

MAY 2020

Legal updates on the COVID-19 & Quarantine Acts 2020

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The COVID-19 (Miscellaneous Provisions) Act 2020 and the Quarantine Act 2020 were passed by the National Assembly on 15 May 2020. They were assented to by the President of the Republic and published in the Government Gazette on 16 May 2020.

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COVID-19 (Miscellaneous Provisions) Act (the “Act”)

The Act amends 56 legislations, in the context of the COVID-19 pandemic, to mitigate its negative impact on the Mauritian economy and on the lives of Mauritians in general.

Although most of the provisions of the Act came into effect retrospectively as from 23 March 2020, those provisions which create new offences or increase the penalties for existing offences came into effect as from the date of publication of the Act, i.e. 16 May 2020.

It is to be noted that some of the amendments apply during the COVID-19 period whereas others apply beyond the COVID-19 period. “COVID-19 period” is defined in the Interpretation and General Clauses Act as the period which starts on 23 March 2020 until 1 June 2020, or such later date as the Prime Minister may prescribe by regulations.

Corporate matters

The Companies Act has been amended to cater for temporary measures during COVID-19 period. Thus, the Registrar has been empowered, during the COVID-19 period or such further period as the Registrar may determine, to issue practice directions, guidelines or instructions as may be necessary for the proper administration of the Companies Act. A similar provision has been added to the Foundations Act, the Limited Liability Partnerships Act and the Limited Partnerships Act.

The annual meeting of shareholders can be held no later than nine months (or such further period as the Registrar may determine) after the balance sheet date, even if it is later than 15 months from the previous annual meeting. The Registrar will also issue practice directions on the manner in which such a meeting will be held during the COVID-19 period or such further period.

During the COVID-19 period, a meeting of a statutory corporation may be held by means of audio and/or visual communication where those participating can simultaneously hear each other throughout the meeting. A resolution can be in writing and can include a copy by facsimile, email or other similar means of communication.

Another temporary provision is that the provisions of section 162 (duty of directors on insolvency) of the Companies Act has been suspended during the COVID-19 period or such further period as the Registrar may determine. In other words, directors who believe that the company is unable to pay its debts as they fall due are not legally obliged to call for a meeting of the board to consider whether the board should appoint a liquidator or an administrator.

The financial statements of a company may be prepared, completed, dated and signed within nine months after the balance sheet date and be filed with the Registrar of Companies for registration within three months after the financial statements are signed.

Employment law

The Employment Relations Act has been amended and the industries concerned with this amendment are among other things civil aviation and airport, air traffic control, health, hospital, and port. The amendment provides that where a labour dispute is reported, during the COVID-19 period or such further period as may be prescribed, to the Commission for Conciliation and Mediation by or on behalf of any party to the dispute in the above mentioned industries, the President of the Commission should refer the dispute to the Employment Relations Tribunal. The tribunal is required to make an award within 30 days of the referral.

The following key amendments have been made to the Workers' Rights Act ("WRA"):

- Work from home and flexitime – A 48 hours' notice from the employer is required to request the employee to work from home or on flexitime. A worker can request to work on flexitime in any circumstance and is no longer limited to cases where the worker needs to care for a child under the age of four or who has an impairment. The Minister of Labour may, for the purpose of this section, make such regulations as he thinks fit.
- Overtime and night allowance in connection with COVID-19 – Under the new section (24A), workers will be compensated with equivalent time-off if no monetary compensation is given. The granting and accumulation of time off is now allowable. Furthermore, workers employed on shift work will not be entitled to any allowance for night shifts as from the commencement of the Act and until such further period as may be prescribed.
- Annual leave – An employer is entitled to withhold up to 15 days' annual leave, during a period of 18 months following the expiry of the COVID-19 period, from the aggregate of the annual leave specified in the law which accrues to a worker as from the beginning of the year of the COVID-19 period. Where a worker has worked during the COVID-19 period, the employer shall not withhold any annual leave.
- Reduction of workforce – The Minister of Labour may, by regulations, exempt an employer who provides services in the sectors requiring a minimum service, from the application of section 72 of the WRA (Reduction of Workforce). That employer would, instead, be subject to an alternative process introduced in the new section 72A of the WRA which provides for the same procedural steps as required under section 72, but with shorter timeframes to give notice to the Redundancy Board and for the Redundancy Board to complete its proceedings.

