

Doing Business in Mauritius 2019



Mauritius Capital, Port Louis, by night

Introduction

Mauritius has a population of approximately 1.3 million people and is an independent sovereign nation with a ‘hybrid’ legal system, combining both the civil and common law practices drawn from its English and French heritage. It has an efficient banking system and is strategically placed in a time zone of GMT+4, allowing worldwide dealings in a day.

Mauritius has a modern IT international network which is based on an advanced globally interconnected infrastructure linked by sub-marine fibre-optic cable systems like SAFE, LION and EASSy, as well as by satellite and is investing in other sub-marine fibre-optic cable projects such as the Europe-India Gateway (EIG) and the West Africa Cable System (WACS).

The island is strategically situated next to the emerging markets of Asia and Africa and offers a secure investment location with established rule of law with an investment friendly regulatory regime

Benchmarks

The jurisdiction benchmarks very favourably globally and especially in Africa. A few key indices are:

Index	Global Rank	Africa Rank
World Bank Doing Business 2019	20 out of 190 countries	1st
Global Competitiveness Index 2018-2019	49 out of 140 countries	1st
Mo Ibrahim Index of African Governance 2018	-	1st
Economic Freedom of the World 2018- (Fraser Institute)	8 out of 162 countries	1st
Forbes Survey of Best Countries for Business 2019	39 out of 161 countries	1st
Democracy Index 2017 – The Economist Intelligence Unit – Full Democracy	16 out of 167 countries	1st
Henley’s Passport Index 2018	34th most powerful passport in the world giving via free or visa on arrival access to 134 countries	2nd in Africa behind Seychelles

Other key attributes of the jurisdiction are

1. Political stability and more than 3 decades of sustained economic growth
2. Peaceful, multi-ethnic with a unique lifestyle in a blend of cultures
3. Ocean State with one of the largest Exclusive Economic Zones in the world
4. Preferential market access to Africa, Europe and the USA
5. GDP per capita: approx. USD 10,547 (2017)
6. Qualified, bilingual (English/French) relatively lower labour costs
7. Foreign skills are welcome, with occupation (work & residence) permits issued without difficulty within 10 to 15 days generally.
8. Legitimate confidentiality is enshrined in Mauritius law. There are no secrecy laws in Mauritius.



The Mauritius International Financial Centre (“IFC”)

The Global Business sector (concerned with predominantly cross border business and investments) inaugurated the IFC in the early 1990s and the Financial Services Commission (FSC) was established as the regulator for the non-bank financial services sector in 2001. The sector was differently regulated until 2001.

The FSC is the integrated regulator for the securities, insurance and Global Business sector industries and it licenses, regulates and supervises all non-bank financial institutions in Mauritius. The FSC has signed Memoranda of Understanding with its counterparts in various jurisdictions, providing for exchange of information where necessary.

Listing in Mauritius

The Stock Exchange of Mauritius (SEM) is open to foreign investors and has been a member of the World Federation of Exchanges (WFE) since November 2005, ensuring SEM’s compliance with the stringent standards and market principles established by the WFE. Streamlined listing rules apply to GBL entities.

The FSC has granted a Securities Exchange licence and a Trading Securities Systems licence to AFRINEX Limited and a licence for Clearing and Settlement Facility to Afrinex Clearing House Limited which is a subsidiary of AFRINEX Limited. These licences were granted on 9 November 2018.

AFRINEX is a Pan-African focused international securities exchange which aims to provide a platform for the trading of securities/derivatives. Investment dealers from any part of the world can register with AFRINEX, and investors from all corners of the globe can use the services of these market intermediaries.

AFRINEX is a demutualised fully electronic, multi-currency and multi-asset trading platform offering listing and trading of securities services and is a subsidiary of the mammoth Bombay Stock Exchange.

Legislation

The Financial Services Act 2007 (FSA), which repealed certain older legislation, specifically provides for the independence of the FSC as a regulatory body. The FSA also allows Global Business Licence corporations (“GBC”) to do business in Mauritius, subject to its annual turnover comprising of income earned from outside of Mauritius in majority. GBCs conducting financial services need to be licensed and approved under the financial services regime and are closely monitored. GBCs conducting non-financial services business also require to be licensed but benefit from lesser compliance requirements. The new Companies Act 2001 (“CA”) provides a modern legislation that caters for the needs of domestic and international investors in and from Mauritius. The FSA and the Securities Act 2005 were introduced to provide a modern regulatory framework for financial services.



