

The Mauritian global business sector revamped

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The legal framework in Mauritius is constantly evolving to keep pace with the rapidly changing economic environment. With the enactment of the latest Finance (Miscellaneous Provisions) Act, 2018 (the “Act”) on 9 August 2018, the government approved amendments to some 68 Acts, with regulations to follow shortly. This once again demonstrates the will of the Mauritian Government to keep abreast of international standards while remaining an attractive destination for foreign investors and promoting ease of doing business in Mauritius.

In our view, the most substantial legal changes brought by these amendments concern the global business sector, which has been under intense pressure from many quarters in recent years to align itself with global norms and transparency standards, while remaining attractive for investors wishing to use Mauritius as a financial platform for inbound and outbound investments into Africa and India. The changes brought by the enactment of the Act therefore, in our opinion, address these concerns and provide comfort to existing and future investors that Mauritius is a jurisdiction of substance with the highest possible level of compliance with international standards. Mauritius therefore remains a jurisdiction of choice in the region and should be recognised for structuring and good business practice.

For a more comprehensive review of the amendments brought by the Act in the financial sector, please click [here](#).

Main amendments to the Financial Services Act 2007 (“FSA”) and the Income Tax Act (“ITA”)

Generally, the regime of Category 2 Global Business was repealed (subject to transitional provisions) with all Category 2 Global Business Licences lapsing on 30 June 2021. The regime of Category 1 Global Business was also repealed (subject to transitional provisions) and replaced by the Global Business Licence (a Category 1 Global Business Licence which is valid on 30 June 2021, will, after 30 June 2021, be deemed to be a Global Business Licence). Section 71 of the FSA, which enters into force on 1 January 2019, now provides as follows:

“Subject to this section and to section 71A, where the majority of shares or voting rights or the legal or beneficial interest in a resident corporation, other than a bank licensed by the Bank of Mauritius and such other corporation as may be specified in FSC Rules, are held or controlled, as the case may be, by a person who is not a citizen of Mauritius and such corporation proposes to conduct or conducts business principally outside Mauritius or with such category of persons as may be specified in FSC Rules, it shall apply to the Commission for a Global Business Licence.”

The conditions of being managed and controlled from Mauritius and being administered by a management company applicable to Category 1 Global Business Licence, now applies to the Global Business Licence. This could have a serious impact on the domestic company regime in Mauritius whereby non-citizens who were previously using Mauritius to carry out their offshore activities through a domestic company would, on or before 1 January 2019, need to apply to the Financial Services Commission (“FSC”) for a Global Business Licence with all the conditions of substance attached to it.

Further, a new section 71A (entering into force on 1 October 2018) was introduced dealing with Authorised Company as follows:

(1) “Where the majority of shares or voting rights or the legal or beneficial interest in a company, other than a bank, licensed by the Bank of Mauritius, and incorporated under the Companies Act are held or controlled, as the case may be, by a person who is not a citizen of Mauritius and such company –
(a) proposes to conduct or conducts business principally outside Mauritius or with such category of persons as may be specified in FSC Rules; and
(b) has its place of effective management outside Mauritius,
it shall apply to the Commission for an authorisation.”

The application for authorisation to the FSC should be made through a management company and an Authorised Company is not allowed to conduct the following business (except where otherwise specified in FSC Rules):

- banking
- financial services
- business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary
- providing of registered office facilities, nominee services, directorship services, secretarial services or other services for corporations
- providing trusteeship services by way of business

An Authorised Company should, at all times, have a registered agent in Mauritius that is a management company and must file with the FSC once every year a financial summary in the form set out in the Ninth Schedule to the Companies Act or such other types of accounts, and financial statements or returns as may be specified in FSC Rules. Subject to any contrary provisions in the guidelines to be issued by FSC, an Authorised Company is only allowed to conduct the following business in Mauritius:

- investing in any securities listed on a securities exchange licensed under the Securities Act, 2005
- opening and maintaining an account in foreign currency with a bank;
- holding any share, debenture, security or any interest in or otherwise dealing or transacting with a corporation holding a Global Business Licence;
- entering into a business relationship with the holder of a management licence or a law practitioner, legal consultant, law firm or a qualified auditor in Mauritius;

Taxation of global business companies

The ITA was amended and provides that the Deemed Foreign Tax Credit regime available to companies holding a Category 1 Global Business Licence will be abolished as from 1 January 2019.

A partial exemption regime, applicable to both domestic companies and global business companies (subject to substance requirements issued by the FSC), will be introduced whereby 80% of the following specified income will be exempted from income tax:

- foreign source dividends derived by a company (subject to conditions);
- profit attributable to a permanent establishment that a resident company has in a foreign country;
- foreign source interest income derived by a company other than a bank;
- foreign source income derived by a collective investment scheme (“CIS”), closed end fund, CIS manager or CIS administrator,
- investment adviser or asset manager licensed or approved by the FSC;
- foreign source income derived by companies engaged in ship and aircraft leasing.

The partial exemption regime would be introduced with the phasing out of the Deemed Foreign Tax Credit regime.

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