

Mauritius



Jason Harel
BLC Robert & Associates



Fayaz Hajee Abdoula
BLC Robert & Associates



Population:	1.3m (UN estimate – January 2017)
GDP per capita:	US\$20,500 (CIA Factbook – 2016)
Average GDP growth over previous [3] years:	3.5% (CIA Factbook – 2014-2016)
Official languages:	No official language, Creole, French and English widely spoken
Transparency International rating:	Ranked 50/176 (2016 Report)
Ease of doing business ranking:	Ranked 49/190 (2017 Report)

Type of legal system	Hybrid – based on the civil Napoleonic Code and the English common law system
Signatory to NY Convention	Yes (19 June 1996)
Signatory to ICSID Convention	Yes (2 June 1969)
Member of COMESA, OHADA, SADAQ, EAC	COMESA and SADC
Signed up to OECD Transfer Pricing Guidelines	No
Bilateral investment treaties	Mauritius is a party to several BITs/TIPs including with China, the US, the UK and the EU

Jason Harel and Fayaz Hajee Abdoula offer an insight into foreign investment in Mauritius, highlighting restrictions within the sugar industry, applicable tax rules and the relevant authorities that investors should consider.



Real Estate

1. Are there restrictions on foreign entities holding interests in land, and if so, how are they expressed?

Yes, the holding of interests in land (whether freehold or leasehold) by foreign entities requires the authorisation of the Prime Minister's Office (PMO).

A written application must be made to the PMO, detailing the precise location of the property, a site plan showing its extent, the nature of the interest intended to be purchased or otherwise acquired or held, and the reasons for which the application is made. The PMO may, at its entire discretion, request such other information it may require.

Certain statutory exceptions to the requirement of obtaining the authorisation of the PMO include:

- Holding immovable property for commercial purposes under a lease agreement not exceeding 20 years.
- Purchasing luxury villas, apartments, penthouses or other similar properties under the Invest Hotel Scheme, Property Development Scheme and Smart City Scheme.

A certificate of authorisation, setting out any particular conditions that must be respected by the applicant, is issued where the PMO authorises the application.

Employment

2. Are there any conditions placed on the hiring of a foreign worker (e.g. local minimum quotas which must first be met)?

A foreign worker cannot engage in employment in Mauritius without a work permit and a residence permit.

There are two different applicable regimes, depending on the category of employment and level of remuneration.

An employer must apply for a work permit from the Ministry of Labour for a foreign worker to be allowed to work in Mauritius.

Any non-citizen not holding a valid work permit whilst in employment, or any person employing a non-citizen not holding a valid work permit, commits an offence, and upon conviction is liable to a fine of not less than MUR 25,000 but not exceeding MUR 50,000 and to imprisonment for a

term not exceeding two years.

Foreign workers should possess the skills, qualifications and experience required for their proposed employment.

Generally, work permits are granted where a ratio of three local to one foreign worker is satisfied, and is subject to particular conditions which must be respected. An application for a residence permit must also be made.

For foreign professionals who, *inter alia*, will be employed to deliver professional services and earn a monthly basic salary of MUR 60,000, an occupation permit (which is a combined work and residence permit) may be obtained.

3. What are the restrictions on redundancies and any applicable compensation?

Mauritian employment legislation provides for employees to be consulted through trade union representatives.

An employer cannot reduce the number of workers in employment (temporarily or permanently) or close down the enterprise without first having, in consultation with the trade union, explored other possibilities, such as:

- restrictions on recruitment;
- retirement of workers who are beyond the retirement age;
- reduction in overtime;
- shortening working hours to cover temporary fluctuations in the need for a workforce; or
- providing training for other work within the same enterprise.

The employer and the worker may agree on the payment of compensation by way of a settlement. The employer may be required to pay severance allowance in the case of unjustified termination.

Investment and local content

4. Are there any general regulations on foreign investment, including any investment requirements for foreign companies to invest in conjunction with local entities or people, and if so, to what effect?

In general, there are no restrictions on foreign investment in Mauritius, except for foreign ownership in Mauritian sugar companies listed on the stock exchange. Not more than 15% of the voting capital of a sugar company can be held by a foreign investor without written consent from the Financial Services Commission (FSC).

It is to be noted that investors would usually be subject to existing anti-money laundering legislation.

There is no requirement for foreign companies to invest in conjunction with local entities or people.

