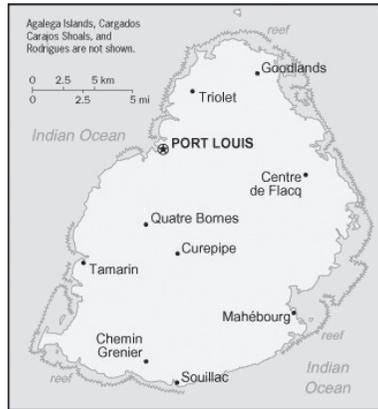


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Mauritius



Map of Mauritius

39.1 INTRODUCTION

Discovered by the Dutch and the French in the 16th and 18th century respectively, Mauritius became a British Colony at the beginning of the 19th century and remained under the British rule until independence in 1968. In 1992, Mauritius changed its status from a Constitutional Monarchy to that of a Republic but chose to remain in the British Commonwealth.

Situated in the Indian Ocean, approximately 2000 km to the east of Durban (South Africa), the island covers a total area of 1860 km or 720 square miles. Mauritius is situated mid-way between Europe and the Far East, being four hours ahead of GMT and four hours behind the Far East.

Over the past decades, the Mauritian economy has diversified away from the production of sugar into the manufacturing with the creation of the Export Processing Zone (EPZ). The tourism industry also contributes substantial revenue and is currently ranked third after sugar and manufacturing.

In the early nineties, Government introduced the financial services sector as the forth pillar of the economy with the launching of the offshore and Freeport sectors. The Mauritius Stock Exchange was launched in 1989 to cater for local needs. With the suspension of all exchange controls in 1994, foreign investors can now invest freely on the stock exchange.

Mauritius is actively involved in regional co-operation. Mauritius is a member of the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA) and Indian Ocean Rim – Association Regional Cooperation (IOR – ARC) and is a signatory to all the major African conventions. With its membership in these regional organ-

isations, and having tax treaties with 12 African countries (including South Africa), Mauritius provides a unique platform for investments into Africa.

Mauritius' remarkable economic and social success has earned the island wide scale international recognition:

- In the World Bank's "Doing Business Survey 2013" report; Mauritius ranks first as the country with the most favourable business reputation in the Africa region and is the 19th out of 185 countries surveyed.
- The Heritage Foundation ranks Mauritius 8th out of 183 countries in their World Index of Economic Freedom 2012 and 1st in Africa.
- In Global Competitiveness Index 2011–2012 of the World Economic Forum, Mauritius is ranked 54th in a list of 142 nations.
- In the Global Corruption Perceptions Index 2010 (Transparency International) Mauritius ranks 39th out of 178 countries.
- In the Mo Ibrahim Index of African Governance 2012, Mauritius was ranked 1st for the 6th consecutive year .
- In the International Property Rights Index 2008 Mauritius ranks 38th out of 129 countries.
- In the Democracy Index 2010, Mauritius ranks 24th out of 167 countries.

Mauritius is also on the OECD "white list" of jurisdictions that have substantially implemented internationally agreed tax standards.

39.2 GENERAL OVERVIEW

39.2.1 Location

Mauritius is a sub-tropical volcanic island with a surface area of 1,865 square kilometers (720 square miles) strategically located in the Indian Ocean, mid-way between the developing continents of Asia, Africa and Australia.

39.2.2 Time zone

Mauritius is GMT + 4 hours. The island is 9 hours ahead of New York and 4 hours behind the Far East.

39.2.3 Population

Mauritius has a population of 1.178 million as at the last census in 2000.

39.2.4 Capital

The capital of Mauritius is Port-Louis, situated in the North-West of the island.

39.2.5 Airport

The Airport of Mauritius, Sir Seewoosagur Ramgoolam Airport, is situated in the South-East of the island.

39.2.6 Language

Due to its past history as a colony of both France and Britain, the population is largely bilingual, generally being equally fluent in English, the official language, and French. The local dialect “Creole” is widely spoken in the island.

39.2.7 Political system

Mauritius is a multi-party Parliamentary democracy, unicameral and based on the British Westminster model with elections every five years by universal franchise.

39.2.8 International dialling code

The international dialling code for Mauritius is 230.

39.2.9 Currency

The local currency is the Mauritian Rupee divided into 100 cents (ISO 4217 currency code MUR). As at September 2013, indicative exchange rates are as follows: USD1= MUR 31; EUR1= MUR 41.76.

39.2.10 Introduction

Since the launch of the offshore sector in 1992, the Government has been actively promoting the financial sector and taken various initiatives to make Mauritius an international financial services centre; revamping the regulatory and legislative framework, expanding the network of double taxation treaties and enforcing norms prescribed by international standard-setters to ensure that business is conducted in accordance with best international practices.

Mauritius, a member of IOSCO, is widely recognised as a well-regulated and credible international finance centre and has succeeded in attracting global funds and major multinationals in setting up their holding companies in the sector.

