



## Editorial

Dear Readers,

As in other sectors, global competition in the Financial Services industry continues to increase with new players emerging in the niche markets.

This calls for increased vigilance from the stakeholders of the Mauritius international financial services industry. In order to remain competitive in the global market place our industry must constantly evolve in terms of legislative framework, products and quality of services. New legislation and amendments to existing ones will present new opportunities whilst at the same time strengthen the regulatory environment.

The industry professionals will continue to work in collaboration with the new government in order to ensure that Mauritius remains a competitive and well regulated international financial services centre.

Jimmy Wong

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## Amendments to The Protected Cell Companies Act 1999 – NEW PRACTICAL USES

The Protected Cell Companies (Amendment of Schedule) Regulations 2005 has come into force on 9 July 2005.

The regulations will permit a wider use of PCCs for global business activities.

Prior to the regulations being passed the use of PCCs was limited to Insurance and Collective Investment Schemes. The permissible activities are now as follows: Asset holding, structured finance business, collective investment schemes and close-end funds, specialised collective investment schemes and insurance business.

## Amendments to The Financial Intelligence and Anti-Money Laundering Act 2002

The Financial Intelligence and Anti-Money Laundering (Amendment) Regulations 2005 has come into force on 9 July 2005.

The main changes relate to omnibus accounts and to introduced business.

When business is referred by a group or eligible introducer (based in Mauritius or in an equivalent jurisdiction), the relevant person (including a Management Company) may accept that the customer identification documents be kept in possession of the group or eligible introducer (“introducers”). However, the relevant person must be satisfied that the procedures laid down by the introducers meet the requirement of the Financial Intelligence and Anti-Money Laundering Act 2002 or any code and guidelines issued by the Authority and also that the introducers will submit the customer identification documents upon request.

In respect of omnibus accounts held in the name of a regulated financial institution based in Mauritius or in an equivalent jurisdiction, the verification of identity of the client will be limited to the financial institution in whose name the account is held.

In practice procedures will need to be put in place in order to meet the above requirements. Whilst the Management Company is ultimately responsible for the client identification, now more reliance can be placed upon the financial institutions and the introducers.

This should facilitate the setting up of entities in Mauritius for clients introduced by introducers and regulated financial institutions.

## NEW PRODUCTS

### ❖ Incorporator Companies

The Financial Services Commission has introduced the concept of Incorporator Company (Shelf Company) in Mauritius for Category 2 Global Business Companies (GBC2).

An Incorporator Company refers limitatively to a GBC2 incorporated and licensed as such but held in the name and on behalf of the Management Company who itself incorporated the Company to the exclusion of any beneficial owner or shareholder with the intention of transferring control in the Company either directly to other persons who become the beneficial owners of the Company, or to nominees to hold it on behalf of and on the instruction of the ultimate beneficial owners. In relation to an Incorporator Company, the MC will not be a beneficial owner but an incorporator.

Clients who need a new company straight away may take advantage of such arrangement. This would involve transferring the control of the company to a beneficial owner and relevant Customer Due Diligence procedures being fulfilled. It should be noted that for so long as an Incorporator Company is on the Register of Incorporator Companies of a Management Company, it cannot be used for any purpose other than for transferring the control of the company to a beneficial owner. It is not possible for the Management Company to use the Incorporator Company or to allow the Incorporator Company to be used in any transaction so that it incurs or is likely to incur liabilities or to obtain assets or be a creditor to anyone.

### ❖ Private Trust Companies

The main objective of a private trust company (PTC) is to act as trustee of a single trust (such as a family trust) or related group trusts. The Private Trust Company structure has several significant advantages: enhanced control, isolation of liability, improved transportability, and (perhaps most importantly) the creation of a focal point for family finances.

The administration, investment management services or investment advice required in connection with the family trusts are generally outsourced by the PTC under a service agreement to licensed financial institutions or service providers (fiduciaries).

In practice, the activity of a PTC is reduced to that of an investment holding company as opposed to a service provider or fiduciary. Accordingly, the PTC may operate as a Category 1 or Category 2 Global Business company.

During the last quarter of 2004, the Financial Services Commission (FSC) introduced new conditions for the purpose of allowing Management Companies to set up Global Business Companies to conduct private trust business. FSC would license a Global Business Company as a PTC on the premise that the Management Company would be ultimately responsible for the PTC's conduct of business.