5. Are there any specific legislative requirements, and if so, what are they?

There are no restrictions on doing business with certain countries or jurisdictions, except for countries banned by UN sanctions. Please also refer to the previous question.

6. Are there any restrictions on the importation of goods or raw materials into the country, including requirements that local produce is utilised rather than products bought outside the country?

Yes. The Minister of Finance may prohibit the importation of any goods.

In particular, the importation of the following is prohibited:

1. base or counterfeit coins;
2. goods which, for the time being, are prohibited by any other enactment; and
3. manufactured articles bearing the name, address or trademark of any manufacturer or dealer or the name of any place calculated to impart to those articles a special character of manufacture which they do not actually possess.

Finance

7. Are there any restrictions on the purposes for which money may be lent?

Yes. Money may not be lent for any purpose which is unlawful and/or against public policy.

8. How does the law work in relation to security interests in this jurisdiction, and over which classes of assets may security be granted? Does your jurisdiction recognise the concept of a trust and the role of a Security Trustee?

Common forms of security interests include charges, pledges, mortgages and assignments.

Security interests may be granted over the present assets owned by a company. Security over future assets generally cannot be taken. Future assets may be captured by a floating charge once these form part of the company's pool of assets.

The provision of, *inter alia*, fixed and floating charges over property, pledges over shares, and

assignment of bank accounts would be recognised. Shares may be secured by (i) a general pledge under articles 2073 to 2094-1 of the Civil Code, (ii) a pledge of shares under articles 2129-1 to 2129-6 of the Civil Code, provided the beneficiary of the pledge is a bank licensed under Banking Act 2004, or (iii) a pledge of shares under articles 92-6 to 92-11 of the Commercial Code, provided the issuer holds a global business licence granted by the FSC.

Mauritius recognises the concept of trust. A security trustee would hold security interests as trust property on trust for the benefit of secured creditors. The trust structure remains unaffected by changes to the underlying debt and the beneficiaries so that a change in lender will not necessitate amendments to the security documents or changes to registration of security.

Procurement/PPPs

9. What laws, regulation and guidance are in place to manage the procurement and management of infrastructure projects (including PPPs) and is this regime overseen by a special unit, division or department (such as a PPP unit) within Government?

The Public Procurement Act 2006 provides the framework for procurement and management of infrastructure projects in Mauritius. The Procurement Policy Office monitors the performance and progress of the procurement system.

The Central Procurement Board is responsible for approving the award of major contracts by public bodies. A party aggrieved by the breach of a duty imposed on public bodies or the Central Procurement Board may challenge procurement proceedings by writing to the chief executive officer of the relevant public body. Where the aggrieved party is unsatisfied with the decision of the relevant chief executive officer or the latter has not issued a decision within a specified time limit, the aggrieved party may apply for a review by an independent review panel.

The Build Operate Transfer (BOT) Projects Act 2016 allows the private sector to build and operate a project for a specified time before transferring same back to a government entity at the end of an agreed period. Where a governmental authority identifies a potential project, it will appraise that project and submit a feasibility report to the BOT Projects Unit within the Procurement Policy Office. The BOT Projects Unit assesses the report and submits its findings to the governmental authority.

Competition

10. Is there a merger control regime? If so, what are the thresholds for notification?

There is no mandatory approval or notification requirement in respect of merger situations in Mauritius. Under Mauritius law, a merger situation (i.e., the bringing together under common ownership and control of two or more enterprises of which at least one carries its activities in Mauritius, or through a company incorporated in Mauritius) may be subject to review by the Competition Commission (Commission).

This occurs where all parties to the merger supply or acquire goods or services of any description, and will, following the merger, together supply or acquire 30% or more of all those goods or services on the market or one of the parties to the merger alone supplies or acquires, prior to the merger, 30% or more of the goods or services of any description on the market.

If the above criteria are fulfilled, and the Commission has reasonable grounds to believe that the creation of the merger situation has resulted or is likely to result in a substantial lessening of competition within any market for goods or services, a review may follow. There is a procedure to seek voluntary guidance from the Commission.

11. Is there a competition/anti-trust law that prohibits items such as abuse of a dominant position, cartel behaviour and exclusivity arrangements, and if so, how actively is it enforced?