39.2.11 Government

The Republic of Mauritius is a Westminster style democracy headed by an appointed President who is the Head of State. The 60 members of Parliament are elected every five years by popular vote. Parliament is the legislative authority in Mauritius and is headed by the Prime Minister who is the Head of Government.

39.2.12 Political and economic stability

Coming from various origins namely Indian, Chinese, African and European, the population of Mauritius is a unique blend of different races, cultures and religions.

Mauritius has enjoyed political stability ever since its independence in 1968. The electoral system of Mauritius is constituency-based, modelled after the British system. The Government is democratically elected every five years.

Political stability has been a very determining factor in the island's economic success and the successive governments have all shown strong and sustained commitment to a market-driven economy where free enterprise can flourish and foreign investment prosper.

39.2.13 Business environment

39.2.13.1 Government attitude to offshore activities

Internationally recognised as a safe investment location due to its long established tradition of socio-political stability, free market economy and good governance, Mauritius offers business-friendly environment to the investor community worldwide.

Investors can now set up local companies under the Companies Act 2001 within three working days for doing business in Mauritius.

Offshore companies, called "Global Business Companies" are set up under the Companies Act 2001 and are regulated by the Financial Services Commission (FSC) under the Finance Services Act 2007. Under this act, a resident corporation which proposes to conduct business outside Mauritius may apply to the FSC for a Category 1 Global Business Licenses or the Category 2 Global Business Licence. The Global Business companies are set up and administered by management companies duly licenced by the FSC.

The Global Business companies benefit from a range of attractive investment and fiscal incentives. The Government of Mauritius is pro-actively marketing the global business sector and a number of bold legislative and institutional changes have been adopted to enhance the reputation and competitiveness of the Mauritius Financial Services sector.

39.2.13.2 Employment

In order to attract foreign talent and expertise, Government has also introduced a series of measures designed to attract foreign citizens to the country.

The Occupation Permit allows eligible non-citizens to live and work in Mauritius for up to three years. A complete application submitted to the Board of Investment is determined within three working days. An application can be made under any of the following categories:

- **Investor:** the business activity should generate an annual turnover exceeding exceeding MRU 4 million annually with an initial investment of USD100,000 or its equivalent in freely convertible foreign currency;
- **Professional:** the basic salary of the professional should exceed MRU 45,000 monthly. However, the basic salary for the category Professional in the ICT Sector should exceed MRU 30, 000 monthly;
- **Self employed:** income from the self employed business activity should exceed MRU 600,000 annually with an initial investment of USD 35,000 or its equivalent in freely convertible foreign currency.

The dependents of an occupation permit holder may also apply for residence permits.

Applicants under all categories may be eligible for a Permanent Residence Permit after three years. A Permanent Residence Permit is valid for ten years.

To qualify, the investor must have generated an annual turnover exceeding MUR 15 million. The professional must have earned a basic monthly salary of at least MUR150,000. The self-employed must have generated an annual income exceeding MUR3 million.

39.2.13.3 Local business requirements

Businesses in Mauritius may be conducted as an individual operating as self-employed, in partnerships or locally incorporated/registered companies under the Companies Act 2001. The Registrar of Companies is the sole place for any business to register before starting operations.

For a limited number of regulated activities, an application for the appropriate permit or licence must be made to the competent authorities prior to the start of operations.

A domestic company can be incorporated within a maximum of three working days.

Companies may register with the Board of Investment (BOI), the official Investment Promotion Agency of the Government of Mauritius, for assistance and support for the implementation of their projects or business.

39.2.13.4 Currency and exchange control

The monetary unit of the Country is the Mauritian Rupee which is divided into 100 cents.

Exchange controls were suspended in 1994.

39.2.13.5 Disclosure of information: secrecy of information; disclosure in company formation and trust settlement; international cooperation measures; banking secrecy

Information relating to global business companies is highly confidential and management companies, trustees and banks are not required or permitted to

disclose any details of the companies, trust and bank accounts to any unauthorised persons. In addition, documents and information in respect of global business companies, filed with the authorities (Registrar of Companies, Tax Authorities etc) are not available for public inspection.

The only time management companies, trustees and banks can be required to disclose information is when a Judge or the Supreme Court makes an order for disclosure on request of the Director of Public Prosecutions and the Director has proof on the balance of probabilities that the confidential information is bona fide required for the purpose of a criminal investigation.

39.2.14 Legal system

39.2.14.1 General

Mauritius is one of the few countries with a hybrid legal system based on English and French law. The procedural law both in criminal and civil litigation is mainly English whilst the substantial law is mainly based on the French Napoleonic code. The Company Law is modelled on the English law. The highest court of appeal is the Privy Council in England.

39.2.14.2 Legislation affecting offshore operations

Offshore banking was allowed since 1989. However, it was with the introduction of a comprehensive legislative framework in 1992 for non-banking offshore business activities, the Mauritius Offshore Business Activities Act 1992, that the offshore sector was officially launched.

Since then, Government has improved the legal framework and today a number of innovative and modern legislation underpins the financial services sector: Banking Act 2004, Companies Act 2001, Financial Services Act 2007, Insurance Act 2005, Securities Act 2005, Trust Act 2001, Protected Cell Companies Act 1999, Limited Partnerships Act (2011), and Foundations Act (2012).

