

The Finance Act 2021 Series

Part 5 – Property Law

Key legislative amendments

axis
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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. This last segment of the joint Axis and BLC Robert Finance Act series sets out the key amendments made to the “Property Law” sector. Entailing the Asset Recovery Act, Borrower Protection Act, Landlord and Tenant Act, Non-Citizens (Property Restriction) Act, Real Estate Agent Authority Act 2020, Registration Duty Act and State Lands Act.

02 | Asset Recovery Act

The main amendment which is brought to the Asset Recovery Act relates to property which is the subject matter of an Unexplained Wealth Order under the Good Governance and Integrity Reporting Act. It is to be recalled that if the Integrity Reporting Board has reasonable grounds to believe that a person has unexplained wealth, it must direct the Integrity Reporting Services Agency to apply to a Judge in Chambers for an Unexplained Wealth Order for the confiscation of that unexplained wealth. With the amendment brought to the Asset Recovery Act, an Explained Wealth Order issued under the Good Governance and Integrity Reporting Act takes precedence over a Restraining Order or a Restriction Order under the Asset Recovery Act.

The Enforcement Authority, i.e., the Financial Intelligence Unit, may, if it determines that it is necessary to appoint a trustee to take custody of and manage the property, apply for the nomination of a suitably qualified person for appointment.

The Asset Recovery Act is also amended to require the Financial Intelligence Unit to give notice of the Restriction Order to every person who may have an interest in the property or such reporting person as it considers appropriate. A reporting person has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act. It is to be noted that a person who has an interest in a property which is the subject of a Recovery Order may make an application to exclude his interest from the Recovery Order and the Judge may grant such application if he is satisfied that the property is not proceeds, a benefit, an instrumentality or terrorist property, or the applicant was not in any way involved in the commission of the offence in relation to which the Recovery Order was made, or if the applicant acquired the interest before the commission of the offence, the applicant did not know that any person would use, or intended to use, the property for, or in connection with, the commission of the offence, or where the applicant acquired the interest at the time or after the commission of the offence, the interest was acquired in circumstances which would not have given rise to any reasonable suspicion that the property was proceeds, a benefit, an instrumentality or a terrorist property.

03 | Borrower Protection Act

The Borrower Protection Act 2007 (the “BPA”) has been amended by the Finance (Miscellaneous Provisions) Act 2021 in order to widen the protections provided over property given as security. The amendments have been made because of the preference of lenders to take fixed charge over immoveable property rather than mortgages. It applies a uniform regime for the protection of immoveable property offered as security irrespective of the form of security interest.

Previously, the BPA provided that a lender seeking to enforce a mortgage over immoveable property needed to report the matter to the Commissioner for the Protection of Borrowers before issuing execution on security. Following the amendment made to the BPA, a lender will need to

report to the Commissioner for the Protection of Borrower before taking enforcement steps over immoveable property subject to a fixed charge in addition to property subject to a mortgage.

In addition, the procedure for sale of property set out under section 20 of the BPA will now apply equally to property subject to a fixed charge in addition to property subject to a mortgage.

Lastly, the BPA has been amended to allow the Ministry of Finance, Economic Planning and Development to issue regulations for the procedure applicable for the sale of property irrespective of the form of security interest created.

04 | Landlord and Tenant Act

The Landlord and Tenant Act (the “LTA”) has been amended to provide that the non-payment of rent in respect of any premises to which the LTA applies for the months of March 2021 to August 2021 and such other subsequent months as may be prescribed, shall not constitute a breach of a tenancy agreement, provided the rent for such months is paid in half by the end of 31 December 2021 and the remaining amount paid in 12 equal monthly instalments, from 31 January 2022 to 31 December 2022 or such later date as may be prescribed. A new provision has also been inserted in the LTA, pursuant to which the court cannot make a possession order if rent has not been paid for the aforementioned months, provided that same is paid within the applicable timeframe.