The Competition Act 2007 regulates business practices which have the effect or object of preventing, restricting or distorting competition in Mauritius. It encompasses the abuse of monopoly, merger, collusive agreements, bid rigging and vertical agreements involving resale price maintenance, and other restrictive agreements such as non-collusive horizontal agreements and other vertical agreements. The Competition Act 2007 is enforced by the Commission and through its chief executive officer (Executive Director).

Where the Executive Director has reasonable grounds to believe that a restrictive business practice is occurring or about to occur, he/she conducts an investigation and submits a report to the Commission. The Commission may then conduct a hearing with parties suspected of anti-competitive practices and decide whether to issue orders or directions or impose financial penalties or remedies. If an enterprise breaches a direction or an undertaking without reasonable excuse, the Commission must apply to a judge in chambers for a mandatory order to make good the default.

Intellectual Property

12. What protections does the local law provide for intellectual property rights?

Intellectual property is protected under two branches – industrial property and copyright.

The Industrial Property Office's (IPO) responsibilities include handling and administration of applications for the protection of patents, industrial designs and trademarks. Applications are made using prescribed forms and paying statutory fees. Duration of protection for: (a) patents is 20 years; (b) industrial designs is five years; and (c) trademarks is 10 years. An Industrial Property Tribunal (IPT) exists to, *inter alia*, hear appeals of persons aggrieved by certain IPO decisions and confirm, amend or cancel such decisions. The IPT is also empowered to invalidate decisions as to whether patents should have been granted, or industrial designs or trademarks been registered.

Any person committing an offence is, upon conviction, liable to a fine not exceeding MUR 250,000 and imprisonment for a term not exceeding five years.

The Copyright Act 2014 (CA 2014) provides for effective protection of copyright and related rights. An author who registers his artistic, literary or scientific work with the Rights Management Society (RMS) secures economic rights (reproduction, adaptation, distribution) and moral rights (claiming authorship, objecting to distortion or alteration) that subsist in the copyright material, and reinforces the claim of authorship by depositing such material with the RMS.

The RMS may represent and defend the interests of its members in Mauritius. An offence under the CA 2014 attracts on a first conviction a fine not exceeding MUR 300,000 and imprisonment for a term not exceeding two years and on a second or subsequent offence, a fine not exceeding MUR 500,000 and imprisonment for a term not exceeding eight years. Offenders may also be subject to orders of forfeiture.

Tax and Foreign Exchange

13. What taxes are businesses subject to in this jurisdiction? Please include, for example, corporate tax, VAT, stamp duty, tax on share issues, etc. and the applicable rates. What transfer pricing rules apply, and are any withholding taxes in force in your jurisdiction?

Tax resident vehicles are charged 15% on chargeable income. Foreign tax credits are generally allowed to reduce Mauritius tax payable where foreign tax is suffered on taxable income and written evidence of same is produced to the revenue authority.

A company holding a category 1 global business licence (GBC1) is entitled to a system of deemed foreign tax credits of 80% of the Mauritius tax which reduces the income tax to an effective tax rate of 3% on the qualifying income of the GBC1. Corporate tax payable by a GBC1 can be less than 3% and even nil where the actual foreign taxes are more than 12%.

A company holding a category 2 global business licence (GBC2) is not resident in Mauritius for tax purposes and is not liable to tax in Mauritius.

Value Added Tax (VAT) applies to goods and services. It is chargeable on taxable supplies of goods and services made in Mauritius by taxable persons in the course any business. VAT is also payable on importation of goods into Mauritius, irrespective of whether the importer is taxable or not. The rate of VAT is 15% on a taxable supply or 0% on a zero-rated supply. Goods and services which are exported and certain goods and services which are supplied on the local market are zero-rated supplies.

There are no stamp duties, capital duty or any other taxes on share issues, and no withholding tax on dividend distribution.

There are no transfer pricing rules. However, transactions between related parties must be made at arm's length.

14. Are there any foreign exchange rules that control repatriation of funds out of this jurisdiction?

There are currently no foreign exchange rules in Mauritius applicable to the repatriation of funds out of Mauritius.

Dispute Resolution

15. What is the courts' approach to enforcement of foreign judgments or arbitral awards?

Registration and enforcement of a foreign judgment without a re-examination of the merits of a case is effected through *exequatur* provided that, *inter alia*, such judgment remains valid and capable of execution where it was delivered. The judgment must also not be contrary to any principle affecting public order, and the defendant regularly summoned to attend proceedings and the court delivering the judgment had jurisdiction

to deal with the matter. The Supreme Court (court) may also register and enforce, under the Reciprocal Enforcement of Judgments Act 1923, an *in personam* judgment of a superior court in the United Kingdom.

