

Newsletter

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Dear Readers

We are pleased to circulate our first newsletter for the year 2018.

The Mauritius Data Protection Act 2017 replaced the 2004 act to be aligned with international standards, namely the EU General Data Protection Regulation 2016/679 (GDPR) and Convention 108. With the imminent 25 May 2018 GDPR deadline it is appropriate that we review the objectives, changes and benefits brought to the new Data Protection Act 2017 (DPA 2017), and more so because the GDPR is relevant to Mauritius as it has extra-territorial applicability.

We continue to have a look at international indexes and monitor how Mauritius is doing compared to other countries and economies worldwide, and follow up on our previous article on the Regulatory Sandbox License.

Hoping that you will find the information contained therein interesting and useful, we will be pleased to hear any feedback from our readers and thank them for their continued support.

Best wishes

The Editorial Team

The European Union enacted the General Data Protection Regulation (GDPR) to "harmonise" data privacy laws across Europe in addition to give greater protection and rights to individuals and to address the difficulties and shortcomings arising under the EU Directive 95/46/EC. Equally, the GDPR sets a stronger basis than Directive 95/46/EC for a greater level of consistency as the regulation is directly applicable in the Member States. The GDPR is also designed to address technological and social changes that have taken place over the last decades or so by adopting a technology-neutral approach to regulation.

The GDPR is relevant to Mauritius because it has extra-territorial applicability. Therefore, it was important that Mauritius align its legislation with international standards, namely the GDPR, and also the European Convention for Protection of Individuals with regard to Automatic Processing of Personal Data (commonly known as Convention 108), which Mauritius acceded to on 17 June 2016. Convention 108 is the first and only international legally binding instrument dealing explicitly with data protection and currently has 51 signatories including 47 Council of Europe Member States as well as Uruguay until Mauritius became the 49th State Party and the first African country to accede to this Convention. The treaty entered into force on 1 October 2016 in Mauritius. One amongst the advantages derived as being a party to the Convention is that Mauritius is considered a country with a safe flow of data to attract foreign investment.

This article looks at the objectives, changes and benefits brought to the new Data Protection Act 2017 (DPA 2017) which is aligned with international standards, namely the EU General Data Protection Regulation 2016/679 and Convention 108, in the wake of the impending 25 May 2018 GDPR deadline.

Aim of the Act

- To strengthen the control and personal autonomy of data subjects (individuals) over their personal data.
- To be in line with current relevant international standards, in particular the European Union's General Data Protection Regulation (GDPR) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- To simplify the regulatory environment for business in our digital economy.
- To promote the safe transfer of personal data to and from foreign jurisdictions, given the diversification, intensification and globalisation of data processing and personal data flows.

Major changes brought in the new Act

- Existing data protection principles and key definitions such as consent and personal data have been modernised.
- Introduction of new concepts such as:
 - Data Protection Impact Assessments (DPIA);
 - Notification by controllers of personal data breaches to the Data Protection Office and data subjects;
 - Record of processing operations;
 - Voluntary certification mechanisms and data protection seals & marks for controllers; and
 - Rights to object to automated individual decision-making including profiling.
- Simplifying:
 - the registration/renewal process of controllers and processors;
 - the complaints' mechanism and the procedures related to hearings conducted by the Data Protection Office, namely the amicable resolution of disputes whenever possible;
 - the ease of business, in particular in terms of free flow of data from EU or other parts of the world to Mauritius.

New Definitions

- The following have been defined under the "Interpretation" section of the DPA 2017:
 - Biometric data; Encryption; Genetic data; Physical or mental health; Personal data breach; Profiling, and Pseudonymisation.

Benefits of the Act

- Increased accountability of controllers will make organisations implement controlled business processes resulting in better organisation, greater productivity and efficiency, and higher level of security.
 - Being compliant will also help organisations to gain and strengthen customer trust, confidence and loyalty.
- Enhanced data subjects' rights will give individuals greater control over their personal data.
- The risk of data breaches will be minimised.
- The legal and practical certainty for economic operators and public authorities will be reinforced.
- The new data protection framework will significantly improve the digital legal landscape to respond to the new EU requirements for adequacy, thereby attracting foreign investors.
- Certified organisations will be recognised as providing adequate privacy protection thus giving legal certainty for cross-border data transfers.

