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Editorial Note

South Asian Journal of Management Research (SAJMR), is a scholarly journal that publishes scientific research on the theory and practice of management. All management, computer science, environmental science related issues relating to strategy, entrepreneurship, innovation, technology, and organizations are covered by the journal, along with all business-related functional areas like accounting, finance, information systems, marketing, and operations. The research presented in these articles contributes to our understanding of critical issues and offers valuable insights for policymakers, practitioners, and researchers. Authors are invited to publish novel, original, empirical, and high quality research work pertaining to the recent developments & practices in all areas and discipline.

Cross-functional, multidisciplinary research that reflects the diversity of the management science professions is also encouraged, the articles are generally based on the core disciplines of computer science, economics, environmental science, mathematics, psychology, sociology, and statistics. The journal's focus includes managerial issues in a variety of organizational contexts, including for profit and nonprofit businesses, organizations from the public and private sectors, and formal and informal networks of people. Theoretical, experimental (in the field or the lab), and empirical contributions are all welcome. The journal will continue to disseminate knowledge and publish high-quality research so that we may all benefit from it.

Dr. Pooja M. Patil
Editor

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Abstract

Had the Mauritian government not stepped in with administrative, political, and economic measures and regulations, achieving business excellence in Mauritius would have been nearly impossible in the face of pandemic problems. It's possible to argue that these steps have been vital even though they haven't always avoided criticism from different parties. The Covid-19 Act, which was passed in 2020, brought about a number of legal reforms, one of which has been implemented. In order to protect the interests of Mauritius businesses and, more importantly, to allow them to keep moving forward toward achieving business excellence, this paper examined the amendments made to the laws pertaining to employment, corporations, insolvency, banking, and financial services. This article aims to emphasize the correlation between corporate excellence and regulation, among other related problems.

Keywords: Mauritius, Business Excellence, Legislations, Covid-19, Post-Covid Challenges.

Introduction

Located in the Indian Ocean around 2,000 kilometers off the southeast coast of Africa is the island nation known as the Republic of Mauritius. Agalega, St. Brandon, Mauritius, and Rodrigues comprise the Republic of Mauritius. With a population of over 1.3 million, the 2,040 square kilometer country contains an exclusive economic zone spanning 2.3 million square kilometers. In 2020, Mauritius was ranked as a high-income country by the World Bank, making it the second-richest country in Africa after the Seychelles. In 2019, the gross national income (GNI) per person was US\$12,740, up 3.8% from 2018 (Bank of Mauritius, 2021).

Mauritius is a multiparty parliamentary democracy (Kasenally & Kadima, 2005). The four main constitutional pillars that are either expressly or implicitly incorporated in the Constitution—which is the ultimate law of the land—are the separation of powers, democracy, human rights, and the rule of law. Because of the Constitution's supremacy, even the legislature is subject to its provisions. Despite having benefited substantially from the Westminster model during a British colony, Mauritius' legislative autonomy is not entirely in line with British practice. In a nutshell, Parliament is sovereign as long as the laws it passes are compliant with the letter and spirit of the Constitution.

Mauritius disclosed its first four cases of the COVID-19 pandemic on March 19, 2020. After contact-tracing tests, the number of cases quickly rose to 81 on March 26, 2020, and as of April 1, 2020, 1703 people were being detained in quarantine. By the end of June 2020, there were 341 registered cases, 10 of which were fatal. From this point on, the number of cases climbed by tens every day (World Health Organisation, 2021). A lockdown was implemented between 19 March and 29 May 2020, and it was lifted on 30 May 2020 when the number of cases had drastically dropped to three in more than a month, all of which were quarantined passengers (Government of Mauritius, 2021). The Mauritius government agreed to remove all restrictions on commercial and economic activity two weeks later, on June 12, 2020, with the exception of the requirement to wear masks in public areas. In addition, the government began to reopen the borders for international travel to and from Mauritius with a required 14-day quarantine.

On March 10, 2021, further contaminated incidents were discovered across the nation. The second wave resulted in 1,709 contaminated cases and 18 fatalities, forcing the government to proclaim another lockdown that would last until May 4, 2021 (Africa news, 2021). Since then, no lockdown has been put in place. In actuality, according to the World Health Organization (WHO), there were 786 fatalities and 70,862 confirmed cases as of January 31, 2022 (WHO, 2022). In reaction to the outbreak, the government formed a National Communication Committee. The executive branch has been crucial during the epidemic under the prime minister's direction, especially with the National Assembly closed during the lockdown.