The Financial Services Act 2007 provides a common framework for licensing and supervision of all financial services other than for the banking and the global business sectors.

39.2.14.3 Treaties

The success of Mauritius as a tax planning jurisdiction and its global business sector can largely be attributed to its network of Double Taxation Avoidance Treaties (DTAs). Mauritius has been used as a route for investment into the emerging regions such as India and China.

So far Mauritius has concluded 34 tax treaties that are in force and is party to a series of treaties under negotiation.

Most of the treaties in force have been in existence as from the period when Mauritius launched its offshore sector in 1992.

Mauritius Tax Treaty Table

	Country	Duration to constitute permanent establishment		Maximum tax rates applicable in the State of Source		
		Building Site etc	Furnishing of services	Dividends	Interest(i)	Royalties
1	Barbados	6 months	(iv)	5%	5%	5%
2	Belgium	> 6 months	(iv)	5% & 10%	10%	Exempt
3	Botswana	> 6 months	> 6 months (ii)	5% & 10%	12%	12.5%
4	China	> 12 months	> 12 months(iii)	5%	10%	10%
5	Croatia	> 12 months	(iv)	Exempt	Exempt	Exempt
6	Cyprus	> 12 months	> 9 months (ii)	Exempt	Exempt	Exempt
7	France	> 6 months	(iv)	5% & 15%	same rate as under domestic law	15%
8	Germany (new)	> 12 months	(iv)	5% & 15%	Exempt	10%
9	India	> 9 months	(iv)	5% & 15%	same rate as under domestic law	15%
10	Italy	> 6 months	(iv)	5% & 15%	same rate as under domestic law	15%
11	Kuwait	> 9 months	(iv)	Exempt	Exempt	10%
12	Lesotho	> 6 months	> 6 months (ii)	10%	10%	10%
13	Luxembourg	> 6 months	(iv)	5% & 10%	Exempt	Exempt
14	Madagascar	> 6 months	(iv)	5% & 10%	10%	5%
15	Malaysia	> 6 months	(iv)	5% & 15%	15%	15%

Country	Duration to constitute permanent establishment		Maximum tax rates applicable in the State of Source			
	Building Site etc	Furnishing of services	Dividends	Interest(i)	Royalties	
16 Mozambique	> 6 months	> 6 months (ii)	8%, 10% & 15%	8%	5%	
17 Namibia	> 6 months	> 6 months (ii)	5% & 10%	10%	5%	
18 Nepal	> 6 months	> 6 months (ii)	5%, 10% & 15%	10% & 15%	15%	
19 Oman	> 6 months	(iv)	Exempt	Exempt	Exempt	
20 Pakistan	> 6 months	(iv)	10%	10%	12.5%	
21 People's Republic of Bangladesh	>12 months	> 12 months	10%	normal rate	normal rate	
22 Rwanda	> 12 months	> 12 months	Exempt	Exempt	Exempt	
23 Senegal	> 9 months	> 9 months (i)	Exempt	Exempt	Exempt	
24 Seychelles	> 12 months	> 6 months (ii)	Exempt	Exempt	Exempt	
25 Singapore	> 9 months	(iv)	Exempt	Exempt	Exempt	
26 South Africa	> 9 months	(iv)	5% & 15%	Exempt	Exempt	
27 Sri Lanka	> 6 months	> 6 months (ii)	10% & 15%	10%	10%	
28 State of Qatar	> 6 months	> 6 months (ii)	Exempt	Exempt	5%	
29 Swaziland	> 6 months	> 6 months(ii)	7.5%	5%	7.5%	
30 Sweden (New)	> 12 months	(iv)	0% & 15%	Exempt	Exempt	

	Country	Duration to constitute permanent establishment		Maximum tax rates applicable in the State of Source		
		Building Site etc	Furnishing of services	Dividends	Interest(i)	Royalties
31	Thailand	> 6 months	> 6 months (ii)	10%	10% & 15%	5% & 15%
32	Tunisia	> 12 months	(iv)	Exempt	2.5%	2.5%
33	Uganda	> 6 months	> 4 months (ii)	10%	10%	10%
34	United Arab Emirates	> 12 months	> 12 months	Exempt	Exempt	Exempt
35	United Kingdom	> 6 months	(iv)	10% & 15%	Same rate as under domestic law	15%
36	Zimbabwe	> 6 months	(iv)	10% & 20 %	10%	15%
37	Zambia	> 9 months	(iv)	5% & 15%	10%	5%

(i) Where interest is taxable at rate provided in the domestic law of the State of source or at reduced treaty rate, provision is usually made in the treaty to exempt interest receivable by a Contracting State itself, its local authorities, its Central Bank/all banks carrying on bona fide banking business and any other financial institutions as may be agreed upon by both Contracting States.

(ii) Within any 12-month period.

(iii) Within any 24-month period.

(iv) No specific provision made in respect of furnishing of services.

