

Mauritius

Fazil Hossenkhan
BLC Chambers

www.practicallaw.com/2-503-9464

RETAIL FUNDS: OVERVIEW

- 1. Please give a brief overview of the retail funds market in your jurisdiction. (How developed is the market? Has it been active in the past year?) Please highlight the changes in market practice in the past year.**

Mauritius is a recognised venue for offshore funds. Since the creation of the offshore sector in the early 90s, the jurisdiction has seen an increase in the number of offshore funds (referred to as global funds). These principally consist of private equity funds and funds with professional investors, which use Mauritius' network of tax treaties to invest in African and Asian countries.

There were over 700 global funds licensed by the FSC (including both open-ended and closed-ended funds) as at 31 December 2009, representing assets under management totalling US\$70 billion (as at 1 November 2010, US\$1 was about EURO.7). During 2008, 112 funds were authorised, but this figure fell to 74 funds during 2009 in the aftermath of the global financial crisis.

The domestic (or onshore) fund industry is widely perceived to be under-tapped, with 27 funds representing assets under management of about MUR9.4 billion in 2009 (as at 1 November 2010, US\$1 was about MUR28.3).

Earlier this year the Stock Exchange of Mauritius opened up global funds for listing. The Stock Exchange trades on two platforms, the Official Market (on which ten global funds are listed), and the Development and Enterprise Market (DEM) (which lists only one fund).

Open-ended retail funds

A fund in Mauritius is regulated as a collective investment scheme or a closed-ended fund. A collective investment scheme is an open-ended fund. It contains an obligation to redeem a participant's shares at their request, at a price corresponding to the net asset value of those investments (less fees and commissions). This obligation does not exist with closed-ended funds (see below, *Closed-ended retail funds*).

Mauritius contains both open-ended retail funds, where there is no limitation on the type of investor or minimum investment, and non-retail funds (exempt funds, which are described as an expert funds or professional collective investment scheme (CIS)), which cater for sophisticated investors and high net-worth individuals, and are entitled to exemptions from the detailed regulations which apply to retail funds.

A CIS is structured as either:

- A public or private company.
- A unit trust.

For the qualifying criteria of a CIS, see *Question 5, Open-ended retail funds*.

Closed-ended retail funds

Closed-ended funds are characterised principally by the fact that the investors do not have control on exiting the fund. They are the preferred fund structures for private equity funds. The typical vehicle is a private company, limited by shares with limited duration. Closed-ended funds are subject to less regulation than collective investment schemes. Like collective investment schemes, they can be retail or non-retail funds, which are subject to fewer regulations.

For the qualifying criteria of closed-ended retail funds, see *Question 5, Closed-ended retail funds*.

Legislation and regulation

- 2. What are the key statutes, regulations and rules that govern retail funds in your jurisdiction? What regulatory bodies are involved in regulating retail funds?**

Open-ended retail funds

Before 2007, the regulation of funds was largely based on regulatory best practices and licensing conditions. Legal provisions were not consolidated and loosely referred to authorised mutual funds, private equity funds and unit trusts.

With an increasing number of funds being domiciled in Mauritius (see *Question 1*), the government introduced a regulatory framework in a bid to ensure fund regulation is comprehensive, precise and in line with international standards. The legislation that applies to open-ended and closed-ended funds includes the:

- Financial Services Act 2007.
- Securities Act 2005.
- Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008.
- Financial Services (Consolidated Licensing and Fees) Rules 2008 (in relation to licence fees).
- Financial Intelligence and Anti-Money Laundering Act 2002 (in relation of anti-money laundering provisions).
- Companies Act 2001 (for funds structured as companies).
- Trusts Act 2001 (for funds structured as trusts).

The following regulatory bodies are involved in regulating open-ended and closed-ended funds:

- The Financial Services Commission (FSC), the regulator for all non-bank financial services activities. It regulates both domestic and global funds.
- The Registrar of Companies, the regulator in relation to all corporate matters.

Closed-ended retail funds

See above, *Open-ended retail funds*.