Country Update – Mauritius FDI inflows hit MUR 12.3 Billion (Jan-Sep)

Following the latest statistical release from the Bank of Mauritius, Foreign Direct Investment (FDI) inflows for the first 3 quarters of 2017 amounted to MUR 12.3 Billion, compared to MUR 10.6 Billion for the corresponding period last year, representing an increase of 16 %.

The top 3 sectors were real estate (MUR 7.3 Billion), financial services (MUR 3.2 Billion) and construction (MUR 845 Million). Hospitality and education also received significant investment from abroad during the

period. It should be noted that the share of FDI in real estate activities has been decreasing over the years following the adoption of a diversification strategy. For the period January to September 2017, FDI in real estate accounted for 59.4% of total FDI, compared to 70.7 % in 2016 and 84.4% in 2015.

With respect to sources of FDI, over 50% of inflows came from France and Luxembourg. South Africa and China remained important markets during the period.

Treaty Update – New Mauritius – Senegal DTA Agreement being negotiated

Senegalese officials were at the Mauritius Revenue Authority (MRA) in the context of negotiations of a Double Taxation Avoidance Agreement (DTAA) between Mauritius and Senegal, from 26 February to 02 March 2018.

Negotiations between both countries are still underway. The two states already have a DTAA in place since 2002 but current negotiations aims, inter alia, at bettering the economic ties between Mauritius and Senegal.

International Index Update – The Economist Intelligence Unit's Democracy Index 2017

The latest edition of the Economist Intelligence Unit's Democracy Index 2017 provides a snapshot of the state of democracy across 165 independent states and two territories globally. The index is measured on a scale of 0 to 10 based on five broad categories namely the electoral process and pluralism, civil liberties, the functioning of government, political participation and political culture.

According to the Index, Mauritius occupies the first position in Africa with an overall score of 8.22 and is ranked 16th out of 167 countries worldwide. The country has gained 2 positions as compared to the 2016 edition where it stood at the 18th position globally. It

should be highlighted that Mauritius is considered as the only “fully free” democracy in Africa.

Norway tops the global ranking as the most democratic country in the world with a score of 9.87 followed by Iceland, Sweden and New Zealand. At the other end of the rankings, North Korea, an authoritarian regime scored a total of 1.08, remains firmly entrenched in last place. Syria (166th), Chad (165th), the Central African Republic (CAR) (164th) and the Democratic Republic of Congo (DRC) (163rd) also bring up the rear, occupying the four slots above North Korea.

The Report has underscored that 49.3 percent of the world's population lives in some form of democracy while only 4.5 percent of people live in full democracies.

International Index Update – The Global Talent Competitiveness Index 2018

The Global Talent Competitiveness Index 2018 (GTCI) entitled “Diversity for Competitiveness” which has been recently released by Insead Business School ranks Mauritius 46th globally out of 119 countries. Mauritius has secured the first position as Sub-Saharan Africa’s brightest destination for attracting, developing, growing and retaining talents.

In the context of the GTCI, talent competitiveness refers to the set of policies and practices that enable a country to develop, attract, and empower the human capital that contributes to productivity and prosperity.

According to the Index, the four upper-middle income countries in Sub-Saharan Africa namely Mauritius

(46th), Botswana (62nd), South Africa (63rd) and Namibia (80th) dominate the top four places in the region. Only Mauritius is above the median GTCI score, with a total score of 46.79 witnessed by an excellent performance in terms of attracting talents (33rd), regulatory landscape (24th) and solid enable pillar (33rd).

The report highlights that diversity and inclusion are incontestable ways of improving talent competitiveness. Innovation is imperative to encourage employees to come up with new ideas and to encourage leaders to implement them.

The annual benchmarking report measures the performance of countries based on the pillars namely

enable, attract, grow, retain, vocational & technical skills and global knowledge skills. High-income countries namely Switzerland, Singapore, US, Norway,

Sweden, Finland, Denmark, UK, Netherlands, Luxembourg occupy the top 10 slot of the index.

