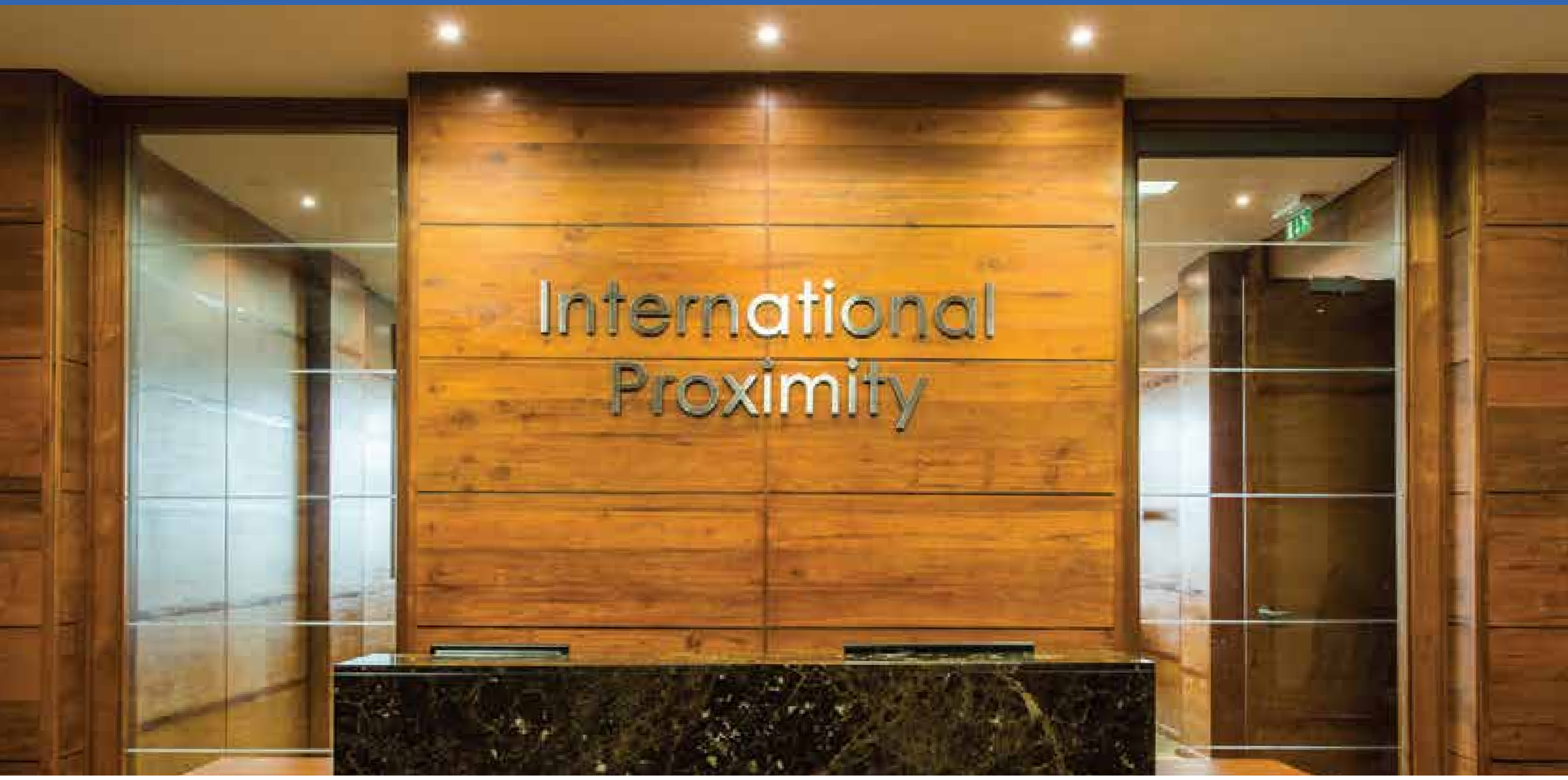

CHANGES TO THE MAURITIUS GLOBAL BUSINESS SECTOR TO ENHANCE THE ATTRACTIVENESS AND COMPETITIVENESS OF THE MAURITIUS INTERNATIONAL FINANCIAL CENTRE

The Mauritian Global Business regime is currently undergoing certain changes aimed at enhancing the attractiveness and competitiveness of the Mauritius International Financial Centre. These changes, introduced on 31 July 2018, by the Mauritius Finance (Miscellaneous Provisions) Act (the "Finance Act 2018") involve the harmonisation of the fiscal regime for Domestic Companies and Global Business Companies.

