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BUDGET 2021-22

REGULATORY COMPLIANCE SPOTLIGHT

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INTRODUCTORY OVERVIEW

The 2021-22 Budget Speech focuses on the continued efforts of Mauritian Government to achieve an early exit from the FATF list of jurisdictions under increased monitoring (FATF Grey List)

The measures announced continue the trend of previous years which has been to reinforce legislation and empower regulatory authorities to be able to implement AML CFT legislations. The overall objective is to align to FATF recommendations which have direct bearing on our status as an international financial centre of good repute.

INTRODUCTORY OVERVIEW (CONTD)

THE FATF FACTOR

As a reminder, in February 2020, when Mauritius made a high-level political commitment to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regime, the following five aspects were identified as core areas to improve :

1. implementing risk-based supervision plans effectively for the Financial Services Commission and relevant DNFBP supervisors and increase the diversity of STR filing, especially among higher risk sectors;
2. ensuring the access to accurate basic and beneficial ownership information by competent authorities in a timely manner;
3. demonstrating that law enforcement agencies have capacity to conduct money laundering investigations, including parallel financial investigations and complex cases;
4. implementing a risk-based approach for supervision of its NPO sector to prevent abuse for TF purposes; and
5. demonstrating the adequate implementation of targeted financial sanctions through outreach and supervision.



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KEY TRENDS

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1. BENEFICIAL OWNERSHIP

Changes under the **Limited Partnerships Act** and the **Limited Liability Partnerships Act** have been announced. These organisations will be removed from the registers in case proper beneficial ownership details are not provided to the Registrar.

Under the **Foundations Act**, foundations will be given the opportunity to remedy in case of failure to disclose beneficial ownership requirements.

2. DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPs)

- **Gambling Regulatory Act**

- The GRA Board will be empowered to take disciplinary action against its licensees for failing to comply with the anti-money laundering and terrorism financing and proliferation guidelines issued by the GRA.
- The definition of “Suspicious Transaction” is expected to be aligned with the action plan requirement of the FIAMLA recommendations.

- **Real Estate Agent Authority Act**

- The Real Estate Agent Authority Act will be amended to require a licensed real estate agent to register themselves with the FIU within 5 working days of their registration with the Real Estate Agent Authority.
- Failing to register within that timeframe will be considered as an offence.



3. POWERS OF THE FIU

The FIU has been further empowered to:

- Include the Registrar of Companies in the definition of “Registrars” to allow the Companies and Business Registration Department to **exchange information** in relation to Non-Profit Organisations with the FIU;
- To impose **administrative sanctions on law practitioners** who fail to comply with Anti Money Laundering and Combatting the Financing of Terrorism (AML/CFT) requirement;
- Provide for the National Committee on AML/CFT to be chaired by the Supervising Officer of the Ministry responsible for the subject of money laundering.

4. STRENGTHENING OF LAW ENFORCEMENT

- **Setting up of Financial Crime Division & Commission**

A **Financial Crime Commission** shall be established to ensure a more effective dealing of financial crimes. Similarly, the **Supreme Court** and the **Intermediate Court** will see the setting up of **Financial Crimes Division** in a bid to ensure that financial crime cases are dealt swiftly.

- **Bank of Mauritius Act**

The Bank of Mauritius Act shall be amended to enable the Central Bank to increase collaboration and cooperation among supervisory authorities and law enforcement agencies through the setting up of a **Central Registry of Accounts**.

4. STRENGTHENING OF LAW ENFORCEMENT

- **Companies Act**

In view of protecting companies from terrorist financing abuse, the Companies Act shall be amended to ensure compliance with the requirements of the Financial Action Task Force (FATF) and which shall include measures such as:

- The introduction of grounds whereby the Registrar of Companies may refuse registration or issue a notice of intention to remove a Company from the Register;
- The monitoring of Company service providers and their reporting of suspicious transactions.