Mauritius has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Previously, the courts adopted the reciprocity principle and enforced arbitral awards only from contracting states. However, with the government's commitment to promoting Mauritius as an arbitration platform, the reciprocity reservation was repealed. A party wishing to enforce an award must apply to the court and submit the duly authenticated original award and the original arbitration agreement or duly certified copies of same. The court may refuse enforcement upon request of a party against whom it is invoked if the party furnishes proof of one of the reasons provided under Article V (1) of the New York Convention or the subject-matter of the dispute is not capable of settlement by arbitration under Mauritius law or recognition or enforcement of the award would be contrary to public policy of Mauritius.

16. Are the local courts generally supportive of arbitration proceedings (for example, in granting interim relief in support of such arbitrations)?

Courts adopt a non-interventionist approach to arbitration unless otherwise required by Mauritius law. Six judges designated by the Chief Justice for a five-year mandate may determine issues relating to arbitration under Mauritius law. Matters arising out of an arbitration submitted to the court are heard by a panel of three judges.

An interim measure application by a party before the court will be heard in chambers by a designated judge and on returnable date by a panel of three designated judges.

The application must be made on notice to the other parties except where the case is urgent and to the arbitral tribunal if it has already been constituted. The court may grant an interim measure where the arbitral tribunal has no power to do so, for example where it has not yet been constituted or is unable to act effectively at that time. Upon application of a party, the court may also enforce an interim measure irrespective of the country in which it was issued.

The court may assist an arbitral tribunal in taking evidence by issuing a summons compelling a person to give evidence before the tribunal or produce documents, or ordering a witness to submit to examination.

General

17. In order for a foreign company to sign a document under local law are there any signing procedures that must be followed?

No, there are no specific signing procedures for a foreign company to sign a document under local law.

18. Are there any current legislative or policy developments that companies investing in this jurisdiction should be aware of?

The Financial Services Act 2007 has been amended as follows:

- a GBC2 may invest in shares or other securities listed on the Stock Exchange of Mauritius or other exchanges operating in Mauritius;
- no prior approval of the FSC is required for change of legal or beneficial ownership of not less than 5% in global business

companies conducting financial activities such as investment advisory, custodian and fund management; and

- entities conducting investment banking activities such as brokerage, underwriting, investment advisory, asset management and distribution of financial services may apply for an investment banking licence to the FSC.

The amendment of the Investment Promotion Act 2000 by the Finance Act 2016 introducing the “regulatory sandbox licence” allows companies to invest in innovative projects within an agreed set of terms and conditions.

The amendment of the Securities Act 2005 by the Finance Act 2016 introduces a corporate finance advisory licence for entities wishing to engage in the provision of advisory services.

The enactment of the CA 2014 revamps the legal framework for copyright protection and makes copyright law compliant with the WIPO Copyright Treaty 1996 and the WIPO Performances and Phonogram Treaty 1996. ■

Jason Harel
BLC Robert & Associates



Jason Harel is a co-founding partner of BLC Robert and boasts substantial experience in corporate M&A, workout transactions as well as taxation. He generally practises in the areas of corporate and commercial law, M&A, corporate insolvency, real estate and tax, but also advises on litigation matters.

Consistently identified as a 'leading practitioner' in his field by legal directories, Jason acts for public and private companies, banks, hotels and real estate on a range of acquisitions and other corporate transactions. Jason also sits on a number of boards of directors including JP Morgan Investments Ltd, African Legal Network (ALN) and IBL Ltd.

jason.harel@blc.mu

Fayaz Hajee Abdoula
BLC Robert & Associates



Fayaz has advised on some major transactions and has counselled various sophisticated and expert investors in the acquisition of companies incorporated in Mauritius. He has also advised Courts Asia, a company listed on the Singapore Stock Exchange, in respect of the proposed acquisition of the one of biggest furniture business in Mauritius. Currently Fayaz is also the advisor to General Electric, a multinational conglomerate corporate, RIU Hotel and Resort Group, one of the renowned names in the hotel industry. He is one of the lead employment lawyers in the firm.

fayaz.abdoula@blc.mu

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2nd Floor, The Axis
26 Bank Street, Cybercity
Ebene 72201
Mauritius

+230 4032 400
www.blc.mu