3. Do the retail funds themselves have to be authorised or licensed? If so, what are the main steps involved? Are there differences between local funds and foreign funds?

Open-ended retail funds

All funds must obtain authorisation to operate from the FSC.

The authorisation process is the same for both open-ended and closed-ended funds:

- The prescribed application form must be sent to the FSC. This must be accompanied by:
 - the proposed prospectus (which must be approved by the FSC and contain certain specified matters);
 - the governing documents of the proposed fund (constitution, trust deed or partnership deed, whichever is applicable);
 - copies of major agreements to be put in place (for example, investment management agreement, custody agreement, administration agreement and any advisory agreements);
 - know-your-customer documentation on promoters, beneficial owners and proposed directors;
 - “fit and proper” person questionnaire;
 - the prescribed first annual registration and processing fees.
- Once the FSC is satisfied that the fund meets the legal and regulatory requirements, the fund entity can be incorporated.
- On incorporation, the FSC issues the certificate of authorisation and the fund can make its first offering.

An open-ended fund must also appoint a custodian to safeguard the assets of the fund (see *Question 7, Open-ended retail funds*).

A distinction is made between foreign and offshore funds:

- **Foreign funds.** A foreign fund is a fund established in a foreign jurisdiction. The FSC has the power to recognise such a fund and permit it to operate in Mauritius. The FSC can exercise this power where it is satisfied that the fund is regulated in its country of domicile, and the FSC has in place an adequate agreement for co-operation with the regulator in the foreign jurisdiction.
- **Offshore funds.** An offshore fund, referred to as a “global fund”, is a fund which is managed in Mauritius, but raises subscriptions from non-resident investors and makes the majority of its investments in countries other than Mau-

ritius. An offshore fund must also apply for a “category one global business licence”, under which it is entitled to certain corporate flexibilities and fiscal advantages.

Closed-ended retail funds

Closed-ended retail funds are authorised by the FSC (see above, *Open-ended retail funds*), and they must also have their prospectus approved by the FSC.

The authorisation process is the same for both open-ended and closed-ended funds (see above, *Open-ended retail funds*).

Marketing

4. Who can market retail funds? Are there differences between local funds and foreign funds?

Open-ended retail funds

For open-ended and closed-ended funds, offerings are made either by a licensed investment intermediary (such as investment dealer, investment adviser or distributor of financial products, licensed by the FSC) or the fund manager, using the fund’s prospectus. There are no separate rules for marketing or offering different kinds of funds. However, different obligations can arise which depend on the manner in which the offering is made. For example, there are different obligations for private placement offers and public offers, and for instances where an offer is made to a specific category of investors, such as sophisticated or institutional investors.

In the case of a public offering, the fund is subject to an additional disclosure requirement (to the FSC) as a reporting issuer. The fund must register itself as a reporting issuer, and file a prospectus (the regulations specify both the form and content required for the prospectus). Reporting issuers must file quarterly financial statements, and must notify the FSC of any material changes to their affairs. They must also declare how many of their shares are held (directly or indirectly) by their holding companies, subsidiaries, officers, and persons holding or controlling more than 5% of the securities of the reporting issuer (referred to as insiders). The disclosure requirements extend to securities of the reporting issuer held by any associates of such insiders. Further, any changes to such interests have to be similarly reported.

Closed-ended retail funds

See above, *Open-ended retail funds*.

5. To whom can retail funds be marketed? Are there differences between local funds and foreign funds?

Open-ended retail funds

Open-ended retail funds and closed-ended retail funds can be offered to the public, and they are required to provide a prospectus. There are no differences between how local or foreign funds are marketed, as they must both have licensed intermediaries (see *Question 4, Open-ended retail funds*). However, the FSC will expect a disclaimer statement for foreign funds, which is broadly to the effect that the recognition of foreign funds does not imply that the regulator is vouching for the merits of investing in the scheme. Once authorised, there are no restrictions on the categories of persons to whom retail funds can be marketed.

Closed-ended retail funds

See above, *Open-ended retail funds*.



Managers and operators

6. What are the key requirements that apply to managers/operators of retail funds? Are there differences between local funds and foreign funds? Can a foreign manager manage a local fund?