Where an employer benefits from the abovementioned exemption and he intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, the employer shall give written notice to the Redundancy Board, together with a statement showing cause for the reduction or closure at least 15 days before the intended reduction or closing down, as the case may be. The Board shall complete its proceedings within 15 days from the date of notification by the employer. Where the Board finds that the reasons for the reduction of the workforce or the closing down are unjustified, the Board shall order the employer to pay to the worker severance allowance at the rate of three months' remuneration per year of service.

- Portable Retirement Gratuity Fund ("PRGF") – The operation of the PRGF has been postponed until such date as the Minister of Labour may prescribe.

Taxation

The Income Tax Act is amended as follows:

- Contributions made by individuals and companies to the COVID-19 Solidarity Fund up to 30 June 2021 are deductible from the net income of the individual or the company. Any unrelieved amount may be carried forward and deducted against the net income up to a maximum of two years.
- A new part XIIB has been added to the Income Tax Act (Wage Assistance Scheme) according to which, the Director-General shall, in respect of every eligible employee (i.e. an employee who is employed on a part time or full time basis, whose basic monthly salary is up to MUR50,000, who is not employed in the public sector and who is not excluded by certain regulations pay to his employer), pay 50% of basic salary for the month of March (capped at MUR12,500), 100% of basic salary for April and May (capped at MUR25,000) and such amount and for such other period as may be prescribed.
- An employer benefitting from the Wage Assistance Scheme will no longer be entitled to the allowance in future months:
 - once he terminates the employment of an eligible employee;
 - if he does not pay the basic salary or wage to an eligible employee; or
 - if he reduces the basic salary or wage of an eligible employee.

In the last two instances, the employer is required to refund the allowance not paid to an eligible employee. In addition, an employer needs to refund any allowance to which he is not entitled otherwise the Mauritius Revenue Authority (“MRA”) may take appropriate action to recover the amount. Giving false information or refusing to give information to the MRA is an offence punishable on conviction to a fine not exceeding MUR50,000 and imprisonment for a term not exceeding two years.

- Employers who have benefited from the Wage Assistance Scheme will be liable to a COVID-19 levy (the “Levy”). The Levy is payable to the Director-General when the employer files its tax return.

An employer will not be subject to the Levy if the employer is not liable to tax. Failure to remit the levy to the MRA will be subject to a penalty of 10% of the Levy amount and interest of 1% per month or part of the month shall be imposed in addition to the Levy amount.

- A Self-Employed Assistance Scheme has also been introduced and according to which the MRA shall pay to every self-employed an allowance of MUR5,100 for the period 16 March 2020 to 15 April 2020, an allowance of MUR2,550 for the fortnight 16 April 2020 to 30 April 2020, an allowance of MUR5,100 for the month of May and such other amount for such other period to such category of self-employed as may be prescribed.

The Value Added Tax Act has been amended by adding protective masks, hand sanitizers and other breathing appliances and gas masks to the list of goods which are zero rated.

Insolvency

- The Insolvency Act has been amended and the key amendments are as follows:
- Bankruptcy order - The threshold for seeking a bankruptcy order as part of creditor proceedings has been increased from MUR50,000 to MUR100,000. The time limit for a debtor to comply with a bankruptcy notice has increased from 14 to 28 days.
- Winding up - Winding up resolutions passed by a company or its creditors during the COVID-19 period, or during a period not exceeding 3 months after the COVID-19 period lapses shall be considered to be ineffective and void, except in respect of companies holding a Global Business Licence.
- Voluntary winding-up – Special resolutions passed by a company during the COVID-19 period, or during a period not exceeding 3 months after the COVID-19 period lapses shall be considered to be ineffective and void, except in respect of companies holding a Global Business Licence.
- Creditors' meetings (Creditors' voluntary winding-up) – Creditors' meetings during the COVID-19 period or during a period not exceeding 3 months after the COVID-19 period lapses shall be invalid.
- Statutory demand - The minimum amount for a statutory demand debt has increased from MUR100,000 to MUR250,000, and the period of compliance has increased from one month to two months as from the date of service. The limitation period for applying to set aside a statutory demand has increased from 14 days to 28 days.
- Receivership – The appointment of a receiver under a charge deed or in other cases, during the COVID-19 period, shall be of no effect and shall be void, unless the appointment is made by court order.
- Administration – The timeframe to hold the first creditor's meeting for a company which is under administration shall be not later than 30 days after the COVID-19 period lapses. This is in the case that the normal time period of 10 days expires, or falls wholly or partly, during the COVID-19 period.