Key features of the conditions for a PTC include:-

- Maintaining a minimum paid up capital of US\$ 5,000;
- Provide its private trust business services solely to connected persons;
- Appoint a duly licensed Management Company to carry out its trust administration services in relation to any express trust to which it is a trustee;
- Provide the FSC on a yearly basis or upon request a list of trusts for which it acts as private trustee;
- Strictly adhere to the compliance requirements and anti-money laundering framework.

### New Licensing Conditions for Global Business Companies

The Financial Services Commission (the "Commission") has, after consultation with the relevant parties, issued New Licensing Conditions applicable to Category 1 Global Business ("GBL1") Companies licensed as from 2nd February 2005 onwards.

Existing licensees will have to adhere to these new conditions as from 1st January 2006 and may, if they so wish, apply for an amendment of their existing conditions before that date. Any licensee who objects to the aforesaid is required to give written notice of their objection to the Commission before 30 September 2005 stating the reasons for their objection.

Typical Licensing Conditions for pure GBL1 Investment Holding Companies and Collective Investment Schemes are listed below:

- (i) The Licensee shall only conduct such business or activity, being business or activity permissible under the laws of Mauritius and those of the jurisdiction where the business or activity is being carried out. Where such business requires any licence / authorization / permission or consent (however described), the business must not be undertaken until such has been obtained;
- (ii) The Licensee shall keep at its registered address a copy of such business licence/authorisation/permission or consent (however described) obtained from any other Authority in relation to the conduct of its activities;

- (iii) The Licensee shall forthwith notify the Commission of any material change in its purpose and/or working principle;
- (iv) The Licensee shall ensure that any director, manager and senior officer appointed are fit and proper and that the Commission is notified forthwith of such appointments;
- (v) Where in the usual course of business, a director or manager or senior officer is asked to resign or is removed, the Licensee shall forthwith inform the Financial Services Commission of the resignation/removal and shall include a description of the circumstances surrounding such request for resignation and removal;
- (vi) The Licensee shall at the request of the Commission remove a director or a manager or senior officer from office, if those persons are not, in the opinion of the Commission, fit and proper;
- (vii) The Licensee should adopt, enforce and re-assess on an annual basis, its anti-money laundering and combating financing of terrorism framework;
- (viii) The Board shall devise and set-up appropriate corporate governance measures for the sustainability of the Licensee and shall review and re-assess these measures from time to time;
- (ix) When delegating or outsourcing any function, the Licensee should ensure that the delegate is competent, capable and fit;
- (x) The Licensee shall not be discharged from its responsibilities upon any delegation or outsourcing arrangement;
- (xi) Notwithstanding any delegation or outsourcing agreement, all books and records of the services/transaction delegated or outsourced will be made available for inspection by the Commission at the latter's request even though the books and records are kept at the delegate's office;
- (xii) The Licensee shall at all times have a Management Company as Secretary;
- (xiii) The Licensee will be required to forthwith notify the FSC whenever a resolution for winding up is made or upon receipt of a petition for winding up.

Different conditions would apply to other licensed activities. For instance, in addition to the above, a GBL1 company which is licensed as an Investment Manager will have to comply with specific conditions. The salient ones are as follows:

- (i) The Licensee shall forthwith notify the Commission whenever a person becomes the holder of 20% or more of the Licensee's shares or its voting powers whether directly or indirectly.
- (ii) Where the Commission is not satisfied that a shareholder exercising control is fit and proper, it may direct the shareholder to dispose of his shareholding and with immediate effect not to exercise his voting rights.
- (iii) The Licensee shall maintain a minimum paid-up and unimpaired stated capital and shareholders' funds of at least US\$ 10,000 or its equivalent in any currency or at such higher amount as may be prescribed by the Commission from time to time.
- (iii) The Licensee shall at all times ensure that its officers and employees have an appropriate level of training and knowledge of the products they promote to enable them to explain the risks involved to clients.

It should be noted that the new Licensing Conditions are not applicable to Category 2 Global Business Companies.

**Freeport Act 2004**

A new Freeport Act "The Freeport Act 2004 " came into force as from 1st January 2005.

The Freeport Act 2004 essentially makes provision for the integration of MFA within the Board of Investment (BOI) and provides the new legal framework for the Freeport sector. The implementation of this Act brought about the following changes for the Freeport sector:

**Creation of a dedicated Freeport Unit under BOI**

A dedicated Freeport Unit would be set up at the Board of Investment. This Unit would oversee the development of the Freeport sector and cater for the specific needs of Freeport developers, operators and other Freeport stakeholders.