The Securities Act 2005 and the Securities (Amendment) Act 2007 reflect a modern approach to regulation and supervision of securities markets, based on international standards recommended by the International Organisation of Securities Commissions (IOSCO), of which Mauritius is a member. These established a framework for the regulation of securities markets, market participants and the offering and trading of securities, to ensure fair, efficient and transparent securities markets, with an appropriate balance between protection of investors, the interest of market makers and market participants and the financial system in general. The Securities Act notably widened the definitions of “securities” and “exchanges”.

International initiatives (Anti-money laundering and Combating the Financing of Terrorism (AML/CFT))

Mauritius is committed to international initiatives to combat money laundering and terrorist financing. It has put in place a legislative framework, namely the Financial Intelligence and Anti-Money Laundering Act 2002, the Prevention of Corruption Act 2002 and the Prevention of Terrorism Act 2002. The AML/CFT regulatory framework is constantly updated to meet new standards as set by international organizations (IOSCO, the Financial Action Task Force (FATF) and the International Association of Insurance Supervisors (IAIS).

A revised and updated National Code of Corporate Governance (the ‘Code’) is applicable in Mauritius as from the reporting year (financial period) ending 30 June 2018.

FATCA, CRS and BEPS

Mauritius is the first African country to sign an IGA Model 1 with the IRS of the USA with respect to FATCA and is also a CRS signatory country. The first CRS reporting to foreign competent authorities took place in August 2018. CRS and FATCA reporting are annual events.

The IFC confirmed that it is a jurisdiction of repute by being among the first countries to have signed, in June 2015, ‘The Multilateral Convention on Mutual Administrative Assistance in Tax matters of the Organisation for Economic Cooperation and Development (OECD).

The jurisdiction is also a signatory to the Multilateral Instrument of the OECD.

Types of types of legal entities:

1. Companies (private limited and public)
2. Trusts
3. Limited Partnerships
4. Limited Liability Partnerships
5. Société (French civil law version of the Anglo-Saxon partnership)
6. Protected Cell Companies
7. Foundations



Global Business Sector

An entity may apply for a Global Business License to benefit from favourable dispensation under company, securities and taxation law. By law, the application must be made via an FSC licenced management company.

The Mauritius Finance Act 2018 enacted several significant changes to Global Business corporations. The two categories of Global Business corporations, category 1 & 2, were discontinued with effect from 01 January 2019 and introduced a new entity called the Authorised Company. Accordingly, the previously known as Category 1 Global Business Licence company now continues to operate under the new regime as Global Business Licence company (“GBL”) as from 1 January 2019 and is subject to enhanced substance conditions.

A new requirement is that a person who is not a citizen of Mauritius can no longer do business mainly outside Mauritius through a Mauritius domestic resident corporation. A GBL is required. This requirement may be exempted in line with the new FSC Rule which was only gazetted on 26 January 2019.

The eligibility criteria to operate as an Authorised Company (“AC”) are that the majority of shares or voting rights / legal / beneficial interest in a Mauritius incorporated company are held or controlled, as the case may be, by a person who is not a citizen of Mauritius; the AC proposes to conduct or conducts business **principally outside** Mauritius and the AC has its Place of Effective Management (“POEM”) **outside** Mauritius. Application for an authorisation by FSC must be made through a Management Company like GWMS. The AC is fully tax exempt in Mauritius where its POEM is outside of Mauritius. Of note is that Mauritius has its own definition of POEM.

There is no minimum issued stated capital requirement, no thin capital rules and no controlled foreign company rules. However, an investment management company licensed by the FSC is required to maintain a minimum stated unimpaired capital of at least Mauritian rupees 1 million or an equivalent amount (approximately, USD 33,300). A GBLL can carry out any lawful business activity and may be a body corporate – public or private, formed or registered under the Companies Act 2001 - or a trust, société, partnership or body of persons as governed by Mauritian laws.