1. Changes to existing regulatory regime

1.1 Changes to the licensing of the GBC1: Conversion to the GBC

As from 1 January 2019, no Category 1 Global Business Company (GBC1) licence will be issued by the Financial Services Commission ("FSC") in Mauritius. There will be only one type of Global Business Company (GBC) licence issued by the FSC (no longer GBC1 and GBC2 licences). The new definition of "Global Business" is as follows:

(a) means a licence issued under section 72(6) of the Financial Services Act
(b) includes a licence issued to an external insurer.

1.2 New enhanced substance requirements for the GBC

There will be new substance requirements for the GBC, clarified in the FSC circular letter of 12 October 2018, and effective from 1 January 2019, requiring that core income-generating activities should at all times be carried out in, or from, Mauritius, by:
(a) employing, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities [where the employment is indirect, e.g. by a Mauritian management company ("MC"), it should be suitably qualified to conduct the core activities]; and
(b) having a minimum level of expenditure which is proportionate to its level of activities;

In addition to the existing requirements below:
(d) management and control from Mauritius; and
(e) administered by a MC.

When assessing the substance requirements set out above, the FSC will consider the nature and level of core income generating activities conducted (including the use of technology) by the GBC.

When determining what is intended by "a reasonable number of suitably qualified persons" and "a minimum expenditure which is proportionate to its level of activities", the FSC will make the assessment on a case by case basis and will look at the specific circumstances of each GBC. In doing so, the FSC will refer to the indicative guidelines as set out in the circular letter.

1.3 Changes to the licensing of the GBC2: replacement by the new Authorised Company

As from 1 January 2019, no GBC2 licence will be issued by the FSC and no new applications for GBC2 licences will be entertained as from 8 October 2018.

A new type of company known as "Authorised Company" has been introduced, with applications being entertained as from 8 October 2018. An Authorised Company is a corporation 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 and of which the majority of shares/voting rights/legal/beneficial interests (other than a bank licensed by the Bank of Mauritius and incorporated under the Companies Act 2001) are held or controlled by a non-citizen of Mauritius. An Authorised Company must apply to the FSC, through a MC, for an authorisation.

An Authorised Company must satisfy the following criteria:
(a) incorporated under the Mauritius Companies Act;
(b) majority of shares / voting rights/legal/beneficial interest held by a non-citizen of Mauritius;
(c) business conducted principally outside Mauritius (certain activities such as banking, financial services, nominee services are not allowed, as was the case for the GBC2);
(d) place of effective management is outside Mauritius; and
(e) have a registered agent in Mauritius which shall be a MC.

1.4 Grandfathering rule/ Transitional provisions applicable to the GBC 1 and the GBC2

In order to ensure a smooth transition to the new regulatory environment for the global business sector, the Finance Act 2018 provides for the following grandfathering provisions:

- A corporation that was licensed as a GBC1 on or before 16 October 2017 will be grandfathered till 30 June 2021. As from that date, the corporation will be deemed to hold a GBC licence.
- A corporation that was licensed as a GBC1 after 16 October 2017 will be grandfathered only until 31 December 2018 after which it will be deemed to hold a GBC licence.
- A corporation that was licensed as a GBC2 on or before 16 October 2017 will be grandfathered till 30 June 2021. As from that date, the GBC2 licence will lapse.
- A corporation that was licensed as a GBC2 after 16 October 2017 will be grandfathered only until 31 December 2018, so will have to apply between 8 October 2018 and 31 December 2018 to convert to Authorised Company status, failing which its licence as a GBC2 will be deemed to have lapsed on 31 December 2018.

1.5 Register of beneficial owners

Every licensee shall keep and maintain at all times a register of beneficial owners of each of its customers and record such information as the FSC may determine.