Open-ended retail funds

Managers of all funds must:

- Be a corporate body.
- Be engaged principally in the business of managing funds.
- Have directors, officers and beneficial owners who meet the fit and proper test.
- Have appropriately qualified staff.
- Be licensed by the FSC and have a place of business in Mauritius (except in the case of offshore funds).
- Maintain a minimum stated capital of at least MUR1 million (or an equivalent amount in a different currency).
- Establish and document their rules of internal control, ensure they are legally compliant and ensure they are sufficiently supervised.
- Have in place a code of ethics and a code of conduct which are binding on its officers, advisers, and employees.

An offshore fund can be managed by a foreign manager once the manager has been approved by the FSC. The FSC will grant approval where it is satisfied that the proposed manager is regulated as a fund manager in the jurisdiction where the fund is regulated. The governing documents of the foreign fund manager, and evidence of its regulated status, must be submitted to the FSC for approval.

Closed-ended retail funds

See above, *Open-ended retail funds*.

Assets portfolio

7. Who holds the portfolio of assets? What regulations are in place for its protection?

Open-ended retail funds

An open-ended retail fund must appoint a custodian licensed by the FSC to safeguard the assets of the fund. Only banks, and trust companies which are subsidiaries of banks, are eligible for a custodian licences. Custodians must:

- Maintain a minimum stated “unimpaired” capital of MUR10 million (or an equivalent amount). “Unimpaired” means that the assets of the minimum capital must not be encumbered, and that if a loss is sustained, it must inject funds to ensure that this minimum capital requirement is maintained.
- Be independent from the manager of the fund.

Closed-ended retail funds

Closed-ended retail funds are exempt from the requirement to appoint a custodian. The portfolio of assets is held in the name of

the fund itself. However, a closed-ended retail fund which is listed is deemed to be a “collective investment scheme” and therefore must meet the same conditions as an open-ended retail fund with respect to custodians (*see above, Open-ended retail funds*).

Legal vehicles

8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures? What are the participants’ interests in the fund called (for example, share or unit)?

Open-ended retail funds

The principal vehicles used to set up retail funds are companies and trusts. *Sociétés*, a French form of partnership, are also used.

Companies. There are various types of companies. Public and private companies are incorporated under the Companies Act 2001. Participants are issued with shares of the company. A private company is limited to 25 shareholders and cannot offer shares to the public. A company may also be set up as a protected cell company, which is subject to the Protected Cell Companies Act 1999 as well as the Companies Act. Participants in a protected cell company are issued with shares in the relevant cell in which they invest.

Companies have the following advantages:

- The limited liability principle means that investors enjoy liability only up to the extent of their investment.
- The statutory rules of filing and reporting ensure transparency and accountability.
- The governing body (board) is responsible to investors for their actions under the doctrine of fiduciary responsibility.
- The flexible rules of operation allow a company to be used in the same manner as a limited partnership. For example, the articles of its constitution can be drafted as an agreement reflecting the general partner/limited partner relationship, and can provide for capital calls, capital commitments, return of proceeds and the waterfall of distribution (in accordance to the 80/20 split between returns to investors and carried interest). All of these inherent features of partnership fund structures can be replicated within Mauritian companies.

Companies have the following disadvantages:

- Their corporate formalities are an additional compliance cost.
- They are not tax transparent: a company is one legal person and is treated as one taxing unit, and investors are not taxed in Mauritius at their level.
- The distribution of income is subject to the company remaining solvent.
- Company migration (that is, where a company relocates to another jurisdiction), and corporate restructuring, merger and termination, require corporate formalities.

Trusts. Trusts are created under the Trusts Act 2001. They can be created as a “purpose” or “beneficiaries” trust. Participants are issued with units in the trust.

Trusts have the following advantages:

- They are easy to set up: the creation of a trust does not require any registration or incorporation.
- They require no corporate filings.
- A trust can be structured as a “non-resident” trust, which is not liable to tax in Mauritius.
- Trustees are subject to fiduciary duties.
- Migration, restructuring and termination are relatively simple to accomplish.