A GBL, if granted an annually renewable Tax Resident Certificate (TRC) by the Mauritius Revenue Authority (MRA), will be tax resident in Mauritius and benefits under the Double Taxation Avoidance (DTA) treaty network (see below). The MRA considers very similar criteria to the FSC when determining whether to grant or renew, on an annual basis, a TRC.

In considering an application or a renewal for a GBL, the FSA requires the FSC to consider whether the conduct of business will be or is being managed and controlled from Mauritius.

It is, therefore, crucial to establish substance in the Mauritius operations.

The FSC will consider whether the entity:

1. Will 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;
2. Will maintain or maintains, at all times, its principal bank account in Mauritius;
3. Will keep and maintain or keeps and maintains, at all times, its accounting records at its registered office in Mauritius;
4. Will 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
5. Will provide or provides for meeting of directors to include at least 2 directors from Mauritius;
6. Which is authorised/licensed as a collective investment scheme, closed end fund or external pension scheme, is administered from Mauritius.

In addition to the requirements mentioned above, the GBL is now required to meet certain enhanced substance conditions in Mauritius which include having its core income generating activities in Mauritius, having the minimum expenditure prescribed by the FSC in line with its activities in Mauritius and employing the prescribed number of employees in Mauritius, where applicable. Of note is the fact that investment holding companies have no prescribed employment requirements in Mauritius.

Collective Investment Schemes (CIS or Global Funds)

Global funds are generally structured as GBL companies incorporated under the Companies Act 2001 that further defines the CIS as an Investment Company. A CIS is thus defined as one where the company's business consists of investing its funds mainly in securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds.

There are no specific restrictions on the operation of an umbrella CIS, multi-class CIS, CIS of CIS, feeder CIS and master feeders. It is common for a CIS to be structured as a multi-class company with shares carrying disproportionate rights, as allowed under the Companies Act 2001.

An Investment Company needs to be approved by the FSC before it commences business. This involves the submission, mandatorily by an FSC licensed Management Company on behalf of promoters, to the FSC of application documents, supporting constitutive and due diligence documents along with the payment of FSC processing and annual fee. An entity that is authorised/licensed as a collective investment scheme, closed end fund or external pension scheme, is required to be administered from Mauritius. Administration includes the computation of the NAV in Mauritius.

It is very common to also establish a dedicated Special Purpose Vehicle (SPV) to act as the investment management company in Mauritius to reinforce the status of the CIS in Mauritius as being its centre of effective control and management.



The above does not exclude the possibility of the CIS obtaining assistance for the management of its assets from an investment advisor established overseas, nor does it prevent management decisions in relation to investment and disinvestment being taken overseas. It is however common for the SPV investment manager to locate a Middle Office in Mauritius whereby most operations back office tasks are performed to enhance substance in Mauritius. The requirement for the location of the issuance and redemption of shares in Mauritius does not preclude foreign intermediaries from participating in the placing and redemption operations as distributors or nominees. The FSC insists on the independence of the board of directors of the CIS with those of the SPV investment manager.

An SPV investment manager is required by law to subscribe to an insurance policy to cover risks such as fraudulent activities of employees, fraudulent instructions, and legal liability to third parties arising from breaches of professional duty, among others. Evidence of the insurance subscribed must be provided to the FSC within 10 business days from the date the SPV investment manager's license has been granted.

FSC licensed Management Companies can also provide fund administration services to funds established in other recognized financial centres.

Timeline for the issue of FSC licenses

The FSC generally issues a GBL license of an investment holding company within 10 days of application. For a CIS, this period is around one month. For an Authorised Company, the FSC issues the license of a successful application within approximately 3 days of application.

Tax Incentives

The 2016 / 2017 Mauritius Budget ushered in a new concept of tax holidays for certain activities.

This tax incentive has been reviewed by the OECD and has not been considered as being harmful tax competition.

Companies with the following new licences issued by the FSC may benefit from tax holidays, subject to certain conditions being met. Tax holidays of 5 years or 8 years (depending on certain conditions) are provided to companies holding:

1. A Treasury Management Centre Licence
2. A Global Legal Advisory Services Licence. This licence will be issued to flagship international law firms that set up their regional offices and operations in Mauritius to provide legal advisory services on international and domestic transactions and international arbitration services to global business clients.
3. Global Headquarters Administration,
4. Global Treasury Activities,
5. An investment bank holding an Investment Banking and Corporate Advisor License.
6. Overseas Family Corporation license. This will enable high net worth foreigners and their dependants to benefit from residency in Mauritius.