Nine treaties await ratification: Congo, Egypt, Gabon, Kenya, Monaco, Nigeria, Russia, Rwanda, South Africa.

One treaty awaits signature: Ghana.

17 treaties are being negotiated with: Algeria, Burkina Faso, Canada, Czech Republic, Greece, Hong Kong, Lesotho, Portugal, Republic of Iran, Malawi, Saudi Arabia, St. Kitts & Nevis, Vietnam, Yemen, Tanzania, Morocco and Montenegro.

Mauritius has also entered into Tax Information Exchange Agreements (TIEAs) with the following countries:

TIEAs in Force	TIEAs signed	TIEAs awaiting signature
Australia	Faroe Island	Greece
Denmark	Greenland	India
Finland	Iceland	Isle of Man
Norway		
States of Guernsey		

39.2.15 Taxation

The taxation of Mauritian companies, trusts and individuals is governed by the Income Tax Act 1995. The Act provides for a uniform flat tax platform at a low rate of 15% for both corporate and personal income.

All income accruing in, derived from, brought into or received in Mauritius by a resident is chargeable to tax.

Non-residents will only be subject to income tax on income, other than exempt income, derived from or accruing in Mauritius.

There is no capital gains tax in Mauritius. However, except for global business companies, any gain derived from disposal of securities within six months of acquisition will be taxed as trading profits.

There is no withholding tax on dividend payable by resident companies.

Dividends paid by resident companies are exempt from income tax in Mauritius.

39.2.15.1 Stamp duties and registration duties

Documents witnessing a transfer between a GBC1 and a non-citizen and which require registration are subject to a maximum duty of MUR50,000.

Such documents would include instruments of fixed and floating charges, pledges or any other encumbrance created by the GBC 1 over its assets.

Documents witnessing a transfer between a non-citizen and a GBC 2 are exempt from registration.

Transfer of shares of a global business company are subject to registration and are liable to a total duty of MUR100 if registered within the prescribed period.

39.2.15.2 Import duties

The current customs tariffs consist of four tariff bands, namely 0%, 15 %, 10% and 30%. Specific duties are applied on certain clothing items. Classification of products for customs purposes: Exported and imported goods are classified according to the 2007 Version of Harmonised System Commodity Description and Coding System (HS).

39.2.15.3 Tax incentives

See section below.

39.2.16 Corporations/global business

39.2.16.1 Types

The Mauritius Global Business sector offers two types of companies namely the Category 1 Global Business Company (GBC1) and the Category 2 Global Business Company (GBC2). A Global Business Company is one which conducts its business outside of Mauritius.

Both companies are incorporated under the Companies Act 2001 but are issued different licenses under the Financial Services Act 2007 (FSA).

There is no restriction on the activities that may be carried out by a GBC1 so long as the activity of the company is not unlawful or contrary to public interest and does cause prejudice to the good repute of Mauritius as a financial centre.

GBC2, on the other hand, cannot engage in the following activities:

- Banking.
- Financial services.
- Carrying out the business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary.
- Providing registered office facilities, nominee, directorship, secretarial services or other services for corporations.

Both entities offer the highest degree of confidentiality and the choice between the two types will depend on a number of factors, namely the proposed activities of the company and the geographical area of operation. While the GBC1 is resident for tax purposes in Mauritius and can thus avail of the benefits of the double taxation treaties signed by Mauritius, the GBC2 is tax exempt and is typically used where no tax treaty benefits are sought.

39.2.16.1.1 Taxation

The GBC1 is taxed at the rate of 15%. However, it benefits from foreign tax credits for taxes suffered at source which are available for offset against tax liabilities in Mauritius. If taxes suffered at source cannot be evidenced, a unilateral tax relief of 80% of the Mauritius tax charge is available under the Income Tax (Foreign Tax Credit) Regulations 1996, thus resulting into a maximum net effective tax rate of 3%.

The GBC2 is tax exempt and does not have access to any double taxation agreement.

39.2.16.1.2 Tax Residence Certificate (TRC)

In order to benefit from Double Tax Treaties, the Company will need to apply for a TRC from the Mauritius Revenue Authority (MRA). The Company will be eligible for a TRC if it observes the criteria for management and control in Mauritius as set out above.

39.2.16.1.3 Filing requirements

A GBC1 is required to file with the FSC its audited financial statements and its annual tax return with the MRA within six months of its financial year end. Quarterly tax returns also have to be filed with the MRA.

A GBC2 is required to file each year a financial summary (P&L and Balance Sheet) to the FSC. The financial summary is not required to be audited.

39.2.16.1.4 Conversion

GBC1 can be converted into GBC2, and vice versa.

39.2.16.1.5 Migration

Provision is made in the Companies Act 2001 for continuation of foreign companies as GBC1 or GBC2 in Mauritius, and of GBC1 and GBC2 abroad.

39.2.16.1.6 Comparative table

Please refer to the table below for a more elaborate comparative overview of the two categories of companies.