Lastly, the BPA has been amended to allow the Ministry of Finance, Economic Planning and Development to issue regulations for the procedure applicable for the sale of property irrespective of the form of security interest created.



05 | Non-Citizens (Property Restriction) Act

The two main amendments being brought to the Non-Citizen (Property Restriction) Act 1975 (the “Act”) relate to (i) the requirement for non-citizens giving security over immovable property in Mauritius to obtain the approval from the Prime Minister’s Office (the “PMO”) and (ii) the establishment of a non-citizen property restriction register.

The amendments to the Act under the Finance (Miscellaneous Provisions) Act 2021 is the second set of amendments made to the Act in 2021 and seeks to further regulate the acquisition and disposal of immovable property in Mauritius. The Finance (Miscellaneous Provisions) Act 2021 widens the scope of activities relating to immovable property needing governmental approval to include the granting of security by non-citizens. As a result of the amendments, any non-citizen contemplating the creation of security over immovable property in Mauritius must obtain the PMO’s approval before doing so.

Previously, the approval of the PMO was required in order for a non-citizen to acquire immovable property in Mauritius and the amendments under Finance (Miscellaneous Provisions) Act 2021 supplement this with the requirement for the non-citizen to obtain the approval of the PMO to grant security. It is worth noting that the requirement for approval for granting security does not apply where the security relates to over immovable property held by a company listed on the Official List of the Stock Exchange of Mauritius or a company holding a certificate under the Invest Hotel Scheme, Property Development Scheme or Smart City Scheme will not require the approval of the PMO.

In making the application for authorisation to the PMO, non-citizens should provide (i) a site plan showing the extent and precise location of the property, (ii) the nature of the proposed security interest, and (ii) the reasons for which the application is made. Failing to obtain the approval of

05 | Non-Citizens (Property Restriction) Act (Cont'd)

the PMO will result in the security interest being void. The non-citizen would also be subject of additional criminal liability.

The second main amendment brought to the Act relates to the creation of a non-citizen property restriction register. The register will be maintained by the Economic

Development Board in which shall be recorded particulars of (i) the acquisition, holding or purchase of property by a non-citizen, (ii) the disposal of property by a non-citizen, and (iii) any security taken on property by a non-citizen. Such particulars will be provided by the PMO to the Economic Development Board.



06 Real Estate Agent Authority Act 2020 (the “Real Estate Act”)

The definition of a real estate agent has been amended in the Real Estate Act, as a result of which a person would qualify as a real estate agent, only if he, or a partnership in which he is a member, carries out a real estate transaction only in the course of business. Moreover, the definition has also been amended to remove the existing restriction on a person who carries out a real estate transaction where he is the owner or part owner of the real estate, from being considered as real estate agent, provided it is carried out in the course of business.

A new provision has also been inserted in the Real Estate Act requiring a real estate agent who has been issued with a certificate of registration to apply, within 5 working days of his registration as a real estate agent, for a registration with the Financial Intelligence Unit, under the Financial Intelligence and Anti-Money Laundering Act 2002.

07 | Registration Duty Act (the “RDA”)

Section 3 amended: Reduced duty on sale of property under the Integrated Resort Scheme, the Real Estate Scheme or the Invest Hotel Scheme

To create a level playing field with other property schemes and accelerate the sale of IRS/RES units, the RDA has been amended to provide for registration duty on the sale of a property under the Integrated Resort Scheme, the Real Estate Scheme or the Invest Hotel Scheme to be levied at the rate of 5% on the value of the property at the time of registration or USD 70,000 whichever is the lower (which was previously at the rate of 5% or USD 70,000 whichever is the higher).

Section 27 amended: Exemption of registration duty for a first-time buyer on the first 5 million rupees cost of acquisition

The RDA has been amended to provide for exemption of registration duty for a first-time buyer on the first 5 million rupees of the cost of acquisition of a residential property (it was previously restricted to properties whose cost of acquisition were below 5 million rupees).