Banking

The Bank of Mauritius Act has been amended to allow the Bank of Mauritius (the "BOM") to grant such amount to the government as the board of directors may approve to assist it in its fiscal measures to stabilize the economy of Mauritius, on account of the negative impact of the COVID-19 virus. Such grants will originate from the BOM's Special Reserve Fund.

The BOM can also provide capital to or invest in any corporation or company set up for the purpose of facilitating economic development and use such amount of the Official Reserves Funds as its board may determine.

Consumer protection

A number of breaches of the Consumer Protection (Price and Supplies Control) Act has been made a Fixed Penalty Offence ("FPO"). Examples of FPOs are selling or supplying any controlled goods at a price higher than that which has been fixed or making a mark-up on those goods which exceeds the maximum mark-up, the illegal charging of VAT or selling at a price higher than that displayed, and using liquefied petroleum gas in small cylinders other than for domestic purposes.

Finance and audit

The Finance and Audit Act has been amended to provide that advances from the Consolidated Fund required in the public interest, shall not, after deduction of any repayment, in the aggregate, exceed MUR15,000 million rupees (instead of MUR3,500 million rupees, as was the case before the amendment).

Landlord and Tenant Act

The Act has amended the Landlord & Tenant Act to provide that the non-payment of rent in respect of premises for the period of March 2020 to August 2020 and such other subsequent month as may be prescribed shall not constitute a breach of a tenancy agreement, provided that the rent for the period of March 2020 to August 2020 and such other subsequent month as may be prescribed is fully paid, in instalments, by 31 December 2021 or such other date as may be prescribed. This amendment applies to all premises, whether business or residential premises, let under the Landlord and Tenant Act or under any other enactment.

Moreover, the Act provides that the court shall not make any possession order where rent has not been paid by a tenant for the months of March 2020 to August 2020 and such other subsequent month as may be prescribed, provided that the rent for the months of March 2020 to August 2020 and such other subsequent month as may be prescribed is fully paid, in instalments, by 31 December 2021 or such other date as may be prescribed.

Criminal Law

The Criminal Code has been amended to provide for more severe penalties for:

- crimes (from MUR5,000 to MUR10,000 fine);
- misdemeanours (from 10 days to 30 days of imprisonment and from MUR5000 to MUR10,000 fine);
- first class contraventions (from MUR1,000 to MUR3,000 fine);
- second class contraventions (from MUR2,000 to MUR5,000 fine and a term of imprisonment not exceeding 10 days); and
- third class contraventions (from MUR3,000 to MUR5,000 fine and a term of imprisonment not exceeding 30 days).

A new third class contravention of spitting in a public place has been created.

Data protection

The Data Protection Act has been amended to provide that when necessary and proportionate measures are taken for the issue of any licence, permit or authorisation during the COVID-19 period, application of the Data Protection Act shall be exempted. No definition is given to the words “licence,” “permit” or “authorisation” in the Act.

Gambling

As a result of the amendment to the Gambling Regulatory Authority Act, the Gambling Regulatory Board may extend, during the COVID-19 period, the validity of any licence for such period and on

such terms and conditions as the Board may determine. The Gambling Regulatory Authority may also direct any licensee to temporarily cease its operations during the COVID-19 period.

Furthermore, no tax or duty shall be payable by:

(a) a bookmaker licensed to conduct fixed odds betting on an event or contingency in respect of a week; or

(b) a licensee of gaming machine or limited pay-out machine in respect of a month, during which the licensee is not authorised to operate.