	GBC1	GBC2
Registered office in Mauritius	Yes	Yes
Minimum no. of members on incorporation	1	1
Corporate shareholder	Allowed	Allowed
Minimum capital requirement	None ¹	None
Minimum no. of shares issued	1	1
No par value shares	Allowed	Allowed
Bearer shares	Not allowed	Not allowed
Access to Double Tax Treaties	Yes	No
Minimum number of Directors	1 (2 resident if TRC required)	1 (may not be resident and can be a corporation)
Corporate Director	Not allowed	Allowed
Resident Secretary	Yes (the management company)	Optional
Registered Agent	Not applicable	Yes (the management company)
Annual meeting	Yes	Not required
Filing of Financial Statements	Audited Financial Statements to be filed with the FSC within 6 months of balance sheet date.	Financial summary (consisting of P&L and Balance Sheet) to be filed with the FSC each year.
Tax status	Taxed at 15% with a maximum effective rate of 3%	Tax exempt
Exchange control	No	No
Free repatriation of profits	Yes	Yes
Occupation permit for expatriate staff	Yes	No
Incorporation time	10 working days	2 days
Redomiciliation	Allowed	Allowed

Note 1: Minimum capital requirements may apply if providing financial services.

39.2.16.2 Fees and costs

Global business companies are required to pay the Financial Services Commission (FSC) and the Registrar of Companies fees as follows.

GBC1 providing financial services and regulated by the Securities Act 2005 are required to pay to the FSC, in addition to fees with respect to the Global Business Licence, processing and annual fees for a licence for financial services activity.

Renewal of FSC licence is due on 30 June each year and renewal of ROC fee is due on 1 January each year. Companies are subject to the penalties for late settlement of Government fees:

FSC		
If annual fee paid on	GBC 1 (USD)	GBC1 (USD)
Due date	Nil	Nil
Within one month after due date	150	25
After 1 month but within 3 months after due date	375	65
After 3 months but within 6 months after due date	750	115
After 6 months but within 12 months after due date	1500	235
ROC		
If payment is made after 20 January each year	100	35

39.2.16.3 Checklist for non-resident and exempt companies

The incorporation checklist for global business companies includes due diligence documents on all principals/shareholders and beneficial owners as well as a business plan of the proposed global business company

39.2.16.4 Other forms of business organisations

39.2.16.4.1 Protected cell company (PCC)

A PCC enables a GBC1 to have one or more cells. It permits the flexibility to divide the assets into various cells with the objective of protecting the assets of one cell against the failure of another cell.

The Protected Cell Company legislation was enacted in 1999 and was restricted to fund and insurance business. The PCC Act was amended in 2005 to extend the use of the PCC structure to other global business activities such as asset holding and structured finance business.

39.2.16.4.2 Foreign companies

A foreign company can apply to the Registrar of Companies and the FSC to migrate/registered by continuation in Mauritius and for a global business licence.

A foreign company can also apply with the authorities for registration of a branch in Mauritius.

39.2.16.4.3 Limited Partnerships

The Limited Partnerships Act was passed in 2011 and is intended to enhance the use of Mauritius as a domicile for US and European private equity funds investing in African and Asian markets. A Limited Partnership can be tailor-made, having either a separate legal entity where any partnership property is held by the Limited Partnership itself or with no separate legal entity, where such property is held by the general partner. The approach in the Mauritius Limited Partnership law is to set default provisions, most of which can be supplemented or displaced by the partnership agreement, thus leaving the Limited Partnership to be a flexible and highly customisable vehicle. Limited Partnerships enable global funds to be structured directly in Mauritius, hence lessening the need for complex master-feeder structures or creative manipulation of companies in order to achieve the optimal structure.

39.2.17 Banks and trust companies

39.2.17.1 Banks

There are currently 19 banks in operation in Mauritius. Of these 19, 13 are either subsidiaries or branches of international banks; five are local and one is a joint venture with a foreign bank.

Among its internationally active banks, Mauritius counts some of the world's largest and most reputable banking groups such as Barclays Bank, Deutsche Bank, HSBC, Investec Bank, Standard Chartered Bank, Standard Bank and State Bank of India, among others.

The banks are governed by the Banking Act 2004 and the Central Bank of Mauritius is the regulatory body.

39.2.17.2 Management companies

Management companies/trust companies are specially licensed by the Financial Services Commission under section 77 of the Financial Services Act 2007 to set up, manage and provide nominee and other services to a corporation (which carries on or intends to carry on any qualified global business and such class of corporation as may be prescribed) or act as a corporate trustee or qualified trustee under the Trusts Act 2001. As the Commission requires that all applications for a global business licence be channelled through a Management Company, the latter has the responsibility of initial vetting of the client and needs to exercise due diligence.

As at September 2013, there were 168 Management Companies on the register.

39.2.18 Insurance

The Financial Services Commission (FSC) is the body responsible for the regulation, licensing and supervision of the insurance companies including Captive Insurance Companies. The FSC being a member of the International Association of Insurance Supervisors and of the Committee of Insurance, Securities, and Non-Banking Financial Authorities (CISNA) of the SADC, supervision of the insurance business is done in accordance with international standards.