2. Changes to taxation regime

2.1 Abolition of the Deemed Foreign Tax Credit and introduction of an exemption regime

The taxation of companies operating in the global business sector has been reviewed. The Deemed Foreign Tax Credit ("DFTC") regime available to GBC1s will be abolished as from 1 January 2019 and GBCs will thereafter be taxed at the rate of 15%. However, a "partial exemption" regime will be introduced. The intended changes shall take effect by regulation.

An income tax exemption of 80% in respect of the following income, provided that the substance requirement criteria are met, is now applicable:

- Foreign source dividend provided that such dividend is not allowed as a tax deductible item in the source country.
- Foreign source interest income.
- Profit attributable to a permanent establishment which a resident company has in a foreign country.
- Income derived by a Collective Investment Scheme, Closed-end fund, CIS manager, CIS administrator, investment adviser or assets manager licensed or approved by the FSC.
- Income derived by companies engaged in ship and aircraft leasing.

2.2 Foreign source income: income not derived from Mauritius

The Income Tax Act 1995 ("ITA") is amended to provide that "foreign source income" shall no longer include (i) income derived by a GBC1 from its transactions with non-residents or corporations holding a global business licence and (ii) income derived by banks from non-residents or corporations holding a global business licence. Further to changes brought to the ITA, an entity incorporated in Mauritius will be treated as non-resident for tax purposes (and therefore exempt from income tax) if its place of effective management is outside of Mauritius. Such an entity shall be required to submit a return of income to the Mauritius Revenue Authority ("MRA") within six months of its year end.

It is to be noted, however, that income derived by a corporation that has been issued with a GBC1 licence on or before 16 October 2017 from its transactions with non-residents or corporations holding a GBC licence under the Financial Services Act, will continue to be considered as foreign source income until 30 June 2021.

In addition, the existing exemption from income tax that GBC2s enjoy will continue to apply until 30 June 2021 to any such companies issued with a GBC2 under the Financial Services Act on or before 16 October 2017. However, such continued benefit will not apply if:

- The company has acquired intellectual property assets acquired from a related party after 16 October 2017.
- The company has acquired intellectual property assets acquired from an unrelated party, or any newly created intellectual property assets, after 30 June 2018.
- Income is derived from such specific assets acquired or projects started after 31 December 2018.

3. How these changes will affect Mauritian companies in practice

3.1 GBC1 - to be known as the GBC with effect from 1st January 2019

GBC1 (current type of company)

The GBC1 is a tax resident company which pays income tax at an effective rate of 3% and is able to access Mauritius' network of tax treaties. The GBC1 is the type of vehicle used for international investment where tax treaty benefits are available and/or where the entity is to be an investment fund. It can also be used for operating activities. In order to form a GBC1, information on the ultimate beneficial owners and the intended business of the company must be given to the FSC, although this information is not available to the public. It takes between 7 and 8 working days to set up a GBC1 as a holding company. A GBC1 must have two Mauritian directors, hold its board meetings in Mauritius - telephonic participation is possible - route its funding through a Mauritian bank and maintain its accounting records in Mauritius if it is to obtain a tax residence certificate entitling it to tax treaty benefits. A GBC1 must file annual accounts (which should be prepared in Mauritius and be audited by a Mauritian auditor).

GBC (new type of company with effect from 1 January 2019)

The GBC1 is to be re-modelled as a GBC with effect from 1 January 2019. The restrictions that existed on the extent to which a GBC1 could conduct dealings in Mauritius have been removed. A resident Mauritian company or partnership which is majority held by a non-resident and which conducts the majority of its business outside Mauritius will be required to obtain a GBC licence from the FSC and to do so through a duly appointed MC. In other respects, including as to the activities to be conducted through a GBC, the GBC will be identical to the GBC1.

A GBC in Mauritius (including a partnership holding a GB licence, but not a bank) will be eligible for exemption from income tax for 80% of specified income (replacing the previous deemed tax credit). That specified income encompasses, inter alia, foreign dividend income, foreign source interest income; profit attributable to a permanent establishment of a resident company in a foreign country; and 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. The existing credit system for relief of double taxation will continue to apply where partial exemption is not claimed or available.