Addition of a new subsection (4) in Section 48A of the RDA: Setting up of a Home Ownership Scheme

The RDA has provided for the setting up of a Home Ownership Scheme (the “Home Ownership Scheme”) pursuant to which the Registrar General shall pay to an eligible purchaser, 5% of the declared value of a property which qualifies under the Home Ownership Scheme (which shall not in any case exceed 500,000 rupees in respect of the acquisition of a property) where: (a) the deed of transfer in respect of that property has been signed and registered during the period starting 01 July 2021 and ending on 30 June 2022 or (b) during the period starting 01 July 2022 and ending on 30 June 2024, provided that the transfer, subject matter of the deed, has previously been witnessed by a document, whether a notarial deed or document under private signature, in the form of a reservation or a transfer under condition precedent signed and registered during the period 01 July 2021 and ending on 30 June 2022. If the property in question is acquired under VEFA, the declared value shall be deemed to be the amount paid by



the purchaser under the VEFA agreement during the period starting on 01 July 2021 and ending on 30 June 2024.

A property will qualify for a payment under the Home Ownership Scheme provided that it is:

- (a) a portion of freehold bare land for the sole purpose of constructing a residential building;
- (b) the right to construct a residential building on top of an existing building together with its quote-part on a freehold land;
- (c) a residential lot which is the subject of a duly registered and transcribed deed witnessing a règlement de copropriété in accordance with articles 664 and 664-1 to 664-94 of the Code Civil Mauricien;
- (d) a portion of freehold land with a residential building thereon; or
- (e) such other property as may be prescribed; and includes
 - a. residential property which is being acquired on the basis of a plan, or during the construction phase, governed by the provisions of a vente à terme or vente en l'état futur d'achèvement (VEFA), as the case may be, in accordance with articles 1601-1 to 1601-45 of the Code Civil Mauricien;
 - b. residential property situated on Pas Géométriques or a residential property acquired under the Economic Development Board (Real Estate Development Scheme) Regulations 2007, the Economic Development Board (Smart City Scheme) Regulations 2015, Economic Development Board (Property Development Scheme) Regulations 2015 or the Economic Development Board (Invest Hotel Scheme) Regulations 2015; and
 - c. freehold residential building which stands on leasehold land.

07 | **Registration Duty Act (the “RDA”)** *(Cont’d)*

Addition of a new subsection (5) in Section 48A of the RDA: Setting up of a Home Loan Payment Scheme

A Home Loan Payment Scheme (the “**Loan Scheme**”) has also been set up under the RDA pursuant to which the Registrar General shall pay to an eligible borrower, 5% of the amount disbursed which qualifies under the Loan Scheme (which shall not exceed 500,000 rupees) where the deed witnessing the loan has been signed and registered during the period starting 01 July 2021 and ending on 30 June 2022. A secured housing loan is defined as a loan contracted for the construction of a residence or part of a residence and used as a residential unit and secured by a mortgage or fixed charge on immovable property.

The RDA provides that a secured housing loan shall qualify under the Loan Scheme provided that it is:

- (a) contracted for the sole purpose of constructing and or completing the construction of a residence;
- (b) signed and registered during the period starting on 1 July 2021 and ending on 30 June 2022; and
- (c) a secured housing loan contracted from (i) a bank or non-bank deposit taking institution; (ii) an insurance company; (iii) the Sugar Industry Pension Fund; (iv) the Employees Welfare Fund; (v) the Statutory Bodies Family Protection Fund; (vi) such other financial institution as may be prescribed.

08 | **State Lands Act**

The State Lands Act has been amended to provide that the annual rental shall be payable before the end of each year of the lease, pertaining to a state land that has been leased, where the lease is in respect of:

- (a) a hotel, including a hotel under construction;
- (b) a guest house, tourist residence or domaine holding a tourist accommodation certificate, issued under the Tourism Authority Act;
- (c) the holder of a tourist enterprise licence or an operator holding a licence under the Tourism Authority Act; or
- (d) the operator of a seaplane or any other similar business.