Trusts have the following disadvantages:

- The lack of formality and reporting requirements make a trust less transparent than a company.
- They do not have corporate personality.

Sociétés. *Sociétés* are set up under the provision of the Civil Code or Commercial Code. The participants’ interests are referred to as “*parts sociales*”.

Sociétés have the following advantages:

- They are fiscally transparent.
- The liability of the general partner can be limited.
- It is possible to structure the *société* so that it is not liable to tax in Mauritius.

Sociétés have the following disadvantages:

- They are based on a form of French partnership law, which has not evolved to accommodate modern fund structures.
- French legal concepts and terminology may not be understood by all investors.

Closed-ended retail funds

See above, *Open-ended retail funds*.

Investment and borrowing restrictions

9. Describe the investment and borrowing restrictions to which retail funds are subject.

Open-ended retail funds

An open-ended retail fund has a number of investment restrictions. It cannot:

- Invest more than 5% of its net assets in the security of the issuer unless it is a debt security issued by the government of Mauritius or the government of any other country.
- Purchase and hold more than 10% of a class of securities of that issuer.
- Purchase real estate.
- Purchase a mortgage.
- Purchase a security for the purpose of exercising control or management over the issuer of that security.
- Have more than 10% of its net assets in illiquid assets.

- Purchase or sell derivatives, except where the FSC has authorised that fund as a “specialised fund”.
- Buy or sell any physical commodity, including precious metals, except where the FSC has authorised that fund as a “specialised fund”.
- Engage in the business of underwriting or marketing the securities of any other issuer.
- Guarantee the securities or obligations of another person.
- Purchase or sell securities not traded through market facilities unless the transaction price is negotiated at arm’s length.
- Subscribe to securities offered by a company in formation.

An open-ended retail fund can only borrow money or create a charge over its assets, when either:

- The transaction is only a temporary measure to accommodate a request for the redemption of securities of that fund, and the outstanding amount of all borrowings does not exceed 5% of the fund.
- The charge secures a claim for fees and expenses incurred for services rendered while redeeming those securities.

These investment and borrowing restrictions can be lifted on an application to the FSC, and the FSC will lift them where it is satisfied that the fund has sufficient justification to borrow or make the investment. Before the FSC lifts the restrictions, it can impose any additional conditions that it considers appropriate to protect investors.

Closed-ended retail funds

Closed-ended retail funds are not subject to investment and borrowing restrictions.

10. Can the manager/operator place any restrictions on the issue and redemption of interests in retail funds?

Open-ended retail funds

Restrictions can be imposed on the issue of shares in open-ended retail funds. However, the fund must still redeem at the request of the holder of its securities, at a price corresponding to the net asset value (less commissions and fees).

Closed-ended retail funds

A closed-ended retail fund can specify restrictions on the issue and redemption of shares in its offering documents.

11. Describe any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties.

Open-ended retail funds

There are no restrictions imposed by law on the rights of participants to transfer or assign their interests in either open-ended or closed-ended funds. However, restrictions can be imposed by the governing documents of the fund.

Closed-ended retail funds

See above, *Open-ended retail funds*.



Reporting requirements

12. Describe the periodic reporting requirements to:

- **Investors.**
- **Regulators.**

Open-ended retail funds

- **Investors.** The reporting requirements are the same for both investors and the regulator. An open-ended retail fund must both file with the FSC, and send to participants:
 - quarterly unaudited financial statements prepared in accordance with the International Financial Reporting Standards (IFRS), which contain matters prescribed by CIS regulations, no later than 45 days after the end of each quarter;
 - quarterly management reports which include performance reports of the fund in the form, and the containing matters, prescribed by the regulations;
 - annual reports, including annual audited financial statements, no later than 90 days after the fund's balance sheet date.

For domestic retail funds, the quarterly reports and annual reports must also be made public.

- **Regulators.** See above, *Open-ended retail funds: Investors*.

