THE ADDITIONAL REMUNERATION AND OTHER ALLOWANCES (2019) ACT 2018

Act No. 24 of 2018

Government Gazette of Mauritius No. 119 of 20 December 2018

I assent

PARAMASIVUM PILLAY VYAPOORY

20 December 2018 *Acting President of the Republic*

Section

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SCHEDULE

An Act

To provide for the payment of an additional remuneration to employees of the private sector and an allowance to certain categories of employees

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Additional Remuneration and Other Allowances (2019) Act 2018.

2. Interpretation

In this Act –

"additional remuneration" –

(a) in relation to a full-time employee, means the appropriate amount specified in Part I of the Schedule;

(b) in relation to a part-time employee, means the appropriate percentage or amount specified in the second column of Part II of the Schedule and corresponding to the basic wage or salary payable to the employee as specified in the first column of the Schedule;

"authorised officer" means the supervising officer or any public officer authorised by him;

"basic wage or salary" –

(a) means –

(i) in relation to an employee whose basic wage or salary is prescribed and which exceeds the national minimum wage payable to him under the National Minimum Wage Regulations 2017, such

basic wage or salary, whether or not the employee's actual wage or salary exceeds the prescribed wage or salary or the employee is remunerated on a piece rate basis or employed on task work;

(ii) in relation to an employee, other than an employee of an export enterprise, whose basic wage or salary is prescribed and which, prior to 1 January 2018, was less than the national minimum wage payable to him under the National Minimum Wage Regulations 2017, the national minimum wage plus the additional remuneration payable under the Additional Remuneration and other Allowances (2018) Act 2017;

(iii) in relation to an employee of an export enterprise whose basic wage or salary is prescribed and which, prior to 1 January 2018, was less than the national minimum wage payable to him under the National Minimum Wage Regulations 2017, the national minimum wage;

(iv) in relation to an employee in respect of whom no wage or salary is prescribed under any Remuneration Regulations or agreed upon in his contract of service, the total amount, by whatever name called,

earned by him as from 1 January 2019;

(v) in every other case and subject to the payment of the national minimum wage under the National Minimum Wage Regulations 2017**,** the basic wage or salary agreed upon in the employee's contract of service, whichever is higher, whether or not the employee's actual wage or salary exceeds the agreed wage or salary or the employee is remunerated on a piece rate basis or employed on task work; and

(b) includes any previous additional remuneration granted under any enactment; but

(c) does not include any allowance, commission or other benefit not forming part of an employee's wage or salary but given to him in addition to his wage or salary;

"comparable full-time employee" means a full-time employee who –

(a) has the same type of employment relationship;

(b) is engaged in the same or a similar type of work or occupation; and

(c) is employed in the same establishment, enterprise or branch of activity,

as a part-time employee;

"employee" –

(a) means any person who works or has worked under a contract of service or apprenticeship, whether the contract is express or implied, oral or in writing, and whether the person is paid daily, weekly, fortnightly, monthly or otherwise; and

(b) includes a part-time employee and a homeworker; but

(c) does not include a public officer;

"homeworker" has the same meaning as in section 5(6) of the Employment Rights Act;

"Minister" means the Minister to whom responsibility for the subject of labour is assigned;

"Ministry" means the Ministry responsible for the subject of labour;

"part-time employee" means an employee whose normal hours of work are less than those of a comparable full-time employee;

"public officer" has the same meaning as in the Constitution;

"supervising officer" means the supervising officer of the Ministry.

PART II – ADDITIONAL REMUNERATION

3. Payment of additional remuneration

(1) Subject to subsections (4) and (5) and to section 9, every employer shall, as from 1 January 2019, pay to every employee in his employment, in addition to the actual wage or salary earned by the employee, the additional remuneration.

(2) Where the wage or salary of an employee is paid partly by one employer and partly by another, each employer shall pay that part of the additional remuneration which bears the same proportion to the additional remuneration as the part of the wage or salary paid by him bears to the total wage or salary.

(3) Where an employer has paid during the period 1 January 2018 to 31 December 2018 an increase in wage or salary –

(a) otherwise than –

(i) by virtue of the Additional Remuneration and Other Allowances (2018) Act 2017;

(ii) by way of an increment or increase on promotion; or

(b) pursuant to a collective agreement or an award of the Employment Relations Tribunal,

and such increase was specified in writing, or agreed upon by the employee, as being an increase in wage or salary designed specifically to compensate the employee for an increase in the cost of living in respect of that period, there shall be sufficient compliance with

subsection (1), in case such increase is less than the additional remuneration specified in subsection (1), if the employer pays the difference.