Where a GBC1 has been issued with a licence on or before 16 October 2017, it will be grandfathered up to 30 June 2021. (Foreign income of a GBC1 with a licence issued on or before 16 October 2017 will include income from transactions with non-residents and other GBC1s or GBC2s up to 30 June 2021.)

Where a GBC1 has been issued with a licence after 16 October 2017, it will be grandfathered up to 31 December 2018.

3.2 New Authorised Company with effect from 8 October 2018 and GBC2 to be phased out with effect from 1 January 2019

Authorised Company (new type of company with effect from 8 October 2018)

Under the Finance Act 2018 changes referred to above, the concept of the Authorised Company has been introduced with applications being entertained from 8 October 2018 for companies that are majority foreign-owned and are conducting business and having their place of effective management outside of Mauritius. An Authorised Company is treated as non-resident in Mauritius for tax purposes, although it will have to file a return of income to the MRA within six months of its year end. The Authorised Company will be able to carry out all the activities of the former GBC2 (essentially any activity except banking, financial services, investment funds, nominee services) and, like the GBC2, will not access Mauritius’ tax treaty network.

An application for authorisation has to be made through a MC. Information on the ownership structure together with a brief business plan must be submitted to the FSC at incorporation. It takes between 4 and 5 working days to set up an Authorised Company. An unaudited financial statement in the form of a financial summary is required to be filed annually with the FSC. The processing fee for an Authorised Company is USD 150 and the annual fee is USD 350.

GBC2 (predecessor to the Authorised Company) to be phased out

The tax exempt GBC2 is to be phased out and the FSC will cease to issue licences for GBC2s as from 1 January 2019 with no new applications for GBC2s being entertained as from 8 October 2018.

Where a GBC2 has been issued with a licence on or before 16 October 2017, it will be grandfathered up to 30 June 2021 and its licence will lapse on 1 July 2021.

Where a GBC2 has been issued with a licence after 16 October 2017, it will be grandfathered up to 31 December 2018 so will have to apply between 8 October 2018 and 31 December 2018 to convert to Authorised Company status, failing which its licence as a GBC2 will be deemed to have lapsed on 31 December 2018.

3.3 Domestic Company

Domestic Company (current use)

In addition to the GBC1 (later GBC) and the Authorised Company, there is the option of setting up a Domestic Company. A Domestic Company is subject to income tax at the rate of 15% (although credit can be given for foreign withholding tax paid). Like the GBC1 and the Authorised Company, it is not subject to capital gains tax on the gain arising on the disposal of any of its investments, because there is no capital gains tax in Mauritian law. It takes between two and three working days to set up a Domestic Company.

Domestic Company (use as from 1 January 2019)

Where the Domestic Company is to be majority Mauritian-owned, it can be used for international holdings and can access Mauritius' tax treaty network. The Domestic Company is not subject to regulation by the FSC unless it is carrying out a financial services/investment fund activity.

Where the Domestic Company is to be majority foreign-owned, the new Finance Act 2018 changes provide that it will only be permitted to conduct business within Mauritius. (A Mauritian company which is majority foreign owned and which conducts its business predominantly outside Mauritius, will be required to obtain a GBC licence and engage a MC, as referred to above.)

The Domestic company will enjoy the same tax regime as the GBC.

3.4 Using the GBC and the Authorised Company to access the advantages of the Mauritius IFC going forward

For clients holding existing GBC1s, these will now be known as GBCs. They will continue to enjoy favourable tax treatment along the lines of the treatment that they have enjoyed before and to operate as they have previously operated, with the demonstrating of substance on the ground in Mauritius continuing to be important.

For clients holding GBC2s, International Proximity will handle the conversion process to Authorised Company status or alternatively GBC1 status prior to 31 December 2018.

For clients wishing to access the advantages of the Mauritius International Financial Centre going forward and who intend to invest outside Mauritius, with majority foreign ownership, the type of Mauritian entity to be set up will be either the GBC (particularly for substantial investment holding, investment funds and financial services activities) or the Authorised Company (particularly for entrepreneurial companies, trading and consulting activities.)

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