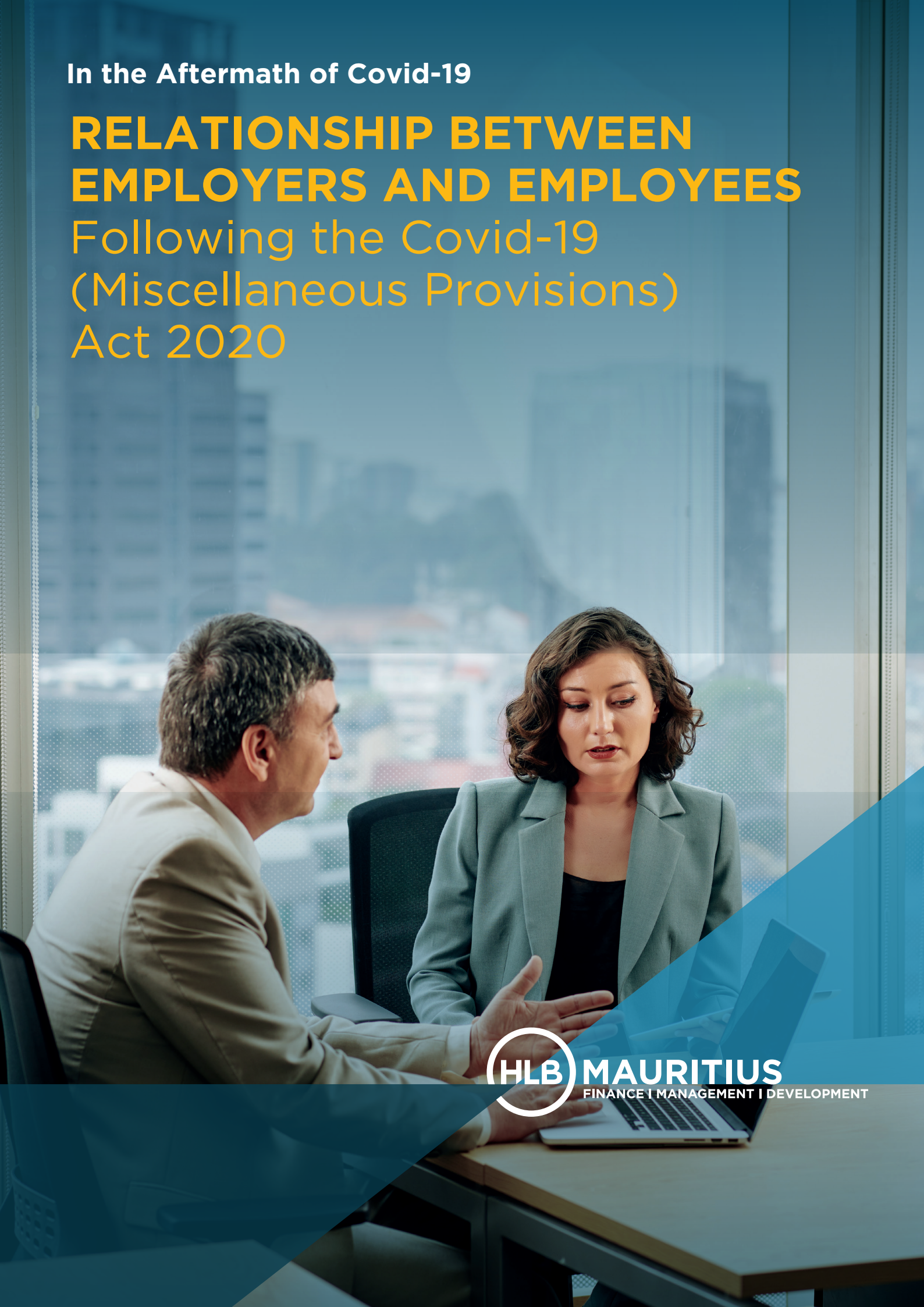
In the Aftermath of Covid-19

RELATIONSHIP BETWEEN EMPLOYERS AND EMPLOYEES

Following the Covid-19 (Miscellaneous Provisions) Act 2020



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INTRODUCTION

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It is no secret to anybody that, like any other country, Mauritius has been heavily impacted by the COVID-19 pandemic and its reverberations. The outbreak of the pandemic has disrupted our lives and livelihood at all levels causing an unprecedented halt to the global economy. All sectors including production, hospitality, trade and business in general have been paralyzed.

