE clause will require careful consideration of the precise wording of the clause and the surrounding circumstances.</p> <p>(d) Notices (remedy periods, triggers?) Borrowers should review their loan documentation and, where events of default have been triggered or are likely to be triggered, they should approach their lenders to renegotiate or restructure their loans.</p> <p>Lenders should, however, be cognizant of the support measures announced by the Government of Mauritius to mitigate against the economic effects of the COVID 19 outbreak (see section 8 above).</p>
10.	<p>Is it possible to have governmental/regulatory intervention in private commercial transactions? For example, can the government require lenders to take certain action or inaction in light of the pandemic?</p>	<p>See section 8 above</p>

	Questions	Answers
11.	Can a borrower request a moratorium on repayments?	There is no statutory right to a debt moratorium in Mauritius outside of an insolvency situation. However as mentioned under section 8 above, the Government of Mauritius introduced support measures amongst which moratorium on repayments of loans. Borrowers should proactively enter in negotiations with lenders in order to forestall potential loan defaults as this would be in the best interest of all parties involved.
12.	Does a lender have an obligation to accommodate a borrower's requests in the face of a pandemic and what would be the legal consequences of a refusal?	Unless otherwise provided in the relevant loan agreement between a borrower and lender and subject to the support measures put into place by the Government of Mauritius (see section 8 above), lenders have no legal obligation to accommodate a borrower's request for a moratorium on debt repayments.
13.	Can the Mauritius Bankers Association engage on possible exemption from certain reporting requirements?	Please refer to Section 8 above on the support measures taken at the level of the Government and the Central Bank of Mauritius in support of the banking activity after consultation with the Mauritius Bankers Association.

J. TAX

	Questions	Answers
1.	Value Added Tax (VAT) return – My first VAT return for 2020 is due on 20th April. What should I do?	<p>A VAT registered person has to submit monthly or quarterly VAT returns to the Mauritius Revenue Authority (MRA) as may be applicable.</p> <p>The quarters end on 31 March, 30 June, 30 September and 31 December.</p> <p>A return has to be submitted within 20 days from the end of the month or quarter to which it relates. Therefore the due date for submission of return for month of March or the quarter ended 31 March is 20 April.</p> <p>The facilities for the electronic submission of VAT returns and electronic payment of any VAT due are available on MRA website (www.mra.mu) during the lockdown period.</p> <p>However, companies who are unable to submit VAT returns or effect payment of tax due to the COVID-19 Pandemic lockdown will not be charged any penalty or interest for late submission/payment.</p>
2.	My corporate tax return is due soon. What should I do?	<p>Annual self-assessment corporate tax returns should be filed and the tax paid with the MRA not later than 2 days (excluding Saturdays and public holidays) before the end of the accounting period.</p> <p>Companies which have a 30 September year end and the deadline for filing their tax returns is therefore the 28th day of March of every year. The facilities for the electronic submission of tax returns and electronic payment of any tax due are available on MRA website (www.mra.mu) during the lockdown period. Should it be apparent that you will not be in a position to file your tax returns by the due date, due to the curfew or lock down, you will not be penalised for any delay. Companies who are unable to submit returns or effect payment of tax due to the COVID-19 Pandemic lockdown will not be charged any penalty or interest for late submission/payment.</p>
3.	Remittance of PAYE withheld	<p>Employers are required to submit a monthly PAYE return electronically and include therein the details of all employees. At the same time pay to MRA the amount of PAYE withheld.</p> <p>The due date where both the monthly PAYE return and the payment are made electronically is the end of the month following that in which PAYE was withheld. In any other case the due date is 20 days after the end of the month in which PAYE was withheld. Thus, for the month of March, the due date for submission of PAYE return and payment is 20 April.</p> <p>The facilities for the electronic submission of tax returns and electronic payment of any tax due are available on MRA website (www.mra.mu) during the lockdown period.</p> <p>However, companies who are unable to submit PAYE returns or effect payment of tax due to the COVID-19 Pandemic lockdown will not be charged any penalty or interest for late submission/payment.</p>

	Questions	Answers
4.	Due to absence of key staff in our accounting department, we have just realised that we missed the deadline for filing an objection to a tax assessment– what should we do?	<p>An application, in a form approved by the Director-General of the MRA, may be made within 28 days of the tax assessment being issued, by a person dissatisfied with the assessment issued to him. The form may be sent by registered post or submitted electronically.</p> <p>In case the objection is lodged outside the delay of 28 days, the MRA is to consider the objection as valid on condition that the taxpayer proves to the satisfaction of the MRA that he was unable to object in time because of illness or other reasonable cause (in this case, the COVID-19 Pandemic lockdown) . We are the view that the current situation will be considered as a reasonable cause.</p>
5.	I have an on-going case at the Assessment Review Committee which is due for hearing or mention. What will happen?	The Committee has suspended sittings during this period until further notice.
6.	What happens with Alternative Tax Dispute Resolution (ATDR) meetings with the MRA?	As we are in a curfew all ATDR panel have been postponed. The ATDR Panel will revert back to the taxpayer with new dates.
7.	Appeal to the Supreme Court	<p>Any party who is dissatisfied with the decision of the ARC on a point of law may lodge an appeal with the Supreme Court. The aggrieved party should, within 21 days of the date of the decision of the ARC, lodge a written application requiring the ARC to state and sign a case for the opinion of the Supreme Court on the grounds specified in the case.</p> <p>Following communique from the Chief Justice of the Supreme Court with effect from 23 March, the Supreme Court has suspended sittings during this period until further notice, except on urgent applications. In the event the appeal cannot be lodged within the time frame, it will in our view be considered as an excusable delay.</p>
8.	How will judgements be delivered by the ARC during this period?	There is no set time frame under Mauritius law to deliver a judgement. It can be done electronically as well.

