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Mauritius Global Business Information Update – GBI 06

The changes brought forward by the Financial Services Act 2007

Adopted by the National Assembly on 24th July 2007 and in force since 28th September 2007.

The Financial Services Act 2007 (FSA) repeals the Financial Services and Development Act 2001 (FSDA) and the Financial Services Development (Amendment) Act 2005. It specifically provides for the independence of the Financial Services Commission (FSC) as a **regulatory** body. The FSA enhances the substance of the Mauritius jurisdiction and promotes value-addition by allowing a larger scope of work to be conducted in Mauritius by a GBL1. GBLs conducting financial services must now also be licensed / authorised / approved / registered under the financial services regime.

The noteworthy changes brought forward by the new legislation are as follows:

Changes in respect of the nature of Global Business

FSDA

1. Section 19 of the FSDA rigidly defined “qualified global business” as follows:

- 1.1 Category 1 Global Business Licence (GBL1) : Any business or other activity specified in the Second Schedule, carried on by a company holding a GBL1, conducted from within Mauritius with non Mauritian residents in a currency other than the Mauritian currency;
- 1.2 Category 2 Global Business Licence (GBL2): Any business or other activity carried on by a private company incorporated or registered in Mauritius and holding a GBL2, conducted with non Mauritian residents in a currency other than the Mauritian currency.

2. Other salient features of FSDA:

- 2.1 Emphasis was laid on whether the company was dealing with Mauritian residents or not.
- 2.2 An exhaustive list of activities (as set out in its Second Schedule) that could be carried out by a GBL1 Company was provided for.
- 2.3 A special derogation needed to be applied for by a GBL1 applicant where dealings with Mauritius resident(s) were likely to occur.



FSA

1. The FSA gives a new and more flexible definition to “global business”.
- 1.1 Section 71 of the FSA provides simply that a “resident corporation” which proposes to “conduct business outside Mauritius” may apply to the FSC for a GBL1 or GBL2.
 - 1.1.1 Resident Corporation
 - 1.1.1.1 GBL1: a body corporate – public or private – formed or registered under the Companies Act 2001 or a trust, société or partnership or any body of persons governed by Mauritian laws.
 - 1.1.1.2 GBL2: a private company registered under the Companies Act 2001. The practice of prohibiting such companies from having a person resident in Mauritius as shareholder or beneficial owner has been maintained.
 - 1.1.2 Conduct Business Outside Mauritius
 - 1.1.2.1.1 To determine whether a company qualifies for a GBL, the FSC no longer considers whether the company is dealing with non Mauritian residents.
 - Accordingly, there is no more any need to apply for a special derogation where dealings with Mauritius residents may occur. Instead, the FSA provides that the FSC may approve in writing the conduct of any other business or dealings with Mauritian residents, where in the opinion of the FSC such dealings are incidental to the conduct of business outside Mauritius by a GBL1 Company.
 - 1.1.2.1.2 The test now applied is the ultimate purpose test. The FSC considers whether the ultimate purpose of the company is to invest or provide a service outside Mauritius. A resident corporation holding a GBL1 shall still be held to be conducting business **outside Mauritius** even if it:
 - opens and maintains a bank account in Mauritian currency for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;
 - leases, holds, acquires or disposes of an immovable property or any interest in immovable property situated in Mauritius;
 - invests in any securities listed on a securities exchange licensed under the Securities Act 2005;
 - opens and maintains a bank account in foreign currency;
 - holds any share, debenture, security or any interest in or otherwise deals or transacts with a corporation holding a GBL;
 - enters into a business relationship with the holder of a Management licence or a law practitioner or qualified auditor in Mauritius;
 - employs staff resident in Mauritius.



1.2 Type of Business

1.2.1 The prescribed list of “qualified global business” activities for GBL 1 entities is now discontinued. A GBL1 entity can carry out **any business activity**, provided:

1.2.1.1 it is not unlawful or contrary to public interest and does not cause serious prejudice to the good repute of Mauritius as a centre for financial services.

1.2.1.2 the relevant licence, authorisation, registration or approval is obtained.

1.2.2 A GBL2 company can conduct any business activity other than those listed in the Fourth Schedule of the FSA, i.e., other than financial services (including banking, holding or managing a CIS), corporate services and trusteeship services by way of business.

1.2.3 A company holding a GBL2 will be considered to be conducting business outside Mauritius notwithstanding the fact that it:

- opens and maintains with a bank an account in foreign currency;
- holds any share, debenture, security or any interest in or otherwise deals or transacts with a corporation holding a GBL;
- enters into a business relationship with the holder of a Management license or a law practitioner or qualified auditor in Mauritius.