By forming a National Communication Committee, the government of Mauritius has assumed leadership in the country's response to the pandemic. Especially when the Parliament was not sitting during the lockdown, the executive, under the Prime Minister, played a significant role during the pandemic. All decisions pertaining to the economy, society, law, and politics were made by this branch of the government. The particular obligations or duties of the executive during a pandemic or a state of emergency are not outlined in the Mauritian Constitution. The President, acting in accordance with the Prime Minister's advice, may delegate to the Prime Minister or another Minister duty for the conduct of any business of the Government, including the management of any department of Government, by giving written instructions. Section 62 of the Constitution is the only general provision on the duties of Ministers.

There is no doubt that the pandemic severely affected lives of Mauritians and the normal routine of the country in unprecedented ways. Business, of a domestic and international nature, was also severely impacted with effects that are still being felt till date. Measures had to be taken by the government to counter the ill effects on business by the pandemic. As a result, measures and policies of an administrative, economic, political as well as legal character were taken in order to ensure continuity and excellence of business. This paper aims at assessing the legal measures taken, specifically through the Covid-19 (Miscellaneous Provisions) Act 2020 of Mauritius (hereafter referred to as the Act), in relation to business. In particular, it focuses on the corporate and insolvency sector, the financial and banking sector and the employment sector. It is argued that these sectors are key to achieving business excellence and therefore undertaken such an assessment is justified.

The nexus between business excellence and law

For business, the rule of law is essential. One can hardly contemplate trying to do business without any ability to form reasonable expectations of the actions and behaviours of others. In addition, without a legal framework and enforcement mechanisms, property rights and pecuniary interests of business would be highly challenging to achieve, thus endangering BE. In the absence of a rule of law system, there would also be no defined procedure for resolving a dispute. There would be anarchy in the workplace without the rule of law. Commercial ties with debtors and creditors are likewise governed by the rule of law. Also, under our bankruptcy law, firms may approach the court for safeguard from creditors if financial affairs do not turn out as planned. This enables businesses to safeguard their real estate from bankruptcy or confiscation by creditors as they regain financial stability. This is again crucial in realising the aim of BE and growth.

Business Excellence (BE) is the process of improving an organisation's management systems and procedures in order to boost productivity and provide value for all parties involved. BE is much more than just putting in a quality system. BE is about attaining excellence across the board for an organisation (including leadership, strategy, customer focus, information management, people, and processes), with the main focus being on maximising financial performance (Mann et al, 2021). BE is intrinsically associated with core values and concepts such as visionary leadership, customer-driven excellence, organisational and personal training, valuing workforce members and partners, agility, focus on the future, managing for innovation, societal responsibility, focus on results and creating value and systems perspective (Mann et al, 2021. pp.4).

Though sometimes implied, the function of law and its significance in attaining corporate excellence are crucial. According to Talwar (2011), business excellence models must be in line with legal requirements. Additionally, it has been stated that the implementation of universal rules can lead to multifaceted corporate growth and excellence (Sharma & Talwar, 2007). According to Shihata (1996), law is essential to the process of business development in general and to the expansion of private enterprise in particular. A crucial component of moral decision-making has also been acknowledged to be the law (Christensen, 2008: 451).

While law plays a crucial role in building businesses and helping it to achieve BE, it can also be argued that law can help sustain BE and growth especially in dire times such as the pandemic period. Indeed, many countries around the world did make use of legislations in order to help in support businesses locally and internationally from firstly collapsing, and secondly, moving again towards excellence and growth after having been hit by the ill effects of the pandemic. For example, necessary amendments in labour law in Germany has been able to decrease the effects of the pandemic on business structures (Adam & Schuller, 2020: 292). The same argument seems to be applicable in Mauritius whereby legislations have played a crucial role in protecting business during the pandemic period and they are still supporting them to now re-achieve business excellence and growth in the new post-covid normal era. The next section will focus on specific provisions of these legislations in a thematic manner with the aim of underlining their role in the achievement and sustainability of BE in Mauritius.

Evaluating the Act's success in attaining business excellence

Although the administration did enact laws through delegated legislation, which was mostly the purview of the executive branch, the first thing to do once the Mauritian Parliament resumed after the lockdowns was to pass the necessary legislation. In order to address the issues brought on by the pandemic, the Covid-19 (Miscellaneous Provisions) Act (the Act) amended a number of laws. The purpose of the Act was to lay forth interim measures that the government wanted to put in place in order to lessen the pandemic's negative effects and consequences on several levels, particularly with regard to corporate, insolvency, financial, regulatory, and employment issues. The "Covid-19 period" has been defined in the Interpretation and General Clauses Act as the time period beginning on March 23, 2020, and ending on June 1, 2020, or such later date as may be prescribed by regulations by the Prime Minister, due to the current uncertainty regarding Covid-19 on a global scale in relation to its duration and cure (the Act, section 28). This section examines a few significant changes made to a few selected areas and its impact on BE in Mauritius.