4. STRENGTHENING OF LAW ENFORCEMENT

Companies Act (CONTD)

- The sharing of information with other law enforcement agencies and institutions for the purpose of preventing money laundering, combating of terrorism financing and proliferation financing in Mauritius and abroad;
- Supervision and application of proportionate and dissuasive sanctions on entities falling under the purview of the Registrar of Companies;
- The protection of companies from terrorist financing abuse through the empowerment of the Registrar of Companies to issue of guidelines, to conduct examinations and investigations and to impose sanctions for non-compliance and offences committed under the Companies Act;
- The conduct of outreaching educational programs.

4. STRENGTHENING OF LAW ENFORCEMENT

- **Courts Act**

The Courts Act shall be amended to **allow for the testimonial of witnesses in relation to financial crime and AML/CFT offence through live video and live television link systems**. In addition, the amended Courts Act shall also allow for:

- The agreement of facts between the Prosecution and the Defence in relation to any criminal proceedings before the Financial Crime Division in a bid to avoid the need for parties to adduce evidence that may be contested.
- The trial of money laundering offences under the Dangerous Drugs Act before the Financial Crimes Division



4. STRENGTHENING OF LAW ENFORCEMENT

The Financial and Intelligence Anti Money Laundering Act (FIAMLA)

The FIAMLA 2002 shall be amended to **allow the lodging of predicate and money laundering offences under a single information** even if the investigations are being conducted by different investigatory authorities.

Other notable measures that shall be brought upon the amendment include:

- A reporting person to provide information to its regulatory body **even if the reporting person is not carrying out listed activities under the Act;**
- The taking effect of decisions of regulatory bodies after 21 days of the decision being issued.

4. STRENGTHENING OF LAW ENFORCEMENT

- **Financial Services Act**

The Financial Services Act shall see a series of amendments to allow for:

- The establishment of a framework for the application of a **Regulatory Sandbox Authorisation**;
- The FSC to require the Official Receiver, a Liquidator, Provisional Liquidator, Administrator or Special Administrator to provide the FSC with information relating to its licensee or past licensee for the discharge of its functions;
- A notice being served for **administrative sanction through a registered usher** or by encrypted electronic mail in addition to registered post.

4. STRENGTHENING OF LAW ENFORCEMENT

Financial Services Act (CONTD)

- The **removal of Self-Regulatory Organisations (SROs)** from the purview of the decision of the Review Panel given that the Panel cannot hear applications regarding SROs;
- The possibility of requesting a **certificate of good standing from the FSC to all its licensees**, and to legal practitioners and accounting firms with the consent of the licensee;
- The **FSC to exchange information with a supervisory body or any other public sector agency** for the administration of their respective Acts and for the FSC to discharge its functions;
- The FSC to regulate and supervise financial institutions or start-ups providing relevant services under the **FinTech Regulatory Sandbox** licence issued by the FSC, with such consequential adaptations as may be required to give thereto.

4. STRENGTHENING OF LAW ENFORCEMENT

- **Foundations Act**

Amendments shall also be brought to the Foundations Act to ensure compliance with the requirements of Financial Action Task Force (FATF) to ensure:

- The protection of non-profit organisations (NPOs) from being misused by terrorist organisations through the **empowerment of the Registrar of Companies to issue guidelines, to conduct examinations and investigations** and to **impose sanctions for non-compliance** and offences committed under the Foundations Act;
- The introduction of **rationales for removing a foundation from the register** kept by the Registrar of Companies for non-filing of an amended Charter;
- **Sharing of information with law enforcement agencies and institutions** involved in the prevention of money laundering and combating of terrorism financing and proliferation financing, in Mauritius or abroad.

4. STRENGTHENING OF LAW ENFORCEMENT

- **Insolvency Act**

The Insolvency Act shall be amended to highlight the requirement for a **liquidator to provide information to the FSC** during the discharge of its functions and obligations under an arrangement or agreement for the exchange of information.

- **Insurance Act**

The Insurance Act shall be amended to allow the FSC to:

- exempt, on specified conditions, a person categorised as a small private company from its reporting obligations;
- extend the time period for doing an act or thing required under the law;
- request any insurer providing motor insurance business to provide information required by the Commission.