Changes in respect of the administration, management & control of GBLs

FSDA

1. Incorporation and administration of GBL1 and GBL2 entities by Management Companies were only a matter of practice.

FSA

1. The Management Company is now legally (as opposed to being only the practice set by FSC) the link between applicants for a Global Business Licence.

1.1 GBL1: It is now **mandatory** for all GBL1 entities to be incorporated and administered by a Management Company.

1.2 GBL2: All applications for GBL2 must be made through a Management Company.

1.2.1 Sec 76 of the FSA now explicitly requires that a GBL2 corporation shall, at all times, have a registered agent in Mauritius who shall be a Management Company.



2. In considering an application or a renewal for a GBL1, the FSC is now **statutorily required** to consider whether the conduct of business will be or is being **managed and controlled from Mauritius**.
- 2.1 Section 71(4) (b) provides that the FSC may have regard as to whether the company:
 - 2.1.1 Shall have or has at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement.
 - 2.1.2 Shall maintain or maintains at all times its principal bank account in Mauritius.
 - 2.1.3 Shall keep and maintain or keeps and maintains, at all times, its accounting records at its registered office in Mauritius.
 - 2.1.4 Prepare or proposes to prepare its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius.
 - 2.1.5 Provides for meetings of directors to include at least 2 directors from Mauritius.

Change in FSC application processing time

FSDA

The FSC had a delay of 15 days to react to an application for a GBL.

FSA

The FSC has a delay of 7 days to react to an application for a GBL. This is rarely observed through in practice. GBL involved in financial services like funds or asset management companies may expect to receive their licence or feedback from the FSC within 15 days of filing an application. This is GWMS experience with its clients though.



Changes relating to material definitions

FSDA

The FSDA does not define a “controller”

FSA

1. The FSA explicitly now defines widely a “controller” in relation to a corporation to mean a person :
 - 1.1 who is a member of the governing body of the corporation;
 - 1.2 who has the power to appoint or remove a member of the governing body of the corporation;
 - 1.3 whose consent is needed for the appointment of a person to be a member of the governing body of the corporation;
 - 1.4 who, either by himself or through one or more other persons –
 - 1.4.1 is able to control, or exert significant influence over, the business or the financial operations of the corporation whether directly or indirectly;
 - 1.4.2 holds or controls not less than 20 percent of the shares of the corporation;
 - 1.4.3 has the power to control not less than 20 percent of the voting power in the corporation;
 - 1.4.4 holds rights in relation to the corporation that, if exercised, would result in paragraphs 1.4.1 and 1.4.3;
 - 1.5 who is a parent undertaking of that corporation, or a controller of such parent undertaking;
 - 1.6 who is a beneficial owner or ultimate beneficial owner of the persons specified in points 1.1 to 1.5 and who appears to the Commission to be a controller of that corporation.



Changes relating to the enforcement regime specific to Global Business companies

FSDA

The FSDA applied the same enforcement regime to GBL1 entities providing financial services which carry greater risks and those that did not, resulting in the use of “heavy artillery” where it is not warranted to do so.

FSA

1. There is now a distinct enforcement regime applicable to Global Business Companies (non-financial services) - s75 FSA.
2. The “heavy artillery” enforcement regime under Part VIII and IX of the FSA does not apply to Global Business Companies (non-financial services) unless the corporation also holds a licence, authorisation, approval or registration for the conduct of a financial services activity under the law like financial institutions and service providers.
 - 2.1 PART VIII – POWERS OF THE COMMISSION includes, inter alia, the following:
 - 2.1.1 Request for information: obligation to furnish information & records as & when required by the FSC;
 - 2.1.2 On site inspections: The FSC may, at any time, audit /inspect on the business premises of a licensee its books and records;
 - 2.1.3 Investigations: The FSC may investigate the business of the licensee or its associate where it has cause to believe that there may be a breach of Mauritius law or GBL licence conditions or any authorizations obtained or activities prejudicial to Mauritius may be carried out or non compliance with anti money laundering laws of Mauritius.
 - 2.1.4 Appointment of administrator: The FSC may appoint an administrator in relation to the whole or part of the business activities of a person whose licence has been suspended, revoked or otherwise terminated;
 - 2.1.5 Freezing of assets: The FSC may apply to a Judge in Chambers who, if satisfied that the FSC has reasonable grounds to suspect that a person has committed or is committing an offence under the relevant Mauritius laws or has been involved in a financial crime, may order a freezing of the assets of such person.
 - 2.2 PART IX – ENFORCEMENT COMMITTEE AND FINANCIAL SERVICES REVIEW PANEL
 - 2.2.1 Inter alia, an enforcement committee may exercise the disciplinary powers of the FSC under section 7(1) (c) to impose an administrative sanction on a licensee.



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