Closed-ended retail funds

- **Investors.** A closed-ended retail fund must make public and file with the FSC:
 - comparative quarterly financial statements prepared in accordance with IFRS, no later than 45 days after the end of each quarter;
 - an annual report, including audited comparative financial statements prepared in accordance with IFRS, no later than 90 days after the fund's balance sheet date.
- **Regulators.** See above, *Closed-ended retail funds: Investors*.

Tax treatment

13. Describe the tax treatment for:

- **Funds.**
- **Resident investors.**
- **Non-resident investors.**

Open-ended retail funds

- **Funds.** Domestic funds are subject to a flat rate of corporate income tax of 15% on business income. Tax is levied on the business profits of a fund. Dividend income received from Mauritian companies, and capital gains realised on a sale, redemption disposal or transfer of investments, are exempt from tax. The full amount of any tax paid abroad can be used as tax credits against tax payable in Mauritius. Tax credit is also allowed against any underlying tax paid,

provided the fund held at least 5% of the underlying investment. Funds holding a category one global business license (global funds) are tax incentive companies and are entitled to an automatic tax credit of 80% (irrespective of foreign tax paid), therefore making them liable to a maximum effective rate of tax of 3%.

- **Resident investors.** Resident investors are subject to a 15% tax on their taxable income, which excludes dividend income from Mauritian companies and capital gains.
- **Non-resident investors.** No tax liability is imposed on any non-resident investor. Withholding taxes on dividends are not payable by a non-resident investor in a Mauritian fund.

Closed-ended retail funds

- **Funds.** Closed-ended funds are taxed in the same way as open-ended funds (see above, *Open-ended retail funds: Funds*).
- **Resident investors.** See above, *Open-ended retail funds*.
- **Non-resident investors.** See above, *Open-ended retail funds*.

Reform

14. Please summarise any proposals for the reform of retail fund regulation in your jurisdiction. Please also summarise any litigation or enforcement action relating to fund regulation in your jurisdiction.

There are currently no proposals for legislative reform to retail funds, and there is no notable litigation or enforcement action concerning fund regulation in Mauritius.

HEDGE FUNDS: OVERVIEW

15. Please give a brief overview of the hedge funds market in your jurisdiction. (How developed is the market? Has it been active in the past year?) Please highlight the changes in market practice in the last year, including any changes to investment strategies being pursued and the terms of investment.

There is no specific regime applying to hedge funds in Mauritius, and the terminology "hedge fund" is not used. Hedge funds are regulated in the same way as any other fund. However, they are usually offered to professional investors or high net worth individuals. For that reason, they can apply to be categorised as "professional CIS" or "expert funds". These categories of funds are exempt from a substantial part of the regulations. They are referred to as "exempt funds" for the purposes of this Chapter (see *Question 19*).

Exempt funds have been authorised following the coming into force of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008. A number of funds which had been authorised prior to that legislation have, after the end of the transitional period ending September 2010, converted into either professional CIS or expert funds, depending on their characteristics (see *Question 19*).



Legislation and regulation

16. What are the key statutes and regulations that govern hedge funds in your jurisdiction? What regulatory bodies are involved in regulating hedge funds?

Exempt funds are regulated in the same way as any other fund, save where they qualify for exemptions (see Questions 2 and 15).

17. How are the following areas regulated (if at all) in relation to hedge funds:

- **Risk.**
 - **Valuation and pricing.**
 - **Systems and controls.**
 - **Insider dealing and market abuse.**
 - **Transparency.**
 - **Money laundering.**
 - **Short selling.**
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- **Risk.** There is no regulation specifically concerning exempt fund risk (see Question 3, *Open-ended retail funds*). However, the prospectus or offering memorandum of the exempt fund must disclose all material risks to potential investors.
 - **Valuation and pricing.** A retail fund must conduct a valuation on a daily basis (or at such other intervals as are agreed with the FSC). When exempted, an exempt fund is free to specify the method and frequency of its valuations.
 - **Systems and controls.** Exempt funds are not regulated as strictly as retail funds. They are dispensed from various prudential and conduct of business rules which generally apply to retail funds, such as:
 - minimum funding requirements;
 - regulation of its constitutive documents and prospectus;
 - regulation of its book-keeping principles;
 - regulation of advertisements;
 - regulation of transactions with related parties;
 - mandatory investor voting powers.
 - **Insider dealing and market abuse.** The Securities Act 2005 contains a chapter on market abuses. This chapter creates the offences of insider dealing, false trading, market rigging, fraud and deceptive conduct involving securities. The prohibition on insider dealing is a general prohibition applicable to any person who uses insider information to:
 - deal in the securities of a reporting issuer;
 - procure, or advise another person to deal in, the securities of a reporting issuer;
 - disclose insider information otherwise than in the course of that person's lawful occupation.A reporting issuer is an entity which has made a public offer of its securities. The offence attracts both a criminal sanc-