The sanitary curfew prevailing since the 20 of March 2020 was lifted on 31 May 2020 after which normal activity started in almost all sectors. However, with economic activity on hold for more than two months, resumption, faced to an unpredictable and muted economic recovery, appears very challenging.

While most business are having great difficulty in navigating through the troubled aftermath of the pandemic, the most commonly asked question from our business associates is: 'how do we deal simultaneously with re-inventing the business with a view to salvaging it while on the other hand preserving employment?'

HLB Mauritius, bearing in mind the quandaries of its stakeholders, wish to highlight, in simple words, the implications of the Covid Act relative to employment and the new rules for industrial relations.

AMENDMENTS IN EMPLOYMENT VARIANTS

Work from home

The Covid-19 pandemic being the most dangerous crisis that human has faced, has forced us to make new arrangements in our daily life. The way of living and working has been impacted. In this vein the government intervened decisively and brought in amendments in the employment law by passing the **COVID -19 (MISCELLANEOUS PROVISIONS) ACT**, which provides that an employer may request a worker to work from home provided a notice of at least **48 hours** must be given to the worker. However, we do not have a proper legal framework on how to regulate 'Work from Home' and for the time being employers are developing their own protocol addressing pertinent issues such as: will 'working time' be the same as for office hours? How to account for leaves? How to record time keeping and 'overtime'? Should 'internet' become a cost to be shared between employers and employees?

Until more clarity is obtained, we strongly advise employers to develop their internal 'Work from Home Protocol' and to agree on a mutual basis with their employees.

Flexitime arrangements

No doubt the repercussions of the pandemic has given rise to new ways of working. For instance, flexible working possibilities during the lockdown brought in a positive acumen in the methods of working arrangements, proving that work can be done in alternative ways other than just between scheduled office hours. In this view the Covid-19 Act has made provisions where employers may request workers to work on flexitime provided a notice of at least 48 hours must be given to the worker. The time has come when businesses must adopt internal policies and protocols in respect of flexitime working arrangement, which will be inclusive of 'Work from Home'.

A worker is also entitled to request to work on flexitime. Such request may be granted by the employer unless the employer has reasonable business grounds to refuse.

Withholding of annual leave

An employer may withhold up to 15 days' annual leave, which accrues between the 1st January 2020 and December 2021, for a worker who has not performed work between the 23rd March 2020 and the 1st June 2020.

However, if during the COVID-19 period a worker has performed work as required by his employer, no annual leaves should be withheld.

Transfer or taking over of a business by a new employer and changes in contractual terms

Our law and in particular S67 of the Worker's Rights Act 'WRA' provides that where a worker is offered employment on terms and conditions which are less favourable than those of his previous employment following a transfer or taking over of a trade or a business by a new employer, the latter may claim that his employment has been terminated by the employer without justification. Changes to a contractual term are permitted if only they are made following mutual consultations and agreements between a worker and an employer. Nevertheless, the Covid-19 Act has provided that the Minister may now, by regulations exempt an employer who provides services in the sectors specified in the Third Schedule to the Employment Relations Act from the application of S67 of the WRA. This means that enterprises under the specific sectors may change the terms of employment and any such changes may not be construed to be termination of employment by the employer.

Sectors specified in the Third Schedule*

- *Air traffic control*
- *Civil aviation and airport, including ground handling and ancillary services*
- *Customs*
- *Electricity*
- *Health*
- *Hotel services*
- *Hospital*
- *Port, including cargo handling services and other related activities in the ports including loading, unloading, shifting, storage, receipt and delivery, transportation and distribution, as specified in section 36 of the Ports Act*
- *Radio and television*
- *Refuse disposal*
- *Telephone*
- *Transport of passengers and goods*
- *Water supply*

Reduction of Workforce - Fast Track for certain employers

In response to the economic pressure caused by the Covid-19 pandemic, many employers are forced, though unreluctantly, to reduce costs by reducing headcounts. Redundancy is an unfortunate situation whereby a worker loses his job because the employer does not need his services anymore or maybe also because the company is reducing its work force with a view to ensure business continuity or still to close down definitely. Although the current extraordinary conditions have resulted from what is tantamount to 'a force majeure', it does not imply that ordinary legal principles can be disregarded or sidestepped.