Public Health Act

The Public Health Act has been amended to provide that any person who contravenes any regulations made by the minister for the prevention or mitigation of any epidemic, endemic, infectious or communicable disease is now liable to a fine not exceeding MUR200,000 and to imprisonment for a term not exceeding five years.

A new section 79A has been added to allow the minister to make such regulations as he thinks fit to prevent the resurgence and further spread of a dangerous epidemic, endemic, infectious or communicable disease.

By virtue of section 79(A) of the Public Health Act, the minister has made the Prevention of Resurgence and Further Spread of Epidemic Disease (COVID-19) Regulations 2020 (the "Regulations") which came into effect on 17 May 2020. The Regulations provides for the sanitary measures which need to be observed with a view to preventing a resurgence and further spread of COVID-19. The Regulations provides, among others, that:

- Subject to the exceptions provided in the Regulations, every person shall, in any place, other than in his ordinary place of residence, wear a protection mask over his nose and mouth and ensure that every child aged five and above in his company, wears a protective mask over the child's nose and mouth.
- Every person shall, at all times, keep a distance of at least one metre from any other person, except where the person is in the company of a child under the age of 12. Every employer shall ensure that appropriate measures are in place to implement the social and physical distancing rules.
- Every person shall, whether in his ordinary place of residence, in a public place, at his workplace and any other premises, ensure that he disinfects his hands regularly using an alcohol-based hand sanitizer, where same is available.
- At any place of work, every employer shall provide to his employees hygiene product (includes soap, hand sanitisers and tissue paper) and rubbish bins for the disposal of waste and shall ensure that the waste is regularly disposed of and the place of work including used surfaces such as benchtops, desks and doorknobs, is regularly cleaned and disinfected.

Failure to wear a protection mask and failure to maintain social distancing as provided amounts to a criminal offence, which on conviction, is liable to a fine not exceeding Rs 50,000 and to imprisonment not exceeding two years.

Extension of time limits

A number of legislations have been amended to extend any time limit which expires during the COVID-19 period or after the COVID-19 period lapses.

Legislation amended	Matter for which time limit is extended (the "matter")	Time limit expires during the COVID-19 period	Time limit expires after the COVID-19 period lapses
Information and Communication Technologies Act	The doing of an act or thing under this law	The matter can be validly done no later than 30 days after the COVID-19 period lapses or such further period as may be prescribed.	If the time limit expires 21 days after the COVID-19 period lapses, then the act or thing can be done not later than 30 days after the period of 21 days lapses.
Interpretation and General Clauses Act	Instituting or lodging judicial proceedings, making of a payment, applying for a licence, including a renewal thereof, making a decision or a determination	Where the time limit falls during the COVID-19 period or a period of 30 days after the COVID-19 period lapses, the matter may be done not later than such period as may be prescribed by regulations.	
Registration Duty Act	Deed not presented to Registrar General	Where the time limit falls during the COVID-19 period or such period as may be specified after the COVID-19 period lapses, no surcharge shall be payable if the deed is presented to the Registrar General not later than such period as may be prescribed.	
	Object to the decision of the Receive of Registration Dues in relation to movable property	30 days after the COVID-19 period lapses.	If the period expires within 10 days after the COVID-19 period lapses, the deadline is 30 days after the period of 10 days lapses.
	Time limit for the Objection Unit to deal with an objection	Two months after the COVID-19 period lapses.	If the period expires within one month after the COVID-19 period, the time limit is two

			months after the period of one month lapses.
	Registration of document	No penalty shall be charged, provided that the document is registered not later than such period as may be specified.	
Mauritius Revenue Authority	Statutory delay relating to proceedings before the Assessment Review Committee ("ARC")	The statutory delay will be suspended and will start from the day following the last day of the COVID-19 period.	If the statutory delay expires 21 days after the COVID-19 period lapses, it will be suspended and will start from the day following the last day of the 21 day period.
	Making of an assessment, a decision, a determination, a notice or a claim	Not later than two months after the COVID-19 period lapses.	If the specific time expires within a period of 30 days after the COVID-19 period lapses, the matter may be done not later than two months after the period of 30 days lapses.
	Making a payment (including the payment of any fee, fine, charge, levy, duty, fine, penalty, interest or surcharge)	The payment will have to be made not later than 25 June 2020	Where the time expires or falls wholly or partly during the period ending 30 June 2020, the payment shall be made not later than 26 June 2020.
Immigration Act	Extension or variation of residence permit or permanent residence permit whilst being in Mauritius	The permits will remain valid for a period of 30 days after the said period lapses (or for such further period as may be prescribed).	Where a period expires 21 days after the COVID-19 period lapses, the permit will be deemed not to have expired and will remain valid for a period of 30 days after the period of 21 days lapses (or for such further period as may be prescribed).
Passports Act	Expiry of visa	Deemed not to have expired and will remain	Where a visa expires during a period of 21