7. An Asset and Fund Manager licensed by the FSC and managing a minimum asset base of USD 100 million;
8. Foreign Ultra High Net Worth Individuals' investing a minimum of USD 25 million in Mauritius.

Taxation

The headline rate of taxation in Mauritius is 15%. This uniform rate applies to corporate, VAT and personal taxes. A GBL is therefore taxed at the standard corporate rate of 15% and its foreign dividends, foreign interest, specified financial services income and Fintech income benefit from a partial exemption of 80% that reduces the effective rate of taxation to 3%. All other income are taxed at 15%. The capital gains tax regime in Mauritius is currently suspended.

There are no exchange control restrictions and capital and profits can be freely repatriated.

There are no withholding taxes on dividends paid out of income from Global Business activities, no withholding tax on interest and no capital gains tax. There is exemption from stamp duty on registration of all documents relating to global business transactions.

Mauritius has focused the development of its Global Business sector on the use of its growing network of Double Taxation Avoidance treaties ('DTAs') for structuring investment abroad.

So far Mauritius has concluded DTAs with 43 countries – namely Australia, Barbados, Belgium, Botswana, China, Congo, Croatia, Cyprus, Egypt, France, Germany, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Malta, Monaco, Mozambique, Namibia, Nepal, Oman, Pakistan, Rwanda, People's Republic of China, Rwanda, Senegal, Seychelles, Singapore, South Africa, Sri Lanka, State of Qatar, Swaziland, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom Zimbabwe and Zambia.

An important aspect of doing international business and investment is security and this consideration is often more critical than taxation or any other criteria. Mauritius has signed 42 IPPAs (Investment Promotion and Protection Agreements) with partner countries. IPPAs protects investments made in a covered country against expropriation, nationalisation and settlement of disputes, amongst many other risks.

Openness of the country

The concept of Occupation Permit ("OP") (combined work and residence permit) is operational in Mauritius since several years now and is designed to attract foreign skills and talent to Mauritius. This concept works on the silent approval principle. On application for an OP, the onus is on the government OP granting agency to communicate the success or failure of an application to the applicant within a predefined timeframe, generally around 15 days, and not for the applicant to chase the government agency officers!

In short, Mauritius considers ease of doing business as being of paramount importance and is open for business!



OECD latest report on Peer Review Results on Preferential Regimes – Mauritius Tax Regimes NOT HARMFUL

On 15th of November 2018, the Organisation for Economic Co-operation and Development (OECD) has released its report on Peer Review Results in its assessment of harmful tax practices of Preferential Regimes in 53 jurisdictions. The report shows clearly that Mauritius meets all the international requirements of the BEPS Action 5 and therefore does not have any harmful practices in its tax regimes. The following local tax regimes (from an international perspective) were reviewed by the OECD Forum on Harmful Tax Practices (FHTP):

1. Category 1 and Category 2 Global Business companies (*now discontinued/new regime applies*);
2. Captive Insurance;
3. Partial Exemption System;
4. Freeport;
5. Global Headquarters Administration;
6. Global Treasury Activities; and
7. Investment Banking;

Mauritius remains committed to uphold its adherence to international norms and best practices.

Law & Regulations

The Financial Services Act 2007

The Companies Act 2001

The Trust Act 2001

The Financial Intelligence and Anti-Money Laundering Act 2002, as amended

The Securities Act 2005 (with the Securities (Amendment) Act 2007)

Other useful contacts

Stock Exchange of Mauritius - <http://www.stockexchangeofmauritius.com/>

Board of Investment - <http://www.boimauritius.com/>

Financial Services Commission – <http://fscmauritius.org>

Mauritius Revenue Authority – <http://mra.mu>

Disclaimer: This Guide should be considered as a general guide only and does not constitute tax or any other professional advice. It contains information, which, to the best of our knowledge and belief, is correct at the time of writing. Readers are however, strongly recommended to seek specific advice before acting on any information contained in it.