The WRA imposes on an employer, **having a minimum of 15 employees** or, having **an annual turnover of at least 25 million rupees**, intending to reduce its number of workers, either temporarily or permanently, the following obligations:

1. First negotiate with the workers or their representatives or trade union in order to explore the possibility of avoiding a complete shut down by a reduction of workforce

2. In case such negotiations are not successful, the employer shall give notice of its intention to the Redundancy Board showing cause for the said reduction, at least 30 days before the intended reduction.

Now the Covid-19 Act provides that an employer who provides services in the sectors specified in the Third Schedule , specified above, may be exempted by the Minister from the application of section 72 (1) of the WRA concerning the reduction of workforce and closure of enterprise. This means the employer may not notify and negotiate with trade union and workers' representatives so as to explore any possibility of avoiding the reduction of workforce or closing down.

Where an employer has been exempted, the latter shall:

1. 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. In case the exemption does not apply 30 days' notice must be given.

2. The Redundancy Board shall complete its proceedings within 15 days from the date of notification by the employer (30 days for non-exempted employers), and decide whether reduction of workforce or the closing down of the company is justified or unjustified.

Where the Redundancy Board finds that the reasons for the reduction of the workforce or closing down is justified, the employer is entitled to terminate the employment of the worker and the latter will be paid 30 days' wages as indemnity in lieu of notice. Alternatively, upon the request of the employer and the consent of the worker, the Redundancy Board may also order the worker to proceed on leave without pay for such period specified by the employer and subject to the condition that the resumption of employment will be based on new terms and conditions.

However, in the event the Redundancy Board finds that the reduction of the workforce or closing down is unjustified, the employer will be obliged to pay to the worker severance allowance at the rate of 3 months' remuneration per year of service

It is to be noted that where the Board makes an order, the order shall be enforced in the same manner as an order of the Industrial Court.

An employer having less than 15 employees or, having an annual turnover of at less than 25 million rupees may still rely on poor economic and business conditions and lay off a worker by giving 1 month notice or remuneration in lieu of notice. In this case the total sum payable to the worker is as follows:

- End of year bonus on a prorated basis
- Unpaid leaves
- 15 days wages per year of service (this can be paid directly to the worker or to the MRA under the Portable Retirement Gratuity Fund)

Although not prescribed in law, the employer has a duty to notify the Ministry of Labour regarding the termination and inform the worker to get himself registered under the Workfare Programme to avail of the transition unemployment benefit.

Another optional avenue available for an employer is that of mutual agreement to proceed on a period of leave without pay, of course with the consent of the worker. However, this route remains disadvantageous for the worker because since employment is not terminated the latter is not eligible to receive the above benefits. Depending on the contractual terms, the agreement may provide that re-employment may be on new terms or on the same terms and conditions which existed before.

AMENDMENTS IN EMPLOYMENT VARIANTS

In order to minimize the risk of corporate insolvency and to safeguard employment, the measures listed below have been proposed under the Covid-19 Act allowing some breathing space for businesses;

- A resolution for the winding up generally or for specific voluntary winding up of a company (with the exception of a company holding a Global Business Licence), passed during the COVID-19 period or during a period of three months after expiry of the COVID-19 period, is deemed to be void. In practice since the curfew and the lock down were lifted on 31 May 2020, no liquidation process can be envisaged before the 1 September 2020.
- The appointment of any Receiver or Receiver Manager during the COVID-19 period has been made void and of no effect.
- The delay to hold a first meeting of creditors in relation to an administration has been extended from 10 to 30 days.
- Section 142 of the Insolvency Act in relation to duty to hold a creditors' meeting and setting out the procedure thereof has been made inapplicable during the COVID-19 period or during a period not exceeding 3 months after the COVID-19 period lapses in line with the clause above.

> The above is a short insight on the legal issues highlighted herein and should not to be construed as being comprehensive legal advice. Our team at HLB Mauritius will be pleased to advise you in relation to any issues raised in this article and assist you with any queries you may have.

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