(4) Subject to subsection (6), where an employee is remunerated on a piece rate basis at rates prescribed in the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 or as agreed upon, such rates shall, as from 1 January 2019, be increased in the same proportion as the increase of the payment of the additional remuneration on the basic wage prescribed or agreed upon, as the case may be, of the employee.

(5) Subject to subsection (6), where an employee is remunerated on a piece rate basis at rates prescribed in –

(a) the Cinema Employees (Remuneration Order) Regulations 2005;

(b) the Tea Industry Workers (Remuneration Order) Regulations 1984;

(c) the Banks Fishermen and Frigo-workers Remuneration Regulations 2016; or

(d) any other enactment,

such rates shall, as from 1 January 2019, be increased by 4 per cent but shall not be more than 400 rupees.

(6) The piece rates prescribed in the enactments specified in subsections (4) and (5) shall include any previous additional remuneration granted by law.

(7) Where civil or criminal proceedings are instituted against an employer under this Part in relation to an employee first employed by him on or after 1 January 2019, it shall be a defence for the employer to prove that the wage or salary paid to the employee is not less favourable than all the pecuniary payments made to any other employee of the same grade.

4. Employees paid otherwise than on monthly basis

Where an employee is remunerated otherwise than on a monthly basis, it shall be deemed, for the purpose of determining the appropriate additional remuneration, that a month, a fortnight or a week shall consist of such number of days as are prescribed in any other enactment or agreed upon in relation to that employee.

5. Powers of authorised officers

Notwithstanding any other enactment, an authorised officer may, for the purpose of ensuring compliance with this Part –

(a) enter any work premises or office of an employer;

(b) inspect any book or record kept by an employer in relation to his employees;

(c) request an employer to furnish him with any information or document which he may require;

(d) prosecute a person who commits an offence under this Part; and

(e) enter any action on behalf of an employee.

6. Jurisdiction

Notwithstanding any other enactment –

(a) in the Island of Mauritius, the Industrial Court;

(b) in Rodrigues, the Magistrate for Rodrigues;

(c) in the other islands under the jurisdiction of the State of Mauritius, the Magistrate visiting those islands,

shall have exclusive jurisdiction to hear and determine any civil or criminal proceedings under this Part.

7. Offences

Any person who –

(a) contravenes section 3 or any regulations made under this Part;

(b) obstructs an authorised officer in the exercise of his powers under section 5;

(c) fails to comply with a request under section 5(c) or, in complying with the request, furnishes any information or document which he knows or should have known to be false or misleading in a material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

8. Regulations

The Minister may, for the purposes of this Part, make such regulations as he thinks fit.

9. Application of Part II

This Part shall cease to apply in relation to any employee who is governed by an enactment where the enactment is amended after the commencement of this Part to provide specifically for the increase referred to in section 3, except where the actual wage or salary earned by an employee immediately before 1 January 2019 exceeds the wage or salary prescribed for him under any enactment.

10. Saving

This Part shall be in addition to, and not in derogation from, any other enactment.

PART III – OTHER ALLOWANCE

11. Payment of allowance

(1) The Director-General may, for every employee who –

(a) falls under such category as may be prescribed; and

(b) derives, for the period 1 January 2019 to 31

December 2019, such monthly basic salary as may be prescribed,

pay, as an agent of Government, to that employee, during that period, an allowance as may be prescribed.

(2) Where the allowance is payable under subsection (1), that employee shall not be eligible to the Negative Income Tax allowance under section 150A of the Income Tax Act.

(3) The Minister may, with the concurrence of the Minister to whom responsibility for the subject of finance is assigned, make such regulations as he thinks fit for the purposes of this Part.

(4) In this part –

"basic salary" includes any additional remuneration payable under section 3;

"Director-General" has the same meaning as in the Mauritius Revenue Authority Act.

PART IV – MISCELLANEOUS

12. Commencement

This Act shall come into operation on 1 January 2019.

Passed by the National Assembly on the twelfth day of December two thousand and eighteen.

Bibi Safeena Lotun (Mrs)

Clerk of the National Assembly

SCHEDULE

[Section 2]

ADDITIONAL REMUNERATION

PART I – FULL-TIME EMPLOYEES

Additional remuneration per month

400 rupees per month

PART II – PART-TIME EMPLOYEES

Monthly basic wage or month salary	**Additional remuneration per month**
Up to 10,000 rupees	4 per cent rounded up to the next rupee
Above 10,000 rupees	400 rupees