4. STRENGTHENING OF LAW ENFORCEMENT

- **National Payment Systems Act**

The National Payment Systems Act shall be amended to provide for the setting up of a **National Payment Systems Committee** which shall act as an **advisory body to BOM** in the exercise of its oversight function in respect of the national payment systems and the amendment shall also concern the **inclusion of regulations as an offence**.

- **Prevention of Corruption Act**

The Prevention of Corruption Act shall be amended to bring extension to the validity of an Attachment Order from **60 days to 180 days** and to provide for the **realisation of assets, subjected to an Attachment or Seizure Order, to facilitate asset recovery**.

- **Prevention of Terrorism Act**

The Prevention of Terrorism Act shall be amended to **empower the Commissioner of Police to apply for Account Monitoring Orders**.

5. FINTECH RECOGNITION

The Government has announced for the **Bank of Mauritius Act** to be amended to empower the Bank of Mauritius (BOM) to launch a **Central Bank Digital Currency**, known as the Digital Rupee, which is to be held and used by the public.

Similarly, other measures announced include:

- The setting-up of **FinTech innovation hubs and digital labs** by the BOM for the banking sector and by the FSC for non-banking financial services sector;
- **Facilitation of digital payments** through the introduction of a dedicated QR-Code.





5. FINTECH RECOGNITION

- The rolling-out of an Open-Lab for **banking and payment solutions** to encourage more entrepreneurship;
- The setting up of a **single desk by the BOM and FSC** to address all FinTech related applications;
- The regulation and supervision of financial institutions & start-ups providing relevant services under **the FinTech Regulatory Sandbox licence** by the BOM and the FSC;
- Empowerment of the Central Bank to make it an offence and impose **sanctions on any person misusing digital currencies**;
- Introduction of **digital gaming** in the gambling industry for local operators.



5. FINTECH RECOGNITION – WHAT THIS MEANS

The demand for FinTech and digital banking products has become an inevitable marker for international financial centres to showcase a competitive edge and ease of doing business.

These long awaited announcements indicate a high receptiveness from the Government to push Mauritius forward on its agenda of digital transformation and build a sustainable financial services industry.

All stakeholders will have to ensure that practical issues that have been experienced so far will not impede the roll-out of these ambitious projects.

6. CAPACITY BUILDING

- **Training**

The BOM and the FSC will launch a one-year training programme on AML and related matters for a minimum of 100 graduates with a monthly stipend of Rs 15,000.

- **Occupational Permits for Fund Accounting and Compliance Services**

The monthly salary applicable for an Occupation Permit for professionals in financial services will be brought down to Rs 30,000. This will be applicable to fund accounting and compliance services by a company holding a license from the FSC, and the professional will need to have at least 3 years relevant work experience.





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LEGISLATIVE CHANGES – OVERVIEW



BANKING ACT - HIGHLIGHTS

The Banking Act will be amended to:

- review the eligibility criteria of money market instruments to be reviewed to promote development of a domestic market for money market instruments;
- allow for disclosure of information with the Central KYC and Accounts Registry and while reporting alleged or suspected Offences;
- extend examination of the operations and affairs of financial institutions to cover their affiliates;
- replace, in Section 7, the words “financial institution” by the word “applicant” to correctly reflect that the section applies to a new application;
- define “Fintech”, “Regulatory Sandbox”, “Regulatory Sandbox Authorisation” and “RegTech” ;
- establish the framework for applying for a Regulatory Sandbox Authorisation.

BANK OF MAURITIUS ACT - HIGHLIGHTS

The Bank of Mauritius Act will be amended to:

- enter into agreement or arrangement with relevant entities to **enable it to discharge of its functions;**
- issue guidelines, directives, rules or instructions on the issuance of sustainable bond, including **blue and green bonds**, in Mauritius;
- empower the Mauritius Credit Information Bureau (MCIB) to provide **credit scoring as a value-added service;**
- protect the BOM, MCIB or **any person providing information, for the purpose of credit scoring**, from any liability for acts done in good faith for that purpose.