tion of up to ten years' imprisonment and a fine. The fine levied is either three times the amount of the profits earned as a result of the offence, or MUR500,000, whichever is the greater sum. A person who has committed an act of insider dealing may also be sued for damages by the FSC, irrespective of the criminal liability.

- **Transparency.** Exempt funds have reduced filing requirements. Open-ended funds which are exempt only have to file quarterly and annual financial statements. Exempted closed-ended funds only need to file annual financial statements (see Question 12).
- **Money laundering.** All funds must comply with the Financial Intelligence and Anti-Money Laundering Act 2002, a law inspired by Financial Action Task Force (FATF) principles. Funds must carry out customer due diligence (CDD) in accordance with a code prescribed by the FSC. This includes verifying the identity of investors, and being satisfied that the source of funds is lawful. For corporate investors, the fund must obtain copies of incorporation documents and CDD information on the principal investor(s). Reduced or enhanced CDD may be applied depending on the profile of the investors, whether or not they are regulated institutions, and their country of domicile. There is no difference in the obligations of both retail and exempt funds under the anti-money laundering laws.
- **Short selling.** There are no rules that specifically address short selling. For retail funds, short sales (and any collateral for such purposes) must be disclosed in the financial statements. There is no legal requirement for such disclosure with an exempt fund.

Marketing

18. Who can market hedge funds? Are there differences between local funds and foreign funds?

The same rules apply for retail funds generally apply (see Question 4). However, exempt funds are usually marketed to experts and sophisticated investors (see Question 19).

19. To whom can hedge funds be marketed? Are there differences between local funds and foreign funds?

Exempt funds can be categorised as expert funds or "professional CIS. These funds can be both open-ended and closed-ended. Expert funds and professional CIS funds enjoy exemption from the regulations on the ground that they are only offered to sophisticated, institutional or high net worth investors. For example, professional CIS and expert funds are exempted from the following:

- The requirement to have a prospectus in the prescribed form. The offering memorandum can be customised subject to a few mandatory disclosure requirements.
- The minimum funding requirements.
- Investment and borrowing restrictions (see Question 9).
- The requirement to prepare and file management reports and annual reports explained (see Question 12).



- The requirement to conduct daily valuations.
- The requirement to publish, weekly, the prices of interests in the collective investment scheme.

An expert fund is only available to:

- An investor which makes initial investments for its own account of no less than US\$100,000.
- A sophisticated investor, as defined in the Securities Act 2005 (or any similarly defined investor in the securities legislation of another country).

A professional CIS is only available to:

- A sophisticated investor, as defined in the Securities Act 2005 (or any similarly defined investor in the securities legislation of another country).
- A private placement where the subscription amount is generally more than US\$100,000.

A sophisticated investor is defined under the Securities Act 2005 as including:

- The government of Mauritius.
- A statutory authority, or an agency established by an enactment for a public purpose.
- A company, all the shares in which are owned by the government of Mauritius, a statutory authority, or an agency established by an enactment for a public purpose.
- The government of a foreign country, or an agency of such government.
- A bank.
- A fund manager.
- An insurer.
- An investment adviser.
- An investment dealer.
- A person declared by the FSC to be a sophisticated investor.

Assets portfolio

20. Who holds the portfolio of assets? What regulations are in place for its protection?

See *Question 7*.