Employment

In view of achieving BE, the labour force or employees of a particular business is of great importance. Job security and job satisfaction are closely linked with BE (Tutuncu & Kucukusta, 2010). During the pandemic period, employments and jobs of Mauritians were at stake either through the threat of their changing nature or through the threat of contracts of employment being terminated because of economic reasons. According to the United Nations Economic Commission for Africa, If the government responds to the pandemic impacts by firing workers and altering their employment contracts to replace full-time employees with part-time and/or temporary ones, the quality of living and employment chances may also decline. This could have a negative effect because their contributions to medical assistance, provident funds, retirement plans, and other benefits that accrue to permanent employees might decrease as a result (UNECA, 2020).

The Mauritius economy has not escaped the pandemic and the resulting economic crisis. As of May 2020, the number of employed people increased by approximately 129,400 units, or roughly 24 percent, and the unemployment rate has begun to rise significantly (Statistics Mauritius, 2020). This is a long cry from the anticipated 12,208 new jobs for the tourism industry that were anticipated prior to the outbreak. The ministry of finance predicted that Mauritius' unemployment rate could increase by up to 150% in 2020 as the pandemic outbreak continued to spread across the globe.

The most significant changes that have been made to the employment rules in response to the epidemic have as goals to introduce new measures on a variety of fronts. The Workers' Rights Act of 2019 is the primary statute at issue here. According to the Act's section 57(b), an employer may now demand an employee to work from home if at least 48 hours' notice has been given to the employee. Now, a worker can ask for flexible hours from their company. Prior to this change, only employees who had to provide care for a kid under the age of four or a child who had a disability could use flextime (the Act, s. 57(c)). However, the ability to work flexibly has been broadened to apply to all employees, with the new Workers' Rights Act criteria requiring employers to offer at least 48 hours' advance notice. An employer may agree to a worker's request to work flextime unless there are good reasons to reject it (Mondaq, 2020).

Due to the new change made by the Act, shift workers who work the night shift during the pandemic are not eligible for any compensation (and such further period as may be prescribed). A worker who works from 23 March 2020 until such further duration as may be stipulated and is employed in the manufacturing industry, stone crushing & associated sectors, block making, construction, and other sectors covered by the Factory Employees (Remuneration) Regulations 2019, other than a watchperson, may be paid as follows: For work done on a national holiday, at least twice (previously three times) the basic hourly rate per supplemental hour of work; and for services done in excess of 45 hours or any other agreed-upon number of hours in any week (excluding hours of work executed on a national holiday), at least 1.5 times the basic hourly rate per extra hour of work (the Act, s. 57(e)). As such, it can be argued that the Act made provisions to ensure that job satisfaction is more or less maintained with appropriate rewards for work done, thus maintaining business excellence and growth in the country.

The following provisions of employment law are among those that are prohibited by the Act: discrimination in the workplace and profession; the prohibition on hiring children is not upheld; when the terms of the compromise agreement are not adhered to; The rules governing overtime are not followed: The principle of equal pay for equal work is not followed: Provision of compensation to the employee; Payment of extra compensation; Payment of an end-of-year bonus; and the power of Ministry of Labour to enquire. The Act,

Section 57(g), prohibits the termination of an employee's employment during any month for which the employer is receiving financial help, including through the wage support program. Any such dismissal by the employer during that given month is inherently unreasonable. Regardless of whether or not an employee received financial aid during a specific month, an employer may nevertheless terminate the employee's employment contract for wrongdoing. The Minister may preclude employers from following the procedure for workforce reduction set forth in Section 72 of the Workers' Rights Act. These employers are known as "Exempted Employers" and include, among others, those in the following service sectors: hospitals, air traffic control, airport and civil aviation, energy, customs and hospitality services sectors (Dentons, 2020).

The Redundancy Board should receive written notice from Exempted Employers at least 15 days (as compared to 30 days) prior to any proposed temporary or permanent decrease in staff or closure of the business. After notifying the Exempted Employers, the Redundancy Board must now wrap up its actions in 15 days (as opposed to the previous 30-day limit) (the Act, s. 57(k)). The aforementioned delay cannot be extended in the case of the Exempted Employers by the Redundancy Board. The Workers' Rights Act, as revised, presently allows for the following potential outcomes by the Redundancy Board, namely: If the Redundancy Board determines that the motives for the reduction or closure are unfounded, it shall order the Exempted Employers to pay the worker severance allowance at the rate of 3 months' salaries per year of service (the Act, s. 57(j)). If the Redundancy Board determines that the causes for the reduction in staff or closure are valid, the Board shall either: order the payment of 30 days' salaries to the employee as indemnity in lieu of notice; or, in lieu of termination, upon the proposal of an Exempt Employer and with the employee's consent, order the employee or category of employees to move ahead on leave without pay for the duration that the Exempt Employer specifies, with the requirement that the reinstatement of employment be on novel terms and conditions (including pension benefits).