		valid for a period of 30 days.	days after the COVID-19 period lapses, the visa will be deemed not to have expired and will remain valid for a period of 30 days after the period of 21 days lapses (or for such further period as may be prescribed).
Environment Protection Act	Expiry of EIA licence	Still temporarily valid for a period of 30 days after the COVID-19 period lapses	Where licence expires during the period of 21 days after the COVID-19 period lapses, the licence remains valid for another 30 days after the initial period of 21 days.
Tourism Authority Act	Expiry of accommodation certificate, tourist enterprise license, pleasure craft licence or canvasser permit	The permit is still temporarily valid for a period of 12 months after the COVID-19 period lapses, provided that the renewal fee are paid.	Where the permit expires one month after the COVID-19 period, the permit shall be deemed not to have expired and shall remain valid for a period of 12 months after the period of one month lapses.
Land (Duties and Taxes) Act	Payment of any duty or tax specified in a notice sent by the Registrar General following reassessment of the value of the property	Payable three months after the COVID-19 period lapses.	If the time delay expires within one month post COVID-19 period, then the duty or tax shall be payable three months after the period of one month lapses.
	Object to a notice	28 days after the COVID-19 period lapses.	28 days post the COVID-19 period if the time delay expires within 21 days post the COVID-19 period.

	The time period for the payment of any duty or levy where a taxpayer has lodged a representation with the ARC and an agreement has been reached	28 days after the COVID-19 period lapses.	If the time delay expires within a period of 10 days post COVID-19 period, 28 after the period of 10 days lapses.
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Exemptions

There are a few legislations which have been amended to provide for exemptions from payment of any surcharge or fee or from undergoing professional development.

Legislations amended	Exemptions
The Central Electricity Board Act The Central Water Authority Act	No surcharge shall be imposed, and electricity and water supply shall not be disconnected, provided that the waste water fees or the MBC licence fees, as the case may be, that the customer owes are paid not later than such period as may be prescribed by the Authority.
Transcription and Mortgage Act	In relation to the fees for searches in the mortgage or transcription books or in the Movable and Immovable Property Database, no fee shall be payable for searches for the month of April 2020 or such other month as may be prescribed.
Interpretation and General Clauses Act	Any person who is required to follow any continuous professional development course is exempt for the current CPD year on account of COVID-19.
Environment Protection Act	The manager of a hotel, guest house or tourist residence of more than 4 bedrooms shall not pay the relevant Environment Protection fees for the period starting 1 March 2020 and ending 31 December 2020.

Miscellaneous

The Financial Services Act now provides that the meeting of the Board of the Financial Services Commission may also be held by means of audio and/or visual communication. Any resolution can be validly passed in writing when signed or assented to by all the members. Such a resolution can be in several counterparts including facsimile, email or other similar means of communication.

The Financial Reporting Act has been amended to allow an auditor who has been requested to produce any relevant book, document or record in his possession or under his control, to produce such documents in electronic form.

The Courts Act has been amended to give the Chief Justice power to make such rules as he considers appropriate during the COVID-19 period, in order to regulate the practice and procedure before any court. It will also be possible to limit the number of persons who may be present in chambers or in a courtroom, or call or hear a matter remotely by means of a telephonic, an electronic or any other communication facility, subject to the written approval of the Chief Justice.