**Administration and control of Freeport Zones**

As it was already the case under the Freeport Act 2001, the overall administration and control of the Freeport Zones would lie with the Customs and Excise Department. Customs officers posted at the gates of each Freeport Zone would continue to monitor activities and movement of goods in and out of the zones. The existing system, the Customs TradeNet / CMSsystem, would be used for the processing of Freeport declarations and the clearance of Freeport goods.

In respect of the management of the Zones, Freeport developers would continue to be responsible and accountable to the Comptroller of Customs for the activities carried out in the zone allocated to them.

**Licensing procedures**

Under this new legal framework, a company wishing to operate in a Freeport zone would be required to apply for a Freeport Certificate from the BOI which would allow the company to benefit from the specified incentives associated with the Freeport scheme.

Once the Freeport Certificate has been issued by BOI the company would then be issued an annual Freeport licence from the Customs Department in order to operate and trade in a Freeport Zone. Please note that the BOI would act as a one stop shop for the issuance and renewal of Freeport licences. Once the Freeport certificate is issued, BOI would liaise with Customs to have the Freeport licence issued to the Operator against payment of the annual licence fee.

**Promotion of the Freeport sector and facilitation activities**

The BOI would be responsible for the promotion of the Freeport sector using its extensive international network. Furthermore, all business facilitation activities would be carried out by the Board of Investment.

**Storage activities in the Freeport by export and local enterprises**

Requests for authorisation to allow an export enterprise or a local enterprise to use the warehousing facilities of the Freeport would be submitted by the third party Freeport developers to BOI using the existing electronic system.

All operational procedures for the entry / exit of goods under storage permits would remain the same.

**Paper trading activities under the Freeport regime**

A Freeport operator or private Freeport developer may, on an application being made to the Managing Director of BOI through a third party Freeport Developer, be authorised to carry out activities relating to paper trading on such terms and conditions as the Board may approve. The Freeport operator or private Freeport developer would be required to submit monthly declarations and annual returns to BOI.

**The Financial Act Reporting Act 2004**

The Government in Mauritius has over the past two years, worked with a national committee in a view of establishing a code of conduct through the enactment of the Financial Reporting Act 2004. The main object of the Act is to regulate the reporting of financial matters in Mauritius through various institutions established under an appropriate legislative framework.

The first institution proposed by the Act will be the Financial Reporting Council (FRC) which will have the responsibility of monitoring the truth and fairness of financial reporting and of overseeing audit practices in Mauritius based on and through the application of international standards such as the International Financial Reporting Standards and International Standards on Auditing. Therefore, the FRC will review the financial statements and reports of a public interest company which includes both private and public companies having a turnover of greater than Rs 250 millions (Approx. US\$ 8.5 millions) and / or companies satisfying two of the following criteria:

1. A company having more than 100 employees
2. Annual turnover of more than RS 150 millions (Approx. US\$ 5 millions)
3. Assets exceeding Rs 100 million (Approx. US\$ 3.3 millions) and / or liabilities exceeding Rs 30 millions (Approx. US\$ 1 million)

The FRC, at first instance, will perform a review, on a sample basis, of the financial statements of public companies and the FRC intends to complete such assignment within six months after its creation. We can thus assume that private companies and companies involved in the global business have a moratorium period of six months prior to the interest of the FRC in the financial statements of such companies.

Another aspect of the FRC will be the regulation of the audit practice in Mauritius. Notwithstanding the conditions set out by the Companies Act 2001 for the qualification to act as auditor, the FRC will, as from 2005, issue licence to audit firms and to sole audit practitioners. The council will systematically review the audit work performed and failure to abide to International Standards on Auditing and/or any standards as approved by the FRC and also to the Code of Professional Conduct and Ethics, will entail the revocation of the audit licence.

The Financial Reporting Act will also ensure the creation of the Mauritius Institute of Professional Accountants (MIPA). The main object of the MIPA is to ensure that all accountants abide to the laws and regulations as depicted by statute, by the MIPA and/or by the association to which the accountant is a member, may it be The Association of Chartered Certified Accountants or the Institute of Chartered Accountants. It has to be noted that no accountants or accounting firms shall be in practice unless it has been registered under the MIPA. The institute will thus have the power to deregister any member in case of breach of the law or breach in regulations set out by the MIPA.

Moreover, the provisions of the Financial Reporting Act 2004 will also act as a vehicle for the setting up of the National Committee on Corporate Governance (NCCG) and of the Mauritius Institute of Directors (MID). The NCCG will in fact act as the national coordinating body responsible for all matters pertaining to corporate whilst the MID will promote the highest standards of corporate governance, and of ethical conduct of director.

