**Working Group on the issue of human rights and transnational corporations and other business enterprises.**

***“Human Rights-compatible International Investment Agreements (IIAs)”***

1. All laws in Mauritius are drafted in compliance with human rights norms. However, there is no specific legislation which explicitly requires the integration of human rights provisions in the IIAs concluded by the Government.
2. Examples of legal provisions pertaining to the protection of fundamental human rights in the business context, including corporate responsibility, are as follows:
3. The Workers’ Rights Act protects employees from all types of discrimination. The right to freedom of association of a worker, men and women alike, is also provided for under the Workers’ Rights Act which states at section 64(1) (d) that an agreement shall not be terminated by an employer by reason of “*a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities outside working hours or with the consent of the employer, within working hours”*;
4. The Equal Opportunities Act prohibits discrimination based on the status of a person and this includes age, caste, colour, creed, ethnic origin, impaired, marital status, place of origin, political opinion, race, sex or sexual orientation. The Act also prohibits sexual harassment at work;
5. The Employment Relations Act which provide for the right of workers to inter alia freedom of association, the protection of trade union of workers against acts of interference and the protection against discrimination and victimization. The Act further sets up the Employment Relations Tribunal and the Commission for Conciliation and Mediation entrusted with the resolution of labour disputes on the basis of a number of human rights based principles;
6. The Occupational and Health Safety Act and the regulations made thereunder which provide for a number of safety and health norms notably for workers’ accommodation and provision of protective equipment and clothing;
7. In addition, the Constitution of Mauritius, which is the Supreme law in Mauritius, guarantees to every citizen his/her fundamental rights which include, inter alia, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, provisions to secure protection of law, protection of freedom of expression, protection of freedom of assembly and association, protection of freedom of movement and protection from discrimination. If any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.
8. The State of Mauritius provided an update on the development made regarding Business and Human Rights to the Working Group on the issue of human rights and transnational corporations and other business enterprises in March 2021. Copy is at ***Annex I***.
9. Furthermore, the Mauritian Investment Promotion and Protection Agreement (IPPA) provides for the following:

ARTICLE 6 of the IPPA: Expropriation

1. Investments of investors of either Contracting Party in the territory of the Other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation except for public purposes under due process of law, on a nondiscriminatory basis and against fair and equitable compensation.
2. The investors affected by the expropriation shall have the right, under the law of the Contracting party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.
3. Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 8 of the IPPA- Settlement of Disputes between and Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.
2. If such dispute cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor may submit the dispute to:
3. arbitration in accordance to the law of the Contacting Party; or
4. if the Contracting Party of the investor and the other Contracting party are both parties to the Convention on the Settlement of Investment Disputes between States and nationals of other states, of March 18, 1965 and the investor consents in writing to submit the dispute to the International centre for the settlement of Investment Disputes, such a dispute shall be referred to the centre; or
5. to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law; or
6. to an ad hoc arbitral tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:
7. The appointing authority under Article 7 of the Arbitration Rules shall be the President, the Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting Party.
8. The parties shall appoint their respective arbitrators within two months.
9. The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding on the parties to the dispute.
10. The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.
11. Where a dispute has been submitted for resolution under paragraph 2(a), 2(b), 2(c) or 2(d) above, the choice so exercised shall not be changed except with the consent of the Contracting Party which is party to the dispute.
12. Notwithstanding anything contained in paragraph (2) above, the Contracting Party which is a party to the dispute shall have the option to submit the dispute for resolution to international arbitration in accordance with procedure set out in paragraph 2(d) above.
13. In view of the provisions of the IPPA, the IIAs concluded usually do include provisions that are in compliance with human rights norms and there are instances of provisions that are addressed directly to investors and their investments. They are usually legally binding to the extent that they are typically incorporated in our domestic laws (mostly secondary legislation). This also include specific instances where these obligations are spelt out, for example, the Investment Promotion and Protection Agreement with Belgian-Luxembourg Economic Union.

22 April 2021