The FSC also licenses different types of insurance intermediaries, namely Insurance Brokers, Insurance Agents and Insurance Salespersons.

There are currently 19 insurance companies in operation on the island. Out of the 19, four carry out long term insurance business (“life”); four carry out general insurance business (“non-life”) while 11 of them carry out both long term and general insurance businesses.

There are also a few reinsurance companies based in Mauritius.

39.2.19 Mutual funds/global funds

The use of Mauritius as a fund domicile has known a recent surge in the wake of new funds and securities regulations bringing added confidence and impetus to Mauritius as a favoured jurisdiction for setting-up global funds. The combination of the relatively low rate of taxation together with the access to the vast network of double taxation avoidance treaties, make Mauritius one of the preferred routes for foreign investment to emerging economies such as India and China, as well as countries on the African continent. As at December 2012, there are more than 936 Global funds incorporated in Mauritius with Net Asset Values exceeding USD30 billion.

The majority of the funds incorporated in Mauritius are Global funds holding GBC1 and CIS (Collective Investment Schemes) licences.

The CIS should hold an authorisation under the Securities Act 2005 to operate. The fund can either be closed-ended or open-ended.

A CIS Manager is normally appointed to manage a CIS. A Mauritius CIS Manager will be regulated under the Securities Act 2005. CIS have the option to use a CIS Manager located outside Mauritius subject to approval of the FSC.

Investment Advisers may also be set-up to advise and manage a portfolio including a CIS and third parties.

39.3 TRUST LAW

39.3.1 Development of trust law and legislation

The Substantive law of Mauritius is derived from English and French sources and the principles of equity were introduced to and applied in Mauritius during the British rule. The first Trust Act which was an updated and improved ver-

sion of the English Trustee Act 1925 was enacted in 1989. In 1992, Parliament passed the Offshore Trusts Act 1992 specifically to provide a framework for the setting-up of non-resident, offshore trusts.

In 2001, a new Trust Act was enacted which replaced the Trust Act 1989 and the Offshore Trust Act 1992. The Act brings consistency to the types of trust vehicles that are available to residents and non-residents. It contains most of the desirable features prevailing in other offshore jurisdictions and also brings about a number of innovative features.

39.3.2 Types of trusts and their uses

Mauritius non-resident trusts are legal structures used for asset protection, inheritance planning and wealth management purposes. Essentially property or assets are transferred by the settlor of the trust to the trustees, as per the terms laid out in a trust deed, for the trustees to hold and administer for and on behalf of specified beneficiaries or for specific purposes. The essence of the concept is the separation of legal and beneficial ownership: ie the property is legally owned by the trustees but is held and administered for the benefit of the beneficiaries or for a purpose.

39.3.2.1 Some important features of Mauritius Offshore Trusts

The Mauritius laws allow for the formation of life interest trusts, discretionary trusts, fixed interest trusts, purpose trusts, charitable trusts, protective trusts, asset protection trusts etc.

Other important features of Mauritius trust law include:

- Non-resident trusts are tax exempt in Mauritius although may optionally apply to become resident in order to take advantage of Double Taxation Avoidance treaties.
- Trusts are not required to be registered in Mauritius, but may do so voluntarily if desired. There is also no requirement for the trustees to disclose the identity of the beneficial owners to any authority. *(Under exceptional circumstances, a trustee may be required to give confidential information to authorised persons under anti-money laundering, prevention of terrorism or prevention of corruption legislation or to the Financial Services Commission.)
- There are no Government or statutory fees for trusts.
- Trusts in Mauritius have a 99 year perpetuity period, except for non-charitable purpose trusts where the duration is 25 years.
- The forced heirship rules of other states will not be enforced by Courts in Mauritius.
- A trust may only be declared void by a court of law where the creditors of the settlor can prove beyond reasonable doubt that the intention of the settlor in creating the trust was to defraud existing creditors. No action

may be brought by the creditors more than two years from the transfer of assets into the trust.

- The appointment of protector is permitted. An enforcer is obligatory for purpose trusts.
- Mauritius trusts may have up to four co-trustees, with the requirement that at least one be a licensed and authorised trustee in Mauritius.

39.3.3 Choice of proper law

The Trust Act 2001 provides for the proper law of a trust, to be:

- the law expressed by terms of the trust or intended by the settlor to be the proper law;
- where no such law is expressed or intended, the law with which the trust has its closest connection at the time of its creation; or
- where the law expressed by the terms of the trust or intended by the settlor to be the proper law, or the law with which the trust has its closest connection at the time of its creation, does not provide for trust or category of trust involved, the proper law of the trust will be in Mauritius.

In ascertaining the law with which a trust has its closest connection, reference shall be made in particular to:

- The place of administration of the trust designated by the settlor.
- The situs of the assets of the trust.
- The place of residence or business of the trustee.
- The objects of the trust and the places where they are to be fulfilled.