Requirements

21. Describe the key disclosure or filing requirements (if any) that must be done by the fund (for example, in relation to the prospectus or offering memorandum and side letters).

The same rules apply as for open-ended retail funds (see *Question 3, Open-ended retail funds*). Exempt funds must still file the documents required for open-ended retail funds for the purposes of authorisation (see *Question 3*). However, there is less regulation of the contents, of the disclosures that are required, and of the form that these documents must take.

22. What are the key requirements that apply to managers/operators of hedge funds? Are there differences between local funds and foreign funds? Can a foreign manager manage a local fund?

See *Question 6, Open-ended retail funds*.

Legal vehicles and structures

23. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures? What are the participants' interests in the fund called (for example, share or unit)?

Open-ended retail funds

See *Question 8, Open-ended retail funds*.

Closed-ended retail funds

See *Question 8, Closed-ended retail funds*.

24. What are the advantages and disadvantages of using onshore and offshore structures?

Onshore

Onshore structures are regulated on the basis that they are authorised to conduct business in Mauritius. Onshore structures tend to be less flexible than offshore structures. Their managers and custodians must be licensed in Mauritius by the FSC.

The statutory documents, periodic reports and the financial statements of onshore funds are publicly available. There are more onerous filing requirements than for offshore structures (such as annual reports and annual returns) which apply in addition to the annual and quarterly financial statements. Confidentiality provisions do not apply to the documents of onshore funds that must be filed with the authorities.

Onshore entities are taxed at the same corporate rate as offshore entities (at 15%, see *Question 13*). They are entitled to full credit of actual foreign taxes paid, including underlying taxes. However, onshore funds are not entitled to automatic deemed tax credits.

Offshore

Offshore funds are not allowed to conduct business in Mauritius. They can have only limited investments in Mauritius, and are generally not entitled to carry out fundraising, or other fund activities, in Mauritius, unless such activities are only an incidental part of their business.

The legal vehicles used for offshore funds (see *above, Question 8*) have a number of flexible benefits, including that they:

- Can have classes of shares denominated in different currencies.
- Can have "par value", or "no par value" shares, or both.
- Can dispense of "Limited" or "Ltd" in their names.
- Are entitled to reduced disclosure requirements for a reduction of capital.



- Can have cross holdings between a holding company and a subsidiary.
- Can present accounts in different accounting and auditing standards (for example, UK GAAP instead of IFRS).
- Do not file an annual report and annual return.
- Do not have to make their records available for public inspection.

They can have their records and documents treated confidentially by the authorities (except where mandatory disclosure provisions apply and are required by law).

Offshore funds also benefit from automatic deemed tax credits of 80% of the normal corporate tax rate, without needing to show evidence of tax paid (see *Question 13*).

Tax treatment

25. Describe the tax treatment for:

- Funds.
- Resident investors.
- Non-resident investors.

- **Funds.** See *Question 13, Open-ended retail funds: Funds*.
- **Resident investors.** See *Question 13, Open-ended retail funds: Resident investors*.

- **Non-resident investors.** See *Question 13, Open-ended retail funds: Non-resident investors*.

Restrictions

26. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?

The same rules apply as for open-ended retail funds (see *Question 11, Open-ended retail funds*).

Reform

27. Please summarise any proposals for the reform of hedge fund regulation in your jurisdiction. Please summarise any litigation or enforcement action relating to fund regulation in your jurisdiction.

See *Question 14*.

CONTRIBUTOR DETAILS



FAZIL HOSENKHAN

BLC Chambers
T +230 213 7920
F +230 313 7921
E fazil.hossenkhan@blc.mu
W www.blc.mu

Qualified. England and Wales, 2000

Areas of practice. Funds; investment.

Recent transactions

- Advising in the setting up and closing of the LeapFrog Financial Inclusion Fund, US\$60 million micro-insurance fund.
- Advising on the launch of the African Infrastructure Investment Fund 2, a US\$250 million fund focusing on infrastructure projects in Africa.
- Advising Masawara plc in connection with its listing the AIM from a Mauritius legal and regulatory perspective and structuring investment in Africa.