The Act also makes changes to the Employment Relations Act. In the past, the Commission for Conciliation and Mediation (CCM) had the authority to listen to parties in a labour dispute, urge them to reach a settlement or not, present a report to the parties within a specified timeframe, and, upon complaint, transfer the case to the Employment Relations Tribunal. However, during the Covid-19 period, the President of the CCM shall immediately refer any labour dispute arising out of any of the following service sectors: air traffic control, civil aviation, airport, customs, electricity, health, hotel services, and hospital (among others) (the Act, s 15).

Also, the time frame for the Tribunal to investigate a labor dispute and issue an award has been reduced. The Tribunal had until 90 days (or an additional period) had passed since the date of referral before the changes to investigate and make a decision about the labour dispute. The Tribunal must now intervene within 30 days of the referral to investigate any labor disputes that arise in the following service sectors: hospitals, air traffic control, airport and civil aviation, energy, customs hotels and health services (among others) (the Act, s. 15(a)).

The Workers' Rights Act distinguishes between employees earning a basic monthly pay of MUR 50,000 or less and employees getting a basic monthly salary of more than MUR 50,000 per month, making it imperative to emphasize that the measures do not apply consistently to all workers. All employees have the option to work from home, however only those making MUR 50,000 or less a month can take advantage of flexitime, non-payment of night shift pay, annual leaves, overtime pay, and paid time off policies. It is highlighted that even though they are merely palliative measures, the existing protections against redundancy, less favourable employment terms following the transfer of undertaking, or resumed work after a period of leave without pay in place of termination, among others, are being suspended. Additionally, the Act has made it illegal to violate some rules, and the penalties imposed for these offences are being applied retroactively. According to the government, the revisions to the Workers' Right Act were implemented to prevent business closures and to protect as many job as possible.

Corporate and Insolvency Law

The Insolvency Act, the core statute that unifies the legal framework for individual and corporate insolvency, has undergone numerous modifications in an effort to reduce the number of bankruptcy and insolvency cases, which have a considerable negative impact on businesses and people. It might be argued that the government limited the liquidation of firms and the appointment of receivers by amending the Insolvency Act in light of the pandemic's adverse consequences, which are anticipated to affect trade and businesses. Under the new administration and thanks to the revisions, there are more and better opportunities for company rescue. It appears that by delaying their immediate closure, businesses who are experiencing

financial difficulties due to the epidemic are being given an opportunity to achieve BE and growth, especially by supporting them to sail through the sea of challenges because of the pandemic.

The amount of debt needed to serve a debtor with a bankruptcy notice has raised from USD 1140 to USD 2280 (the Act, s. 27(a)), in an effort to decrease the number of individual debtors who are declared bankrupt. Also, under the Act's section 27(c), an individual debtor will now have 28 days starting from the service date to abide by such notice. The Act altered the Insolvency Act by nullifying any winding-up resolution passed by a firm or by its creditors during the COVID-19 period in an effort to prevent any new instances of voluntary winding-up during the pandemic (the Act, 27(g)). It is important to remember that a business with a Global Business License is exempt from this restriction. This modification may encourage businesses to choose administration over liquidation as a last resort, which is unquestionably in the best interests of creditors and employees.

The Act's section 27(i) rendered invalid the directors' duties under the Insolvency Act, including the requirement to summon a creditors' meeting in the event of a creditor's voluntarily winding up during the pandemic period and within three months of the same period. The amount of the debt, which was changed from USD 2280 to USD 5700 as a need to issue a statutory demand on a firm (the Act, s. 27(j)), is another crucial provision that must be emphasised. Also, the Act revised the time frame for compliance with a statutory demand, which was formerly one month to two months, to assist businesses experiencing financial hardships during the epidemic (the Act, s. 27(j)(ii)). In this method, business debtors are given some relief to fix their cash flow problems and meet their financial obligations.

