TEMPLE CONSULTING

REGULATORY COMPLIANCE SNAPSHOT 2022-23

AN INITIATIVE OF TEMPLE GROUP

As anticipated, the Budget 2022-23 Speech by the Honourable Doctor Renganaden Padayachy brought its fair lot of social measures. Nonetheless, several measures were announced for the regulatory landscape in Mauritius in a continued effort to be aligned to international norms and standards despite being cleared from the FATF Blacklist and other Grey Lists.

Financial Services Sector

The Financial Services Sector ("Sector") has been one of the few sectors which has shown great resilience in the face of the Covid-19 crisis with an estimated growth rate of 4.2% over the past year. The past two years' budget measures for the Sector had the primary objective of an early exit from the FATF's Blacklist and other Grey Lists whilst this year's announced measures demonstrate the Government's commitment in strengthening the momentum acquired and lessons learnt over the past 2 years.

Firstly, the amendment of the Financial Services Act to remove the definition of "Global Headquarters Administration", "Global Shared Services" and "Global Treasury Activities" from the scope of "Financial Services" to create a separate section for the regulation of global activities per the FATF requirements, demonstrates an acknowledgement that global activities covering, inter alia, administration, general management, business planning and economic research ventures should be treated separately from typical financial institutions' activities.

The setting up of a Settlement Committee by the Financial Services Commission ("FSC") for the purpose of assessing the possibility of an early resolution of disciplinary matters with a licensee comes as an addition to the already established regulatory framework which includes the rules of the Enforcement Committee. This comes with great relief for licensees wishing for a reduced penalty, as redemption, from the Commission especially in light of recent enforcement actions taken for breach of regulatory norms.

Another key measure announced for the Sector includes the empowerment of the FSC to initiate regulatory actions against individuals, who have in effect been performing the functions of an officer without prior approval by the Commission. This measure comes as a reinforcement of the "Fit & Proper" Guidance Notes issued by the Commission to ensure that officers of financial institutions are competent and capable of holding such positions in the industry whilst also maintaining the good repute of the jurisdiction, as an international financial hub. On the other hand, it remains to be seen whether this announcement shall have any significance on the personal liability of such approved officers along with, any potential punitive measures and if the definition of competence and capability is suitably defined for such officers in the Guidance Notes.

As part of other measures announced for the Financial Services Sector, the Insurance Sector ("Insurance Sector"), finds itself in the middle of a re-structuring, especially for general insurers. A multilateral clearing system shall be set up with the aim to expedite the settlement of outstanding motor claims recoveries and, the FSC may require motor insurers to furnish information to facilitate, in collaboration with other regulatory bodies, the clearing and settlement of claims.

Another measure announced for the Sector includes the alignment of the approval for the appointment of "Fit & Proper" with the provisions of the Financial Services Act 2007, in a move, to ensure good repute and management of the Sector.
The Insurance Sector shall also witness the establishment of a proper framework for Structured Investment-Linked Insurance Business Activities that aims to formalise the existence and regulation of insurance investment products that are becoming more common.

While the above measures were more or less anticipated, astonishingly, the Budget also announced the merging of the domestic and global business regimes. This comes as an unexpected turn of events since, over the years, the regulatory landscape in Mauritius was mostly focused on global businesses and DNFBPs. The change in regime could prove to be challenging in practice since domestic companies will need to demonstrate and match international AML/CFT norms.

Banking Sector

The Banking Sector shall also see a series of amendments to be brought to its regime in the pursue of meeting international norms and standards. For example, the Banking Act shall be amended to facilitate the issuance of a banking licence by granting an in-principle approval to the applicant provided that all required documents are submitted and conditions are fulfilled to the satisfaction of the Bank of Mauritius ("BOM"). With this initiative, should the expectation be that we will be seeing more banks and more diversification and innovation within the sector in line with the global trends?

Under other initiatives announced to empower the BOM, the Central Bank shall now be able to amend, vary or cancel any condition attached to, or impose new conditions on an authorisation granted or a licence issued under the National Payment Systems Act. The BOM may also receive green signal to open accounts and accepts deposits for the purposes of issuing digital currency, as a continuation to last year's budget announcement.

The powers of the BOM have also been extended to require Financial Institutions or even service providers to comply with the requirements of confidentiality as specified in guidelines, directives or instructions. The Budget further allows the BOM to require a person to sign a declaration of confidentiality if the latter conducts a due diligence on a Financial Institution with the intention of acquiring a shareholding in that Financial Institution.

In a bid to promote the facilitation of collecting, verifying, validating and extracting KYC information, the BOM shall now be able to increase the functionalities of the Central KYC system and the Central Accounts Registry. This will allow for a more expeditious process of opening bank accounts, in line with the new objective of processing bank account opening applications for corporates and individuals within a week.

Corporate Governance

The Budget has also reinstated the importance of good governance post Covid-19. For example, the temporary time extension provided to registered companies due to Covid-19 shall no longer be valid. Registered companies shall be called to resume the requirements of calling annual meetings of shareholders not later than 6 months after the balance sheet date; prepare their financial statements within 6 months after balance sheet date; and file their financial statements with the ROC within 28 days from signature of the financial statements or any other period determined by the ROC. These measures reinstate in full s115, s210 and s215 of the Companies Act 2001, respectively. S162 of the Act has also been reinstated regarding the duty of directors for insolvency.