The Freeport Act is amended to provide that subject to the payment of an annual fee of MUR3,000 (if paid within the due date) or MUR4,500 (if paid after the due date) to the Economic Development Board, a private freeport developer is henceforth authorised to provide warehousing facilities for the storage of goods (which have been cleared from customs) in a freeport zone to any person during the COVID-19 period and such further period as may be prescribed after the COVID-19 period lapses. Furthermore, goods which enter during the period of 1 October 2018 and 31 December 2020 may be stored for a maximum period not exceeding 36 months.

The Pharmacy Act has been amended to provide that no person shall sell a locally manufactured pharmaceutical product on the local market unless he is licensed as a manufacturer under the Pharmacy Act and the pharmaceutical product is registered with the Pharmacy Board.

The Public Procurement Act has been amended to provide that the opening of a bid, during the COVID-19 period and such further period as may be prescribed, be made through technological means, subject to such guidelines as the Policy Office may issue.

The Quarantine Act (the “Act”)

The Act repeals the 1954 Quarantine Act and provides a reformed and modern legislative framework with a view to catering for more appropriate measures for the prevention and spread of communicable diseases.

This Act is not yet applicable law and shall come into operation on a date to be fixed by proclamation.

The Quarantine Authority in Mauritius is the Director General of Health Services.

The main measures under the Act are as follows:

- The Minister of Health may by notice in the Government Gazette declare the likelihood of an epidemic and further declare a quarantine period to be in force in Mauritius or part hereof. Following such a notice, the Quarantine Authority shall designate such premises that may be used as quarantine facility, including private premises where an agreement has been reached with the owner or occupier of such premises. A quarantine facility shall be under the control of the quarantine officer.

- During a quarantine period, the Prime Minister may, by order published in the Government Gazette:
 - (a) prohibit the entry of aircraft and ships in Mauritius;
 - (b) order that all persons shall remain indoors; or
 - (c) order that commercial premises or offices specified therein remain closed.
- The Commissioner of Police is empowered to issue a permit to a person to be outdoors for such purpose and on such terms and conditions as the Commissioner of Police may specify in the permit.
- During a quarantine period, a person who travels into Mauritius from abroad and who has been exposed to a communicable disease may be confined in a quarantine facility for such period as a quarantine officer shall determine. Such a person shall undergo such medical examination as the quarantine officer may require. Where necessary, such a person may be transferred to a hospital for medical treatment. Such a person may request to follow medical treatment in a private health institution at his own cost and such a request will be entertained if the private health institution has adequate facilities for treating the disease in question.
- When a person is discharged from quarantine and does not comply with conditions imposed, he may be readmitted into a quarantine facility.
- There is a duty on every person to provide such information as a quarantine officer may reasonably require to ascertain if the person presents any symptoms of a communicable disease, or is infested with vectors or has otherwise been exposed to a communicable disease. If the person fails to comply with such a request for information or provides fake or misleading information, he shall commit an offence.
- Similarly, if any person suspects that he has or may have a communicable disease, or may be infested with vectors or may have been in contact with a person who has or may have a communicable disease, he shall forthwith inform a quarantine officer.
- The police is given powers to provide assistance that may be reasonably required by a quarantine officer and as such may board a ship or aircraft and enter premises without a warrant and arrest without warrant a person whom he has reasonable cause to believe has committed an offence under the Quarantine Act.

This law provides for a number of offences, and on conviction they are liable to a fine not exceeding MUR500,000 and to imprisonment for a term not exceeding 5 years

Contacts



Marc Hein SC, GOSK

Chairman

Juristconsult Chambers, DLA Piper Africa, Mauritius

mhein@juristconsult.com



Nicolas Richard

Managing Partner

Juristconsult Chambers, DLA Piper Africa, Mauritius

nrichard@juristconsult.com



Shalinee Dreepaul Halkhoree

Partner

Juristconsult Chambers, DLA Piper Africa, Mauritius

sdreepaul@juristconsult.com

Contributors

Arvin Halkhoree

Senior Associate-Barrister

Khemila Narraido

Senior Associate-Barrister

Bhavish Sewraz

Associate-Barrister

Ankusha Nathoo

Associate-Barrister

Ingrid Lecordier

Associate-Barrister

Annabelle Ribet

Pupil-Barrister

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