K. CYBER SECURITY

	Questions	Answers
1.	During the COVID-19 pandemic, is there an increased cyber security risk? Why?	<p>The effects of the COVID-19 continue to be felt across the world as the pandemic disrupts the health, economic, political and social systems. The social isolation policy has compelled organizations to have their employees work from home as a business continuity measure.</p> <p>The shift in working environment has an impact on information security as digital tools (e.g., internet connection) available to staff as they work from home may not be as robust as those at the workplace. There is therefore the underlying risk of cyber-attacks as cyber criminals could exploit the situation to access the employee's computer resources.</p>
2.	What is social engineering?	<p>According to Norton Security¹, 'social engineering' is the act of manipulating a person into giving out sensitive information, rather than by outright stealing the information.</p>
3.	What is phishing?	<p>Phishing is a form of social engineering. It relies on the computer user's own vulnerabilities, namely ignorance.</p> <p>The current anxiety about COVID-19 has triggered a lot of emails from "experts or state agencies" containing links to information on the pandemic. While some of these emails are genuine, cyber actors are exploiting the situation by:</p> <ol style="list-style-type: none"> launching phishing attacks using attachments that have data on COVID-19; and sending emails from fake "Government institutions or companies". <p>On 20 March 2020, the Mauritius Computer Emergency Response Team issued a Communique advising people not to click on links on unsolicited emails and to be beware of attachments relating to COVID-19.² Like for any cyber incident, a person may report a COVID-19 related cyber incident on the following website: http://www.maucors.govmu.org</p> <p>Because more people will be working from home or remotely, cyber criminals will continue to look for ways to exploit this. Therefore, employees need to be sensitised about this.</p>

¹ <https://www.nortonsecurityonline.com/security-center/phishing.html>

² For more information see <http://cert-mu.govmu.org/English/Documents/Security%20Alerts/2020/March/Communique%20COVID-19.pdf>

	Questions	Answers
4.	What prescriptive measures should your organization consider in dealing with phishing?	<p>You should consider the following:</p> <ul style="list-style-type: none"> a) Does your organisation have in place reminders on phishing including what a phishing email looks like? b) How often are employees reminded of such attacks? c) Have employees been cautioned against clicking on links or opening emails from suspicious sources? How often are they cautioned? d) Does your anti-virus scan identify suspicious links? e) How are links embedded in emails monitored? f) Does the business have a cyber security incident response plan and a business continuity plan?
5.	What do insider threats entail?	<p>Insider threats are malicious threats originating from people within an organization who have knowledge of the organization's systems, data and security procedures. Insider threats are also a reality for organizations during this health crisis.</p> <p>At the place of work, a security check is in place when employees leave their place of work, security officers are unlikely to go through bags for fear of getting infected, and this provides a major opportunity to exploit the measures.</p>
6.	What prescriptive measures should your organization consider in dealing with insider threats?	<p>The organisation should consider the following:</p> <ul style="list-style-type: none"> a) What security measures do you have in place to safeguard against insider threats: do you have host-based firewalls, security event management tools, etc.? b) Has your organisation carried out an internal/external vulnerability assessment in the last 12 months to check for loopholes that can be exploited by malicious cyber actors? c) Has your organization conducted a general IT audit within the last 12 months? d) Are employees allowed to connect external devices on the employer's network? <p>In addition, employers and employees alike are encouraged to consider the following factors which ensure remote cyber-security. These factors have been published by the Mauritius Computer Response Team and are as follows:</p>

	Questions	Answers
		<ul style="list-style-type: none"> (i) Keep close contact with your employer - It is important to know new policies relating to COVID-19 to help keep you, your co-workers, and the business safe. (ii) Use the company’s tech toolbox – your employer’s tech tools are designed to protect data and devices; they can keep you ‘cybesafe’ when working remotely. (iii) Control the impulse to improvise – If a digital tool (e.g., a software which allows for teamwork) is not working, refrain from downloading a substitute. You could inadvertently introduce a software with a security flaw. (iv) Stay up-to-date on software updates and patches - Updates help patch security flaws and help protect your data. (v) If you have Virtual Private Network (VPN), keep it on - A VPN can provide a secure link between employees and businesses by encrypting data and scanning devices for malicious software such as viruses and ransomware (vi) Beware of COVID-19-themed phishing emails – Cybercriminals are exploiting the COVID-19 virus outbreak to send out fake emails with dangerous links to emails. (vii) Develop a new routine - Working from home means new routine and making sure that you are cyber secure is part of that.