



Mauritius Global Business Update 25

AMENDMENTS TO THE FSC GUIDE TO GLOBAL BUSINESS

The Vice Prime Minister and Minister of Finance of the Republic of Mauritius (“Mauritius”), Xavier Luc Duval, (the “Minister”) in his Budget Speech 2013, dated 09 November 2012, had announced the introduction of enhanced substance measures that Global Business entities in Mauritius will need to fulfill to benefit under the tax treaty network of Mauritius.

Management and control in Mauritius determines the eligibility of a corporation to a Category 1 Global Business Licence (GBC1) and to a Tax Residence Certificate (TRC). To be eligible to tax treaty benefits, a Global Business corporation is required to be managed and controlled in Mauritius and to hold a valid TRC.

Further to government policy of encouraging substance in Mauritius by Global Business companies, as announced in the last budget, the Mauritius Financial Services Commission (“FSC”) recently amended Section 3 of Chapter 4 of the Guide to Global Business which requires a GBC1 to have presence which can be reasonably expected from a corporation managed and controlled in Mauritius.

*A GBC1 has to comply with these new requirements by **1 January 2015**.*

1. Control & Management of a GBC1

1.1. The FSC considers that management & control of a corporation is generally evidenced where, among others, the corporation (*the new requirements are stated in blue and in bold*):

1.1.1. shall have or has at least 2 directors, resident in Mauritius, who are **appropriately qualified** and are of sufficient calibre to exercise independence of mind and judgement;

GWMS comments:

- *Unfortunately, FSC has not defined what constitutes “appropriately qualified”. FSC’s Circular CL280313 of 28 March 2013 provides limited guidance. It states that “A director shall have the relevant qualification and experience to exercise sufficient care, diligence and skills for the good conduct of the business of a licensee..”*
- *We take the view that a case may still be made for the appointment of a director who may not have a relevant formal qualification but has compensatory strong track record that may be evidenced formally in the line of business of an applicant for business or an existing licensee.*
- *In such case, it is essential that the application to FSC be prepared professionally and sufficiently motivated. GWMS may assist.*



- 1.1.2. shall maintain or maintains, at all times, its principal bank account in Mauritius;
- 1.1.3. shall keep and maintain or keeps and maintains, at all times, its accounting records at its registered office in Mauritius;

GWMS comments:

- *In the view of some service providers in Mauritius especially, requirement 1.1.3 above is satisfied even where such accounting records are prepared elsewhere than in Mauritius provided that the updated records are kept in Mauritius;*
 - *GWMS believes that the above view is at best only a subterfuge to perhaps reduce operational or administration costs in Mauritius and is a highly risky approach which is unlikely to stand the test of substance in Mauritius, especially in the context of the introduction of enhanced substance measures in Mauritius.*
 - *A simple rule of thumb is that, to be on safe ground, substance means work done in Mauritius;*
 - *It is sufficient for a group or related company (see point 1.4 below) to satisfy the office condition for all entities in the group to be deemed to comply with the said condition. For example, where a subsidiary or any other corporation within the same group structure has an office in Mauritius, the whole group will be deemed to satisfy the office criteria.*
- 1.1.4. shall prepare, or proposes to prepare or prepares, its statutory financial statements, and causes or proposes to have such financial statements to be audited in Mauritius; and

GWMS comments:

- *It is imperative that the audit sign off takes place physically in Mauritius;*
- *The audit firm need not necessarily be a firm registered in Mauritius under the Companies Act. A foreign audit firm shall also qualify to audit GBCIs, provided the foreign firm and the signing partner is licensed as a foreign auditor by the Financial Reporting Council (“FRC”) in Mauritius, the regulator of auditors in Mauritius.*
- *Under the Mauritius Companies Act and Financial Reporting Act, members of the Institute of Chartered Accountants of India and the South African Institute of Chartered Accountants ,among others, are eligible to be appointed as auditors, provided they are licensed by the FRC as stated above.*



1.1.5. shall provide or provides for meeting of directors to include at least 2 directors from Mauritius;

1.1.6. **which is authorised/licensed as a collective investment scheme, closed end fund or external pension scheme, is administered from Mauritius.**

GWMS comments:

- *It is a fact that all GBCIs are required to be managed and controlled in Mauritius to be tax resident in Mauritius. This means that all GBCIs should be administered from Mauritius.*
- *Requirement 1.1.6 above is meant to remove any ambiguity regarding the administration of funds and pension schemes which should be from Mauritius. We draw attention to the fact that it was always the practice for funds to be administered from Mauritius.*
- *While the computation of NAV of a fund in Mauritius is persuasive contributing evidence that the fund is administered from and therefore managed and controlled in Mauritius, the outsourcing of such NAV calculation may still be possible provided the Mauritius fund administrator and the fund accept responsibility for the NAV calculation. We however strongly advise to have the computation done in Mauritius, wherever possible.*

1.2. **Directors of FSC licencees are also required to comply with all requirements provided in the FSC Circular Letter (CL280313) issued on 28 March 2013.**

GWMS comments:

- *While the Circular applies to all directors of licencees, several of the requirements are more relevant to Mauritius resident directors.*

1.3. **Additional requirements**

In addition to the requirements mentioned above, when determining whether a corporation is managed and controlled from Mauritius, the FSC shall, from **1 January 2015** also consider whether a corporation meets **at least one** of the following criteria:

1.3.1. the corporation has or shall have office premises in Mauritius; or

GWMS comments:

- *A GBCI always had to have registered office in Mauritius which was sited at the office of the MC of the GBCI. This requirement expands this requirement to require, where appropriate, the GBCI to have its own office space in Mauritius. This is evidenced, for example, by signing a lease agreement for such office space.*
- *A basic special purpose vehicle like a passive investment holding company may not find it appropriate to have its own office space. However, a more active company like an operating company, a regional headquarter company or a fund may find it appropriate to have its own office.*



- *The size of the office depends on the volume of activity of the GBC1 or the staff complement, among others. While it is our view that a very small cubicle will not meet the test of office in Mauritius, we believe that a relatively small but sufficiently equipped office which is decent enough to enable the business of the GBC1 to be carried out efficiently should be sufficient.*
- *GWMS is able to arrange such office space for its clients.*

1.3.2. the corporation employs or shall employ on a full time basis, at administrative/technical level, at least one person who shall be resident in Mauritius; or

GWMS comments:

- *The FSC has not stipulated any minimum qualification or expertise level that the Mauritius staff should have;*
- *We advise that the decision be made based on the basis of a reasonableness test taking into consideration the type and complexity of the work to be carried out in Mauritius.*

1.3.3. the corporation's constitution contains a clause whereby all disputes arising out of the constitution shall be resolved by way of arbitration in Mauritius; or

GWMS comments:

- *In July 2011, the Government of the Republic of Mauritius, the LCIA and the Mauritius International Arbitration Centre Limited (MIAC) entered into an agreement for the establishment and operation of a new arbitration centre in Mauritius, which is now known as the LCIA-MIAC Arbitration Centre.*
- *The LCIA is based in UK and is one of the longest-established arbitral institutions in the world.*
- *The LCIA Court is the final authority for the proper application of the LCIA-MIAC Rules.*
- *The LCIA-MIAC arbitration rules are universally applicable, being suitable for all types of arbitral disputes. They offer a combination of the best features of the civil and common law systems.*
- *Hearings may be held in Mauritius even if the seat, or legal place, of the arbitration is elsewhere.*
- *GWMS is able to draft the appropriate clause of a constitution relating to arbitration.*



- 1.3.4. the corporation holds or is expected to hold, within the next 12 months, assets (excluding cash held in bank account or shares/interests in another corporation holding a Global Business Licence), which are worth at least USD 100,000 in Mauritius; or

GWMS comments:

- *Under current law, a GBCI is required to obtain the prior approval of the FSC in respect of any investment it proposes to make in Mauritius or assets it proposes to hold in Mauritius;*
- *Mauritius offers world class real estate residential properties that may be acquired by international investors, individuals or companies alike. The high end properties have attractive rental income potential which may be fully repatriated. The hospitality sector also offers investment opportunities. Foreigners are only allowed, by law, to acquire real estate in Mauritius under four schemes. However, special conditions apply to each scheme. We are able to advise our clients about such requirements.*
 - ✓ *Integrated Resort Scheme – minimum price is USD 500,000 (excluding taxes)*
 - ✓ *Real Estate Scheme – no minimum price*
 - ✓ *Occupation Permit*
 - ✓ *Invest Hotel Scheme*
- *Under current law, a GBCI is not eligible to hold real estate under the above schemes. However, measures have been announced in last month budget 2014 speech (November 2013) to amend the law to enable a GBCI company to purchase residential property in Mauritius under the IRS/RES schemes.*
- *An investor registered with the Board of Investment can acquire immovable property for business purposes on the condition that he gets an approval from the Board of Investment. Such approval includes a prior approval under the Non-Citizens (Property Restriction) Act. Note that a GBCI is currently prohibited to acquire such property but this will change very shortly.*

- 1.3.5. the corporation's shares are listed on a securities exchange licensed by the FSC; or

GWMS comments:

- *Currently, only the Stock Exchange of Mauritius (SEM) is licensed by the FSC for listing purposes. The SEM recently introduced simplified listing rules for GBCIs. The listing fees are very competitive.*



1.3.6. the corporation has or is expected to have a yearly expenditure in Mauritius, which can be reasonably expected from any similar corporation, which is controlled and managed from Mauritius.

GWMS comments:

- *The FSC has indicated some of the factors that it may consider to determine the reasonableness of this expenditure requirement. See below.*
- *In our view, the determination of the level of expenditure that is appropriate should again be measured against the type of business, whether a fund or an investment holding company for example, previous or current level of activity or similar. Based on experience and informal industry data, USD20,000 may be appropriate for a passive investment holding company while the expenditure level for a fund may be around USD100,000 per annum.*
- *We draw attention that the level of expenditure under consideration is only expenditure incurred in Mauritius in respect of its operations and not services from outside Mauritius. For example, a payment made by a parent company, based outside Mauritius, of a GBCI to a foreign Counsel for professional services provided in connection with the GBCI's operations would be disregarded. However, fees paid by the GBCI to a foreign counsel in connection with the GBCI's operations would qualify.*

1.4. **Points to note with reference to the Additional Requirements stated above**

Requirements	Clarification by FSC
1.3	<p>A corporation shall be deemed to have satisfied the requirements at 1.3 above where a related corporation which holds a GBCI satisfies any one of the listed conditions.</p> <p><i>Related corporation means a subsidiary, fellow subsidiary, a parent corporation or any other corporation within the same group structure.</i></p>
1.3.6	<p>The onus is on the corporation to satisfy the FSC that its level of expenditure in Mauritius is reasonable. Reasonableness of expenditure would be judged in the light of circumstances of each case. Factors to be considered to decide whether the level of expenditure of a corporation is reasonable include the type of activity of the corporation, its average turnover, the country (ies) in which it is conducting business, the value of its net assets, and the industry average.</p>



International network

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