

MAURITIUS: A FACILITATION PLATFORM FOR THE GLOBAL BUSINESS SECTOR

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1. INTRODUCTION

Mauritius is an island-republic of 720 square miles, located between Asia and East Africa. It has a written Constitution fully providing for separation of powers between the Legislature, Executive and Judiciary.

Mauritius is recognized as one of the most open economies in sub-Saharan Africa, relying mainly on Sugar, Textile, Tourism, ICTs and the Financial Services as the main growth engines of its economy. New sectors under development are the Seafood Hub, the Knowledge Hub and the Medical Hub as well as the Integrated Resort Schemes.

2. LEGAL STRUCTURE

The Constitution guarantees freedom and personal rights of every citizen.

The executive authority of Mauritius lies with the President of the Republic – elected by Parliament. It is exercised by the Cabinet headed by the Prime Minister, Ministers and civil servants.

The National Assembly based on the UK-westminster style is responsible for Statute Laws and consists of 70 elected members, 8 of whom are appointed on a best loser system after a General Election.

An independent judiciary exercises control over the executive and the legislature – the Privy Council (UK) being the Final Court of Appeal.

The legal system is made up of Statute law, Common law, the Civil Code and Case law.

The Mauritian legal environment consists of Statute Law enacted by Parliament including Bye-laws & Regulations made by ministers under Acts of Parliament. Mauritius being a former French and British colony has developed a hybrid legal system whereby the French Civil Code and English Common Law and Case Laws form an integral part of the legal system.

Mauritius is well known for its political and socio-economic stability with general elections democratically held every five years as guaranteed by the constitution.

3. CORPORATE LAWS

The Corporate Sector is mainly regulated by the Companies Act 2001, the Income Tax Act 1998, the Trust Act 2001 and the Financial Services Act 2007, the Protected Cell Companies Act 2003, the Insurance Act 2004, and the Mutual Fund Act 2003. Annual Finance Acts bring necessary legislative amendments as and when required.

4. GLOBAL BUSINESS SECTOR

The Global Business sector, previously known as the offshore sector, is an important contributor to GDP and economic growth. The sector is regulated by the Financial Services Commission and the Financial Services Act 2007. The Global Business Sector consists of more than 32,000 global business investment vehicles structured as companies, funds, trusts, protected cell companies.

4.1 COMPANY LAW

Under the Companies Act 2001 a company in Mauritius may be incorporated with or without a Constitution. Shares can be issued at no par value. The Companies Act 2001 is in line with the requirements of the OECD's report on harmful tax competition.

A Mauritian company does not require a Memorandum and Articles of Association. A company is allowed to reduce its capital, purchase its own shares, acquire/redeem shares, give financial assistance, and repurchase its own shares provided it satisfies a solvency test requirements. Notarial Deeds are no longer required to register a domestic company.

4.2 GLOBAL BUSINESS COMPANIES

Two types of Global Business Companies can be created: GBC 1 and GBC 2.

GBC 1:- Global Business Company – Category 1

A GBC 1 can carry out any type of business activity such as investment holding, asset management, portfolio holding, distribution of financial products, factoring & leasing, occupational pension scheme, pension fund administration, pension scheme management, treasury management, retirement benefit schemes, distribution of financial products, non CIS-Custodian services, credit financing and superannuation fund.

Investors in a GBC 1, benefit from low taxation, generous tax credits, no withholding taxes & capital gains tax, no estate duty, inheritance, wealth or gift taxes. They can also freely repatriate profits capital and interests. Asset protection is guaranteed.

A GBC 1 is a tax resident of Mauritius and investors benefit from the wide network of DTAs that Mauritius has signed. The effective tax rate of a GBC 1 is 3% and it therefore enjoys a very flexible regime.

Investment Fund as a GBC 1

A GBC 1 may also be incorporated to structure investment funds in single-tier or two-tier structure or even branches of foreign registered companies. Funds may be open ended or close ended, as a unit trust or limited partnership. Investment Funds can also be structured as Umbrella Funds with separate classes of shares and segregated portfolios are allowed.

GBC 2:- Global Business Company – Category 2

A GBC 2 can carry out most types of business activities. It is not a tax resident of Mauritius. It is exempt from taxation in Mauritius but it does not benefit from the DTAs network. A GBC 2 conducts business with non-residents only and in currencies other than the Mauritian Rupee.

A GBC 2 can be used for invoicing, international trading and marketing. It may be used as an investment company. A GBC 2 provides for greater flexibility and is suitable to hold and manage assets for High Networth Individuals. It may also be used in conjunction with offshore trusts to provide more confidentiality to beneficial owners.