International Index Update – 2018 Index of Economic Freedom

Mauritius has maintained its first position as a "mostly free" economy in Sub-Saharan Africa and has been ranked 21st out of 180 countries with a score of 75,1 in the 24th Index of Economic Freedom published by the Heritage Foundation. The country has recorded an increase of 0,4 points with improvements in scores for government integrity and property rights indicators.

The Heritage Foundation has rated Mauritius for its efficient and transparent regulatory environment which supports relatively broad-based economic development, and its competitive tax rates, prudent banking practices and a fairly flexible labour code which facilitates private-sector growth. According to the 2018 Index, in Sub-Saharan Africa most of the 47 graded nations are "mostly unfree", and more than half of the world's "repressed" economies, 12 out of 21, are in Sub-Saharan Africa.

The Index of Economic Freedom launched in 1995 studies economies throughout the world and provides in-depth analysis of each country's political and economic developments. The Index groups the world's countries into five regions: America, Asia-Pacific,

Europe, Middle East/North Africa and Sub-Saharan Africa.

It measures economic freedom on 12 quantitative and qualitative factors, grouped into four broad categories: Rule of Law (property rights, government integrity, judicial effectiveness); Government Size (government spending, tax burden, fiscal health); Regulatory Efficiency (business freedom, labor freedom, monetary freedom); and Open Markets (trade freedom, investment freedom, financial freedom). The Index measures the scores on a scale of 100 points classified as "free" (combined scores of 80 or higher); "mostly free" (70-79.9); "moderately free" (60-69.9); "mostly unfree" (50-59.9); or "repressed" (under 50).

Among the 180 countries ranked, scores improved for 102 countries and declined for 75. According to the Index, Hong Kong and Singapore each recorded increases in their Index scores, finishing first and second in the rankings for the 24th consecutive year. Three other frequent top finishers, New Zealand 3rd globally, Switzerland 4th and the United Kingdom 8th also witnessed a rise in their scores.

CKLB Services Update – Regulatory Sandbox License

In our previous newsletter we reported on the pro-activeness of the Government of Mauritius passing legislation to allow for Regulatory Sandbox License (RSL) as a means of positioning Mauritius in the league of select countries enabling promoters and entrepreneurs to engage in innovative and high value added activities that rely on the dynamic technological evolution.

In this newsletter we will look at the guiding principles of the Mauritius RSL legislation and issues of eligibility, safeguards, terms & conditions and monitoring and reporting, and how CKLB can help.

The RSL offers the possibility for a person to conduct a business activity for which there are no, or no adequate provisions under any enactment. The RSL will be issued by the Board of Investment now the Economic Development Board (EDB) to eligible companies willing to invest in innovative projects within an agreed set of terms and conditions for a defined period.

RSL Application

An application for RSL must be made to the EDB which is responsible for managing the scheme. Applications and relevant supporting documents should be

submitted electronically to the EDB through its RSL online portal.

The EDB will review the application in consultation with stakeholders and assess the risks involved. Projects that are viable and that represent minimum potential for harm are issued with a list of safeguards, conditions and recommendations. Some of the conditions preclude the issue of the RSL. Non-viable projects or those failing to meet the criteria proposed are rejected.

Selection Criteria

Considering the fact that projects and projects' maturity level that might be entitled to the RSL may be very diverse, selection criteria may vary as per project's nature. The general eligibility criteria are defined and are neither exhaustive, mandatory nor exclusive. The Board reserves the right to define the selection criteria tailor made to each project.

Generally, an applicant seeking the Board's approval to participate in a Sandbox must demonstrate the following:

- a) the product, service or solution is genuinely innovative, i.e. it is novel and not similar to those



already available in the Mauritian, regional or international market;