COMPANIES ACT - HIGHLIGHTS

The Companies Act will be amended to:

- specify that “**FIU**” and “**Suspicious Transaction Report**” have the same meaning as in Financial Intelligence and Anti Money Laundering Act;
- remove the requirement for a company to include certain information in relation to its subsidiaries in its annual report in line with the; **Code of Good Governance where disclosure is only for holding companies.**



COMPANIES ACT - HIGHLIGHTS

The Companies Act will be amended to:

- provide that a public company having not more than 50 members **may be converted into a private company**;
- include that other categories of persons, including a representative of the company or any person qualified to act as company secretary under Section 165 of the Companies Act, to **request a current standing certificate**; and
- **remove the restriction on companies limited by guarantee** not to have more than 50 members.



FINANCIAL SERVICES ACT - HIGHLIGHTS

The Financial Services Act will be amended to:

- define “**Fintech**”, “**Regulatory Sandbox**”, “**Regulatory Sandbox Authorisation**” and “**RegTech**”;
- authorise the FSC to set up such **fintech innovation hubs and innovation and digital labs** for the non-banking financial services sector;
- **allow issue of shares of less than 5%** in a licensee without the approval of the FSC unless such issue results in a change in control in the licensee;
- extend the possibility to **request for a certificate of good standing from the FSC** to all its licensees, and to legal practitioners and accounting firms with the consent of the licensee.

FINANCIAL INTELLIGENCE AND ANTI-MONEY LAUNDERING ACT - HIGHLIGHTS

- FIAMLA will now **include the Registrar of Companies** in the definition of Registrars allowing companies and Business Registration Department exchange information to NPO'S with the FIU.
- Entities registered as **reporting issuer** which are not engaged in any financial activities are announced to be **excluded from the “financial institution”** definition under FIAMLA.
- **“Member Firm”** meaning will be clarified to be in line with the Financial Reporting Act.



FINANCIAL INTELLIGENCE AND ANTI-MONEY LAUNDERING ACT - HIGHLIGHTS (CONTD)

- **“Financial Institution”** definition shall be reviewed to include a qualified trustee as defined by the Trusts Act instead of simply referring to the Trusts Act.
- **Interagency Coordination Committee** establishment shall be provided for effective cooperation and coordination among members in the implementation of international standard on AML/CFT proliferation.



UN (FINANCIAL PROHIBITIONS, ARMS EMBARGO AND TRAVEL BAN) SANCTIONS ACT - HIGHLIGHTS

The UN Sanctions Act will be amended to:

- define “Fintech”, “Regulatory Sandbox”, “Regulatory Sandbox Authorisation” and “RegTech”;
- authorise the FSC to set up such fintech innovation hubs and innovation and digital labs for the non-banking financial services sector;
- allow issue of shares of less than 5% in a licensee without the approval of the FSC unless such issue results in a change in control in the licensee;
- extend the possibility to request for a certificate of good standing from the FSC to all its licensees, and to legal practitioners and accounting firms with the consent of the licensee.



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OTHER NOTABLE

A **Regulatory Impact Assessment Bill** has been announced

This legislation will require Regulatory bodies, amongst others, to:

- submit an impact of upcoming regulations on the business environment
- To oversee and monitor the quality of assessments, a RIA Office will be established under the purview of the PMO.

The 'silence is consent' principle will apply to licenses and permits as may be prescribed.



CLOSING COMMENTARY

- The past year has seen regulators of financial services and relevant professions issue extensive guidance covering how to adopt the risk-based approach. It has also been observed, in parallel that there have been stronger moves towards risk based supervision.
- This new budget is a natural continuation into the trend of increased regulatory scrutiny on industry stakeholders. Apart from drastically increasing the powers of law enforcement agencies, it is also observed that bold steps have been taken to ensure that the financial services sector does not lag under the accelerated the pace of digital change. A holistic approach is also observed with the announcement of measures bringing fund account and compliance services under the purview of Occupational Permits opening up the possibilities for recruitment of competent personnel from outside the jurisdiction.
- Inevitably these changes signal that the compliance function is going nowhere. Savvy industry stakeholders would be well advised to consider the compliance function as part of a sustainable business strategy rather than merely being a cost centre.





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