4.3 TRUST

A Trust may be created by the vesting of property (movable & immovable) into it through a trust deed. Name of settlors and beneficiaries need not be disclosed in the trust deed. A Trust may also be created in form of the French “Fiducie” in which property transferred constitutes a separate and independent part in respect of the “Constituant” (settlor).

Different types of trust can be created, like property trust or spendthrift trust, maintenance & accumulation trust, interest in possession trust, discretionary trust, charitable trust, purpose trust and commercial & trading trust. The duration of a trust is usually 99 years from the date of creation, except a purpose trust and a perpetual trust

The settlor of an offshore trust may not be a resident of Mauritius and the trust must have at least one qualified resident trustee, or a Mauritian management company or a bank holding a Category 2 banking licence.

A trust is deemed to be irrevocable unless stated otherwise at the time of its creation.

5. CONFIDENTIALITY

Specific “Secrecy and Confidentiality” principles are enshrined in the various corporate & banking laws to protect investors especially those operating in the Global business sector. The Financial Services Commission will only disclose information to any court tribunal or committee upon an order of the Supreme Court following an application of the Director of Public Prosecution and on proof beyond reasonable doubt that the confidential information is bonafide required for the purpose of enquiry or trial into or relating to the trafficking of narcotics, dangerous drugs, money laundering and arms trafficking. Information regarding Global business entities is not kept in public records and is not available to the public from the records of the Registrar of companies.

6. INTERNATIONAL TAXATION

Mauritius is a preferred investment destination because of the attractive fiscal framework it offers. Many investors use this platform to invest in emerging economies worldwide such as India, China and others.

Local tax laws and International tax treaties are the backbone of the tax structure. Domestic as well as Global business companies are taxed at the same rate of 15%. Dividends paid by all resident companies are exempt from tax. Gains or profits on sale of securities are exempt from taxation. The tax system is based on a Residence Rule. Non-residents are taxable only on Income derived in Mauritius.

TABLE OF DTA'S

Type	Europe	Asia	M.East	Africa	Others
X	Italy U.K Belgium France Germany Sweden Cyprus Croatia Luxembourg	India China Singapore Pakistan Nepal Sri Lanka Thailand Malaysia	Kuwait Oman United Arab Emirates	Madagascar Botswana Uganda Seychelles South Africa Mozambique Rwanda Zimbabwe Lesotho Namibia Senegal Swaziland	Barbados
Y		Vietnam Bangladesh	Tunisia	Nigeria Malawi Zambia	Russia
Z	Portugal Greece Czech Republic		Iran Qatar		Canada

X = Available DTAs **Y** = DTAs under ratification **Z** = DTAs under negotiation

6.1 TAXATION OF GLOBAL BUSINESS COMPANIES & OFFSHORE TRUSTS

A GBC 1 is liable to corporate tax at 15% but may claim a foreign tax credit in respect of the actual foreign tax suffered or 80% presumed foreign tax credit, whichever is higher. As such, a GBC 1 has a maximum effective tax rate of 3%.

A GBC 2 is exempt from tax in Mauritius and cannot benefit from DTAs.

6.1.1 Tax Residency Rule for a GBC 1

For tax residency purposes, a GBC 1 must be centrally managed and controlled from Mauritius. The following conditions must be met to ensure control and management in Mauritius.

Pre-requisite for a Tax Residence Certificate (TRC)

- (1) The Company shall at all times have at least two directors resident in Mauritius. The resident directors shall be of appropriate calibre who can exercise independence of mind and judgment.
- (2) All meetings of the Board of Directors shall be held, chaired and minuted in Mauritius.
- (3) The company shall at all times keep all its accounting records at its registered office in Mauritius.
- (4) The company shall ensure that all its banking transactions are channeled through a bank account in Mauritius.

6.2 Tax Incentives for Trusts

- A resident trust can benefit from DTAs
- The applicable tax rate is 15% where the settlor is either a non-resident or holds a GBC 1 or GBC 2 licence, as the case may be, and either the beneficiaries are throughout an income year non-resident or hold a GBC1 or GBC 2 licence or the trust is a purpose trust the purpose of which is carried out outside Mauritius.
- Where a resident trust holds a GBC 1 Licence, it may benefit from the deemed foreign tax credit of 80%.
- Exemption from tax for non-resident trusts.
- Resident trusts are taxed on the net income after distribution to beneficiaries.
- Distributions made to beneficiaries are an allowable deduction. Such distributions are exempt from tax in Mauritius where the beneficiaries are non-resident.
- Non resident trusts and non resident beneficiaries are tax exempt in respect of income from the trust.

6.3 Licence Fees for GBCs

The Annual licence fees for GBCs are as follows:

GBC	FSC	ROC
GBC 1	US\$1500	Approx US\$220
GBC 2	US\$135	US\$65

7. OUR CONTACT DETAILS

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