A foreign trust whose proper law is a law other than the law of Mauritius is governed by, and interpreted in accordance with, that proper law. However, a foreign trust is not enforceable in Mauritius to the extent that it purports to do anything which under the law of Mauritius is an offence, that it confers or imposes any right or function, the exercise or discharge of which under the law of Mauritius is an offence, that is immoral or contrary to the public policy, or that it purports to apply directly to immovable property situated in Mauritius.

39.3.4 Creation of trust

39.3.4.1 Who may settle a trust?

A trust may be created by disposition of property *inter vivos* or by will, or by holding property on trust. Only an instrument in writing can create a trust other than a unit trust, constructive and resulting trust, or any trust arising by operation of law or by judicial decision.

A trust is not valid or enforceable where it purports to do anything contrary to the law of Mauritius, or it purports to confer any right or power or impose any

obligation, the exercise of which or the carrying out of which is contrary to the laws of Mauritius, or where the court declares that it was established by duress, fraud, mistake, influence, misrepresentation, or is in breach of the fiduciary duty, or is immoral.

The settlor can be any person who has the legal capacity to contract. A settlor who is a non-citizen and who transfers or disposes of assets to a trust, shall be deemed to have had the capacity to do so, where at the time of the transfer or disposal, he is of full age and of sound mind under:

- the laws of Mauritius; or
- the laws of his domicile or of his nationality; or
- the proper law of the transfer or disposition.

The Trust Act 2001 also provides that where a non-citizen transfers or disposes of property on trust, the transfer or disposition shall not be set aside, avoided, or otherwise declared invalid or ineffective by virtue of any rule or law of his domicile or nationality relating to inheritance or succession or any rule or law of a similar nature, or any rule or law restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death, or any rule or law having similar effect.

39.3.4.2 Trust property

There is no restriction on trust property which may consist of cash or shares. These shares are normally a holding or trading company. The assets of holding companies may be anything from immovable property to a private yacht to listed equities to the shares in an onshore trading company.

39.3.4.3 Duration and termination of trusts

All trusts are limited to a perpetuity period of 99 years from the date of their creation, unless terminated earlier, with the exception of a purpose trust which may be of perpetual duration.

A trust may be terminated by unanimous agreement among all beneficiaries or by court or by trustees in accordance with the terms of the trust deed.

39.3.4.4 Beneficiaries

A trust must either have identifiable beneficiaries or have a clearly defined purpose. The beneficiaries have an equitable interest in the trust property and can take action against the trustees if the trustees do not do their job properly. The beneficiaries are normally a class of persons.

39.3.4.5 Trustees

A trust under Mauritian law must always have at least one licensed Mauritian corporate trustee. There can be a maximum of four trustees.

39.3.4.6 Protector

The Trust Act 2001 provides for the office of a protector. Unless otherwise provided in the terms of the trust, the protector shall have the power:

- to remove a trustee and to appoint a new or additional trustee;
- to determine the law of which jurisdiction shall be the proper law of the trust;
- to change the forum of administration of the trust;
- to withhold consent from specified actions of the trustees either conditionally or unconditionally.

For a purpose trust, it is required by law that an enforcer be appointed whose duty shall be to enforce the trust in accordance with its terms and purposes

39.3.4.7 Formalities

There is currently in Mauritius no requirement for a trust to be registered with any governmental body. However, the trust deed may be registered at the office of the Registrar General in order to get a “date certaine” in evidence of the existence of the trust and its date of creation.

39.3.5 Administration of trust

39.3.5.1 Trustees' meetings and resolution

The trust is managed by the Board of Trustees (maximum of four trustees), one of whom must be a duly licenced management company.

Subject to the terms of the trust, trustees have the duty to preserve and enhance, so far as is reasonable, the value of the trust property.

Trustees are required to keep updated and accurate accounts and records of their trusteeship. In addition, trustees must keep trust property separate from their own property, and separately identifiable from any other property of which they are trustees.

The Trust Act 2001 also provides for Custodian and Managing Trustees.

Private Trust Companies (PTC) may also be set-up to act as trustee for a particular trust or group of related (underlying) trusts and which does not need to be licensed as a trust company.

A PTC provides a means by which a settlor incorporates his or her own private trust company to act as trustee (in place of appointing a professional trustee) to hold the shares of the asset holding or investment company. The primary advantage of such a structure over a usual trust structure would be the fact that the settlor retains an element of control over the trust affairs.

39.3.6 Taxation of trusts and fiscal Regulations

In respect of taxation, a distinction is made between resident and non-resident trusts. A trust of which the settlor and all the beneficiaries have been non-resident and all the beneficiaries for the fiscal year may submit a declaration of non-residence with the Mauritius Revenue Authorities. Non-resident trusts are not subject to income tax in Mauritius.

