

The Mauritius Finance (Miscellaneous Provisions) Act 2018

August 2018

The Finance (Miscellaneous Provisions) Act (the "Finance Act"), which was enacted on 31 July 2018, introduced a number of major legislative changes that affect the Global Business Companies regime in Mauritius. The Mauritius Financial Services Commission ("FSC") has not yet issued any guidelines to provide further clarity on the changes. This memo summarises the principal changes, which are:

- The abolition of the GBC2 regime and the creation of a new Authorised Company Regime; and
- The renaming of the GBC1 regime to GBC and the introduction of additional substance requirements for GBCs.

Abolition of GBC2 Companies

The Category 2 Global Business Licence ("GBL2") and Category 2 Global Business Company will be abolished on 1 January 2019 and a new type of company, the Authorised Company, is being introduced on the same date.

From 1 January 2019, the Category 1 Global Business Company will be known as the Global Business Corporation ("GBC") and the Category 1 Global Business Licence ("GBL1") will be known as Global Business Licence ("GBL").

Existing GBC1 and GBC2 companies, where licences were issued on or before 16 October 2017, will be able to continue under the provisions of the Financial Services Act 2007 until 30 June 2021.

Existing GBC1 and GBC2 companies, where licenses were issued after 16 October 2017 will be grandfathered only until 31 December 2018.

After 31 December 2018 or 30 June 2021 as applicable, GBC2 licences will lapse and companies will need to comply with the prescribed requirements of an Authorised Company.

Rules for GBCs

Section 71 of the Financial Services Act has been repealed and replaced by a new section.

The major changes that have been introduced are:

- The majority of shares/voting rights/legal/beneficial interest should be held or controlled, as the case may be, by a person who is not a citizen of Mauritius.
- The GBC should conduct business principally outside Mauritius.
- The GBC should at all times carry out its core income generating activities in, or from, Mauritius.

- The GBC should employ either directly or indirectly, a reasonable number of qualified persons to carry out the core activities.
- The GBC should have a minimum level of expenditure, which is proportionate to its level of activities.
- A corporation which conducts business without holding a GBL shall commit an offence and shall, on conviction, be liable to a fine of up to one million rupees.

Tax Measures Applicable to GBCs

A company holding a Category 1 Global Business Licence was subject to 15% income tax in Mauritius on its chargeable income. It was however entitled to a tax credit equivalent to the higher of the actual foreign tax paid or 80% of the Mauritius tax payable on its foreign source income (deemed Foreign Tax Credit).

The Foreign Tax Credit ("FTC") regime available to GBC1 companies will be abolished as from 1 January 2019. Instead, there will be an introduction of an 80% exemption regime on the following income of the GBC (provided that the FSC's substance requirement criteria are met):

- Foreign dividend, subject to amount not allowed as deduction in source country
- Foreign source interest income
- Profit attributable to a permanent establishment of a resident company in a foreign country
- Foreign source income derived by a Collective Investment Scheme ("CIS"), Closed End Fund, CIS manager, CIS administrator, investment adviser or asset manager licensed or approved by the FSC
- Income derived by companies engaged in ship and aircraft leasing

Authorised Company Activity

An Authorised Company is a company which proposes to conduct or conducts business principally outside Mauritius (or with such category of persons as may be specified in the FSC rules) and which has its place of effective management outside Mauritius.

Shareholding/Control/Beneficial Interest

The majority of shares/voting rights/legal/beneficial interest (other than bank, licensed by the Bank of Mauritius, and incorporated under the Companies Act 2001) should be held or controlled by a non-citizen of Mauritius.

Registered Agent

An Authorised Company shall, at all times, have a registered agent in Mauritius which shall be a management company. One of the main responsibilities of the management company will be record keeping, including board minutes and resolutions, transaction records and such other documents as the FSC may require.

Authorisation

The FSC must authorise an Authorised Company and the application for authorisation must be made through a Mauritius management company.

Tax Measures Applicable to Authorised Company

An Authorised Company will be deemed non-resident for tax purposes (and thus be exempted from income tax) in Mauritius. However, it will be required to submit a return of income to the Mauritius Revenue Authority within six (6) months of its year-end.

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