- b) the project will contribute to the development of local skills and know-how;
- c) the provision of the new product, service or solution is otherwise:
 - i. not allowed due to any prohibition or restriction under existing laws or regulations administered by the country; or
 - ii. either wholly or partly incompatible with applicable regulatory requirements currently imposed by the country; However, in cases where the proposed product, service or solution possesses strong value propositions, the Board would adopt an 'open' mind approach which includes granting flexibilities in complying with existing rules and regulations.
- d) the product, service or solution has clear potential to:
 - i. contribute to the development of Mauritian economy. This may include greater accessibility, efficiency, security, reliability or effectiveness in the provision services and products in diverse sectors
 - ii. bring about enhancement to the Mauritian industrial, commercial and know-how efficiency or risk management and controls;
 - iii. significantly benefit the Mauritian consumers.
- e) the applicant has conducted an adequate and appropriate assessment to demonstrate the usefulness and functionality of the product, service or solution and understands the associated risks;
- f) the applicant has the necessary resources to participate in Sandbox, mitigate and control potential risks and losses arising from the offering of such product, service or solution;
- g) the applicant's business plan to deploy the product, service or solution on a commercial scale in Mauritius after exit from the Sandbox or to deploy the product, service or solution on a commercial scale for the international market with relevant advantages for Mauritius (sharing of Royalties, setting up of the company's Headquarters in Mauritius);
- h) the adequacy of safeguards, terms and conditions to mitigate major foreseeable risks assessed and mitigated and
- i) any other criteria that would be deemed necessary to be met by the Board.

Safeguards, Terms & Conditions

The license will enable the applicant to start his or her business activity even if relevant regulatory frameworks are not complete or inexistent.

The RSL will be accompanied by a number of conditions related to the activity, such as safeguards, terms and conditions that need to be followed, compliance with existing regulations referring to general business operation, monitoring mechanisms, amongst others.

Applicants should beforehand identify the potential risks to consumers and the country's economy that may arise from the testing of the product, service or solution in the Sandbox and propose appropriate safeguards to address the identified risks.

Where there are existing legal provisions for such types of activity, the applicant is encouraged to provide the necessary information.

The Board of Investment will on its end assess the proposed safeguards and may implement additional safeguards, terms and conditions as it may deem necessary. In addition to the safeguards, the project should be carried out in accordance with all existing legislative arrangements.

Monitoring and Reporting

The EDB will continuously monitor any business activity in respect of which a RSL that has been issued and ensure that the licensee complies with the conditions of the license. To this end, the EDB may design a monitoring mechanism, in collaboration with other public sector agencies, as it may deem appropriate. In addition, a holder of RSL must submit regular reports to the EDB.

Subsequent Enactment

In the case whereby a business activity for which a RSL had been issued is subsequently regulated under an enactment, the RSL shall be deemed to have lapsed and the business activity shall be governed by that enactment.

How can CKLB help?

CKLB can help clients with the appropriate corporate structure, assist them in completing the application documentation pack and business plan, etc., meet with the officers of the EDB and be the liaison between the client and the authorities. Besides, CKLB will provide management, administration, company secretarial and accounting services to the corporate structure and other ancillary services.

our services

CKLB is independently owned and being of medium size, we pride ourselves in our ability to remaining committed to provide a personal and tailor-made service to clients. We understand well the particular requirements and needs of clients and the key to our successful development has been our commitment to satisfy these needs at high standard. We provide a one-stop quality service with emphasis on local presence and substance. Our varied client base includes HNWI / Ultra HNWI Individuals, private companies as well as companies listed on major stock exchanges. Our range of services includes:

- our core service, advice to HNWI's and family offices in developing efficient estate planning solutions
- management and family office support structures
- focus on a complete set of fund structuring and administration services
- corporate structuring and advice
- company formation and corporate management
- administration and accounting
- establishment of trusts and provision of trustee services
- back office administration and accounting services
- outsourcing and payroll services
- business administration services, including international trading, licensing and financing
- expatriates occupation and residence permits
- group investment holding and management services

Connecting our clients to international networks to facilitate cross-border business

CKLB interacts with several professional firms and services group, and is member of the International Grouping of Accountants and Lawyers (IGAL), a well-established association boasting 107 member firms located in 41 countries throughout the world, with 170 offices worldwide. IGAL has developed into a leading business network of legal and accounting firms whose members offer superior services related to legal, financial, tax and insolvency matters to companies and individuals with international activities; as well as expert and personal assistance to reduce the obstacles of doing business in a foreign environment and at a distance. IGAL provides CKLBs valued clients with a wide network for assistance in their cross-border businesses through privileged access to experienced professionals and technical expertise in relevant countries. CKLB will be pleased to co-ordinate any assistance you may require in these countries as an extension of our one-stop shop service.

Disclaimer

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