39.4 REGULATORY AND LEGISLATION UPDATES

39.4.1 New legislation

A Foundations Act came into force in July 2012. A foundation is in many respects similar to corporate entities but affords the protection and continuity derived from the use of trusts. It has no members or shareholders, and is generally established to reflect the wishes of the founder, who may be an individual or a corporate entity. These wishes are contained within the foundation's charter and regulations. Foundations can be established for a fixed or indefinite period of time and can be used for charitable, commercial or family purposes. Foundations are a very important component when structuring the ownership of family and corporate assets and are generally important where trusts are not generally recognised. It is increasingly being used across the globe, especially in civil law jurisdictions where the concept of trusts is less well known. The Mauritius Foundations Act 2012 offers one of the most versatile and dynamic foundations available from any jurisdiction and further promotes the jurisdiction as a platform for wealth management services, succession and estate planning. A foundation may upon application to the Financial Services Commission of Mauritius, hold GBL1 and benefit from all the advantages available to GBL1 as detailed above.

39.4.2 Double Tax Agreements (DTA)

Nine treaties await ratification: Congo, Egypt, Gabon, Kenya, Monaco, Nigeria, Russia, Rwanda, South Africa.

One treaty awaits signature: Ghana.

39.4.3 Exchange of Information (EOI)

Following the OECD peer review carried out in June 2010, the Income Tax Act was amended in December 2010 to require the keeping of underlying documentation by all persons deriving income including trusts and sociétés. The Companies Act was also amended in July 2011 to require GBC2 companies to keep full accounting records and underlying documentation.

39.4.4 Foreign Account Tax Compliance Act (FATCA)

In August 2013 representatives of the governments of Mauritius and the United States concluded their negotiations and initialled a Model 1 intergovernmental

agreement (IGA), and a new tax information exchange agreement. The agreements pave the way for automatic exchange of information under the US Foreign Account Tax Compliance Act (FATCA) provisions.

The main recommendations have been as follows:

- To enter into a Tax Information Exchange Agreement (TIEA) and to sign a Model 1 Intergovernmental Agreement (IGA) with the US to facilitate the compliance of financial institutions (FFIs) in Mauritius with FATCA reporting rules.
- That our IGA with the US should contain a “most favoured nation” clause which provides that any more favourable terms negotiated under another country’s IGA will automatically be applicable to Mauritius.
- That a Collective Investment Scheme (CIS) should be exempt from the reporting obligations where all the investors in the CIS are FATCA compliant.

The Model 1 IGA requires Mauritius Financial Institutions to report information directly to the Mauritius Revenue Authority, which then automatically exchanges the information with the US pursuant to an income tax treaty or exchange of information agreement.

While both Governments are completing the necessary procedures to sign the agreements, the Technical Committee shall now work on the legal framework needed for the implementation of the IGA in Mauritius.

39.5 SUMMARY FACT SHEET

GENERAL OVERVIEW	
Location	Indian Ocean
Time zone	GMT +4
Population	1.2 million (2000 census)
Capital	Port-Louis
Airport(s)	1 - Sir Seewosagur Ramgoolam
Language	English and French
Currency	Mauritian Rupees [MUR]
Political system	Westminster style democracy
International dialling code	+230
Legal system	Hybrid system
Centre's expertise	

TAX	
Personal income tax	15%
Corporate income tax	15%
Exchange restrictions	Suspended
Tax treaties	37 tax treaties
SHARE CAPITAL	
Permitted currencies	All currencies
Minimum authorised capital	Concept of authorised capital is no more applicable.
Minimum share issue	One share
TYPE OF ENTITY	
Shelf companies	Not available
Time taken to register new entity	GBC1 – 10 Days GBC 2 – 3 to 4 Days
Annual fees	GBC 1 – USD1740 GBC 2 – around USD300
DIRECTORS	
Minimum number	One director
Residency requirements	Two directors for GBC1
Corporate directors	For GBC2 only
Meetings/frequency	At least one meeting for GBC1
SHAREHOLDERS	
Disclosure	Disclosure to authorities only
Bearer shares	Not allowed
Minimum number	One shareholder
Public share registry	No
Meetings/frequency	Once a year
ACCOUNTS	
Annual return	For GBC1 – audited financial statements For GBC2 – financial summary (P&L and Balance Sheet)
Audit requirements	For GBC1 only
REGULATORY & LEGISLATION	
Double Tax Agreements (DTA)	Mauritius has 37 DTA in force. Most of them are based on the OECD model.

Exchange of Information (EOI)	5 Tax Information Agreements (TIA) are currently in force.
Criminalisation of Money Laundering	Mauritius has enacted AML/ CFT legislation, to deal with the prevention of corruption, fraud, financial crime, money laundering and terrorism activities.
Foreign Account Tax Compliance Act (FATCA)	Mauritius and the US have agreed to enter into a Model 1 intergovernmental agreement (IGA), and new tax information exchange agreement.
Mutual Administrative Assistance in Tax Matters	S74 of Income Tax Act allows the Government to enter into arrangements with the government of a foreign country for the purpose of the exchange of information in the administration of the laws in relation to income tax and foreign tax. .
OTHER	
Registered office	Must be maintained in Mauritius.
Domicile issues	Foreign companies can be re-domiciled in Mauritius and vice-versa
Company naming restrictions	Some restrictions on some words



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