On a general point of view, the introduction of the Financial Reporting Act 2004 will surely provide more substance in the willingness of the government in bringing confidence in the financial reporting structure of the Mauritian economy. So, fellow financial practitioners, the challenge is yours.....

## Accounting Standards

Section 26 (2) of the Financial Services Development Act 2001 (FSD Act) requires that GBL1 companies prepare financial statements in accordance with International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS). However, the amendment brought by the Finance Act 2002, has provided an exception to the above principle and allows the GBL1 companies to prepare audited financial statements in accordance with internationally recognised accounting standards after obtaining the approval of the Financial Services Commission.

On 22 February 2005, the FSC clarified its position on the accepted accounting standards, other than IAS and IFRS, which would be deemed to comply with the FSD Act as amended by the Finance Act 2002.

Henceforth, the following accounting standards can now be used without prior approval of the FSC:

- UK GAAP
- US GAAP and
- South African GAAP

Additionally, the GBL1 companies are also required to submit a confirmation from the auditor that no significant difference arises from the use of the abovenamed standards and the IAS and IFRS, and a statement of reconciliation, will also have to be submitted, if applicable.

GBL1 companies preparing audited financial statements in accordance with an accounting standard other than IAS, UK GAAP, US GAAP or South African GAAP, should still obtain the prior approval of the FSC.

## NEWS

### ❖ Tax Treaties

#### DTA with Barbados

The Double Taxation Agreement (DTA) between Mauritius and Barbados was ratified on 28 January 2005. The salient features of the DTA are as follows:

- Withholding tax rates applicable on Dividends, Interests and Royalties shall not exceed 5 per cent of the gross amount received; and
- Except for alienation of immovable property, movable property forming part of the business property of a permanent establishment, and ships and aircraft, other gains from the alienation of any property are taxed only in Mauritius under the treaty, and there is no capital gains tax in Mauritius.

#### DTA with the Republic of Seychelles

The government of Mauritius has signed an agreement with the Republic of Seychelles on Double Taxation Avoidance and Prevention of Fiscal Evasion with respect to taxes on income. The agreement was signed on 11 March 2005 and is now awaiting ratification in the Seychelles.

So far, Mauritius has concluded 31 tax treaties and is party to a series of treaties under negotiation.

### ❖ New government in Mauritius

A new government was sworn in the National Assembly following the general elections held on 3<sup>rd</sup> July 2005 in Mauritius. The new Prime Minister is The Honorable Dr Navin Ramgoolam.

The Financial Services Commission is now under the Ministry of Finance and Economic Development and has been entrusted to the Hon. Rama Sithanen, Deputy Prime Minister and Minister of Finance and Economic Development. The Mauritius offshore sector was launched in 1992 when the latter was Minister of Finance.

### ❖ Singapore – India Tax Treaty Protocol

In June 2005, Singapore and India signed a landmark Comprehensive Economic Cooperation Agreement. This included a Protocol that changes certain provisions in the tax treaty between the two countries. The Protocol came into force on 1 August 2005.

Under the Protocol, capital gains from disposal of property is taxable only in the country of residence and as Singapore does not tax capital gains, the treaty benefit is only significant for Singapore residents investing in India.

To prevent treaty shopping, the capital gains tax exemption contains certain limitations:-

- (a) The capital gains tax exemption is not available to those who arranged their affairs with the prime purpose of taking advantage of the treaty benefit;
- (b) A shell or conduit company that claims to be a resident of Singapore will also not enjoy this treaty benefit. A shell or conduit is any legal entity having negligible or nil business operations or no real and continuous business activities carried out in Singapore. An entity is deemed not to be a shell or conduit if:
  - it is listed on a recognised stock exchange; or
  - its total annual expenditure on operations is equal to or more than Singapore \$ 200,000 or Indian Rs 50,00,000 as the case may be, in the immediately preceding period of 24 months from the date the gains arise.

The availability of this treaty benefit is tied with the capital gains tax exemption in the India - Mauritius tax treaty. It will remain in force so long as the exemption in the India - Mauritius tax treaty remains in force. As the exemption in the India - Mauritius tax treaty is not subject to any limitation of benefit provision, Mauritius will continue to be the preferred choice for investors to hold their Indian investments.

The Protocol will be subject to an annual review by representatives of both countries.

#### Board of Directors

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