Banking and Financial Services

Financial institutions are up against a significant hurdle as a result of the pandemic. The Bank of Mauritius Act 2004 has undergone numerous revisions with the intention of providing the government with financial support. The Act, s. 2(a)(i), grants the Bank of Mauritius the authority to lend the Government any sum that may be agreed by the Board in order to support the Government's efforts to stabilise the Mauritius economy. According to the Act's section 2(b), the Bank of Mauritius may invest any sum of authorised foreign reserves that the Board determines in any corporation or firm that has been established with the goal of promoting economic development. According to the Act's section 2(c), the Board may also authorise a grant out of the Special Reserve Fund to support the Government's efforts to stabilise the Mauritian economy.

Although these actions seem appealing in the midst of the pandemic, it might not be a wise policy choice for the Bank of Mauritius, which serves as the nation's central bank, to fund government spending. The Bank of Mauritius must continue to operate independently of the government in order to fulfil its crucial duty of maintaining price stability. This will guarantee that its goal is not compromised by short-term political considerations. It is crucial that the Central Bank take caution while putting these policies into effect.

All facets of the Mauritius economy are experiencing uncertainty as a result of the pandemic, including the financial services industry. A number of reforms are being advocated in order to ease the functioning and operations of the Financial Services Commission, the unified regulator of the sector of financial services and the international business sector. According to Section 19(a) of the Act, meetings of the Board of the Financial Services Commission may be conducted via audio and/or visual interaction so that all participants and members necessary for a quorum can hear one another at the same time. A written resolution that is ratified by all members who are currently eligible to receive notice of a meeting is also legal, effective, and regarded as having been adopted at a meeting that has been duly called and held (the Act, s. 19(b)). These changes have been made to make the Board's meetings easier to conduct, including the option to do them remotely, and to speed up and improve the effectiveness of the decision-making process.

Critical analysis

Temporary nature of these measures

Arguably except for the measures regarding the Bank of Mauritius and the fact that it is bound to lend money to the Government whenever required by the latter, the other changes and amendments brought to the law by the Act are commendable. They indeed have the potential of bringing the culture of business excellence to the benefit of entrepreneurs and employees. It should however be noted that these are temporary measures applicable only during the legally defined 'covid period' as discussed above. It is argued that a case has to be made by relevant stakeholders so that these temporary measures could be

assessed in terms of their effectiveness and probably made permanent in case they have proven to be effective and useful. For that matter, it is the responsibility of Mauritian researchers, think tanks, trade unions and the civil society in general to assess these measures and to lobby and advocate for their continuity.

For instance, in the changing economic and business world post covid, it may be a good idea to maintain the new thresholds and time delays for a notice of statutory demand to be served on a company. In addition, the numerous changes brought to the Worker's Rights Act may also be maintained to provide for more protection of the workforce which will enhance business excellence. It may make sense and logic to consider that the pandemic was a mere excuse for these critical work related legal amendments to be brought.

Education and sensitisation about the Act and the ensuing amendments that it brought

It should not come as a surprise to note that many businesses are perhaps not aware of the changes that the Act has brought similar to the workers themselves. As a result, both mentioned stakeholders may not be aware that these amendments, if properly and diligently observed, may enhance business excellence for companies. There is thus a need for educational and sensitisation campaigns regarding these amendments. All stakeholders related to a business must be made aware of these changes and the way they can positively impact businesses. This will no doubt enhance the working relationship among the stakeholders and bear positive results for the business.

The government also needs to take its responsibilities and inform the public in general of which of these amendments discussed above are still maintained and which ones are obsolete with the termination of the covid-19 period. Some clarity, through appropriate communications from the executive or the legislation would be most welcome.

The need to legislate on the basis of the concept of business excellence

Finally, the concept of business excellence should be one which should be more indoctrinated in legislations pertaining to business. In today's multi-disciplinary world, it could be beneficial for legislators in Mauritius to create laws by infusing relevant components and doctrines of business excellence in acts of Parliament and regulations with the aim of achieving business excellence. In addition, the 2016 Code of Corporate Governance could also be revisited and revised under the lens of business excellence. This could enhance the application of governance principles and provide for incentives for business to follow the prescribed provisions of the 2016 Code which is a non-binding and voluntary framework without much legal force.

Concluding remark

The Act has certainly played a crucial role in protecting business during the pandemic period in Mauritius. In some cases, it can be said that businesses that were already performing very well before the pandemic, have got the opportunities to continue in their trends despite the challenges of the pandemic and eventually reach business excellence and growth. While other administrative, political and economic measures and policies from the government have played an essential role, the legal framework created and implemented during the pandemic period and beyond has also been decisive. The paper has shown how changes made to legislations on employment, banking services, financial services, company law and insolvency law have allowed companies to survive and, for some companies, to achieve business excellence.

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