On the same note, the Registrar of Companies ("ROC") shall now have the power to remove a company from its Register should it be deemed appropriate. In the event, a company is found to have been carrying on business operations at the time of removal, the ROC shall also have the power to restore that company on its Register. Per the new measures announced, companies shall be prevented from being registered in Mauritius as well as in another jurisdiction in parallel. This echoes and reinforces the principle of the Organization for Economic Cooperation and Development ("OECD") of a permanent establishment in one jurisdiction.

The Companies Act 2001 shall also require subsidiaries of companies to disclose, in their annual reports, information such as

1. Particulars of interest;
2. Donations made by the subsidiaries;
3. Details of present and past directors;
4. Fees payable to auditors; and
5. Details of major transactions.

Virtual Assets

Following last year's budget measures, the Virtual Asset and Initial Token Offering Services Act 2021 (VAITOS) came into force on the 7th February 2022. The VAITOS aims to regulate business activities of virtual assets service providers and initial token offerings in a view to manage, mitigate and prevent money laundering and the financing of terrorism risks associated with these emerging and innovative business operations. As per the VAITOS, it is an offence for any person to carry out any such business activities without a proper licence issued by the Financial Services Commission ("FSC"). The VAITOS shall now be amended to allow the FSC and other competent investigatory authorities to carry out supervision and investigation by using software or digital tools on and such means of procuring evidence shall be admissible in criminal investigation, prosecution or other related criminal or civil court proceedings. This demonstrates the Government's proactiveness towards combatting financial crime, especially with the setting up of the Financial Crime Commission.

In a similar vein, this year's announced initiatives regarding virtual assets aim to propel the sector through a series of measures. For example, holders shall now have an obligation to declare their virtual assets under the Declaration of Assets Act. Additionally, virtual assets shall also be defined and covered under the Financial Intelligence Anti Money Laundering Act and the Mutual Assistance in Criminal and Related Matters Act as "property".

Tax Reporting

Another highlight of this year's budget is the reiteration of the Government's commitment against erosion of tax. For instance, the Mauritius Revenue Authority Act will be amended to empower the Mauritius Revenue Authority ("MRA") to recover foreign taxes in order to provide assistance to foreign countries in their recovery of taxes. Another further step has been the empowerment of the MRA to request information from a Foundation or Trust so that the Authority is able to:

1. make an assessment;
2. collect tax; or
3. comply with any request for the exchange of information under a Double Taxation Avoidance Agreement.

Ending Note

The overall announcements of the Budget hit a note of consistency following the trends of previous years seeking to reinforce the regulatory framework and align it to international norms. This represents huge opportunities for the sector to raise its standards but also will imply some tough choices and very real practical challenges for companies as the need to invest in internal compliance and risk management becomes even more inevitable. The announcements further continue to suggest a leaning towards Fintech and creating a space for companies to grow in a structured manner.

Nevertheless, it would be worth noting that the more stringent emphasis on competence and capabilities is likely to propel the growth and training of approved officers by the FSC at an unprecedented rate and companies hiring should be more mindful of who they are appointing in these roles. In addition, the opening up of a traditionally very conservative area of our financial services suggests that we are also opening up to competition; ultimately in the medium/ long term this should be a welcome initiative. We should, however, be mindful of the shock of absorbing and keeping up with very rapid change might prove to be challenging for numerous companies.

Overall, this is a recurring theme as the few bold moves we have seen send a strong signal of change but the shift in paradigm remains to be seen.

Other Highlights – Miscellaneous

Amendment to the Insurance Act 2005

The amendment to the Insurance Act 2005 provides the following propositions:

- Extension of the prescribed delay from 2 to 5 years
- The new provisions account for a definition of a ''custodian'', ''custodian agreement' 'clearing'', ''clearing system'' and ''settlement'', which was not clearly construed in the previous insurance act.
- The multilateral clearing system will allow for point-to-point connection and allow cross checking in the settlement of outstanding motor claims recoveries.

Amendment to the Gambling Regulatory Authority Act and the Mauritius Revenue Authority Act

The Gambling Regulatory Authority Act will provide a definition as to a ''fit and proper'' person, as announced in the Budget 2022/23. However, the MRA will be of assistance to the GRA in determining the fitness and properness of that person before issuing a personal management licence.

Amendment to the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019

Mauritius, under the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 has the prerogative to address the issues of terrorism, terrorism financing and international peace and security. The Act will now cater for the definition of term ''International terrorism'', as enlisted in the budget 2022/23.

Amendment to the Financial Intelligence Anti-Money Laundering Act (FIAMLA)

The FIAMLA, will be amended to further encompass the combatting of proliferation financing.

As defined by the Financial Action Task Force (FATF), Proliferation Financing shall include various connected financial services, and other activities, in an optic to develop and deliver dangerous weaponry ranging from chemical, biological and nuclear weapons.

Amendment to the Prevention of Corruption Act

The Prevention of Corruption Act (POCA) provides a framework to regulate corruption activities and fraud and allows for the implementation of an Independent Commission Against Corruption.

The POCA will be amended to cover offences with regards to foreign bribery and provide a definition concerning foreign bribery and foreign public official.
Furthermore, the offences of non-deductibility of bribes when filing tax returns, will also fall under the umbrella of the amended POCA.