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Investment Funds

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BLC Robert & Associates

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Law and Practice

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Contents

BLC Robert & Associates is made up of seven partners and over 30 locally and internationally trained lawyers. The firm regularly advises on the establishment of closed-end funds and collective investment schemes in Mauritius and has assisted a number of private equity funds and fund managers as well as institutional investors. Their work consists of structuring and setting up fund structures and other types of private investment vehicles, and this includes advising on regulatory matters. The firm also regularly intervenes on transactional work and ongoing compliance issues. The eight-strong Financial Services team focuses on: financial services and regulations (including investment funds), compliance, banking and finance and capital markets. Recent work includes: advising on the setting-up of a fund in the form of an investment company and targeting a maximum USD400 million, which will provide permanent equity capital to growing mid-market companies across sub-Saharan Africa; and assisting on the setting-up of the fund with a target size of USD210 million and investing in income producing real estate, real estate-related companies or companies in which the underlying investment value is linked to real estate.

Authors

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Bhavna Ramsurun is a senior associate at the firm. She is involved in diverse aspects of financial regulatory matters with a special focus on securities law, investment funds and capital markets regulation. In that capacity, she has advised domestic and international players on securities law and capital market matters such as the raising of capital (private and public) and listing of securities (structured products, exchange traded funds, equity and debt securities) on both the Official Market and the Development & Enterprise Market segments of the Stock Exchange of Mauritius and on their ongoing obligations under the regulatory framework. She has also acted for investors on the acquisition of securities in Mauritian entities (listed and those entities regulated by the Financial Services Commission including investment funds). Bhavna regularly advises on the establishment of closed-end funds and collective investment schemes in Mauritius and of financial services providers and has advised private equity funds and fund managers as well as institutional investors. Her work consists of structuring and setting-up fund structures and other types of private investment vehicles, including advising on regulatory matters. She also regularly intervenes on transactional work and ongoing compliance issues.

1. Fund Formation

1.1 Formation of Investment Funds

The choice of Mauritius for the structuring of investments is well known to investment fund managers, as well as to investors (including institutional investors). Mauritius has established itself as a leading financial centre by adopting international norms and best practices and promoting a business friendly environment. Some key attributes of Mauritius include the following.

- According to the ratings of Doing Business 2019, issued by the World Bank, Mauritius is ranked as the 20th (out of 190 countries) most favourable country for doing business in the world and, among African countries, it is ranked first.
- In addition to providing an efficient platform to invest from, Mauritius is well regarded when it comes to good governance and economic democracy. Mauritius ranks first in Africa for the Mo Ibrahim Index of African Governance 2018.
- A Mauritius International Financial Centre regulated to international standards including anti-money laundering and countering the financing of terrorism (AML/CFT) and tax transparency and compliance.
- Mauritius has signed up to numerous co-operation and information sharing mechanisms, including the Foreign Accounts Tax Compliance Act (FATCA), the Common Reporting Standards (CRS), and Base Erosion Profit Shifting (BEPS) project.
- There are currently no foreign exchange controls and no restrictions on repatriation of profits.
- On 15 November 2018, the Organisation for Economic Co-operation and Development confirmed that Mauritius meets all the international requirements and does not have any harmful practices in its tax regime.
- In terms of structure, limited partnerships are commonly used, given the flexibility of being governed under the terms covered in the partnership agreement. Limited partners can have different rights compared to a company having a particular class of shares. Also, different terms and conditions can be arranged with different limited partners.
- It has a favourable and sophisticated legal system and a good level of professional service.
- The legal system of Mauritius is a hybrid legal system that is derived from both the English system of Common Law and the Romano-Germanic system, in which, the right to appeal in judicial proceedings may be brought before the English Privy Council.
- The entities to be created, being residents of Mauritius, can benefit from Mauritius' extensive network of double taxation agreements and investment promotion and protection agreements.

Mauritius is a recognised jurisdiction for global investment funds and, according to the Financial Services Commission (FSC, the regulator for non-banking financial services sector) data sheet, in December 2017 there were 964 investment funds (including 462 open-ended funds and 502 closed-ended funds).

1.2 Raising Capital from Investors

Mauritius is used as a platform for the raising of capital from investors both within Mauritius and internationally. The domestic fund industry is widely perceived to be undertapped (as per the register of licensees at 14 December 2018, there were 41 domestic funds).

The majority of funds holding a global business licence (as described in response to **1.3 Common Process for Setting Up Investment Funds**) are principally marketed to investors outside of Mauritius.

1.3 Common Process for Setting Up Investment Funds

A fund in Mauritius is regulated as a collective investment scheme or a closed-ended fund and a fund authorisation is required from the Financial Services Commission (FSC). There exist in Mauritius various vehicles which may be used to structure the proposed fund such as a company, limited partnership, trusts and protected cell companies.

A fund conducting business principally outside of Mauritius and whose majority of shares/voting rights/legal or beneficial interests are held by non-citizens will also be required to apply, in addition to their fund authorisation, for a Global Business Licence (GBL).

It is a mandatory requirement for any corporation holding a GBL to be administered by a management company duly licensed by the FSC (Administrator). Such an Administrator must also be appointed as the GBL's company secretary/registered agent and will be responsible for liaising with the authorities for the setting up and licensing of the entity. It also has the statutory functions of conducting know-your-client procedures on the principals, the beneficial owners and officers of the proposed GBL and for ensuring ongoing compliance with Mauritius' laws.

Prior to application, the applicant will need to reserve the proposed names of the entities with the Mauritius Registrar of Companies/Registrar of Limited Partnerships (Registrar) accompanied by the relevant fee and, if approved, the proposed name is valid for a period of two months from the date of notice of reservation of name.

In relation to the setting up of the fund in Mauritius, the application for registration is lodged with the Registrar concurrently with the application for a GBL and authorisation to operate as a fund (open-ended or closed end) with the FSC.

The following documents need to be submitted for registration and licensing of the Fund:

- a duly completed application form for registration/incorporation and licence;
- fund documents (for a company, a constitution and the shareholders' agreement (if adopted); for a limited partnership, a limited partnership agreement, an investment management agreement; for a trust, the trust deed, the subscription agreement, any advisory agreement). Drafts of the fund documents may be submitted and the FSC expects these to be in near final form;
- a draft offering memorandum or prospectus;
- a consent form for initial shareholders and directors or partners;
- know-your-customer documentation on promoters, beneficial owners and proposed directors, general partner or trustee (as applicable);
- certificates and confirmations required by law and the regulators; and
- appropriate government/licence fees.

It is to be noted that the FSC may also require an applicant to furnish such additional information as it considers appropriate to process the application. The timeframe for the application of a fund authorisation is six to eight weeks from the time the application is submitted to the authorities.

1.4 Regulation of Fund Structures

A fund is required to be managed by a Mauritian licensed investment manager but, in the case of a company, may be self-managed (ie, managed by its board of directors), management with the approval of the FSC. In respect of a fund holding a GBL, a foreign regulated investment manager may be appointed, subject to the prior approval of the FSC.

Most funds set up in Mauritius are managed by an investment manager in Mauritius holding a CIS manager licence and a GBL (where it is managing a GBL fund).

1.5 Limited Liability

Investors typically seek participation in a structure where their liability is limited. These investments generally take the form of shares in a company limited by shares or partnership interests in a limited partnership. The liability of investors will be limited to the amount that the investors have contractually undertaken to pay to the fund.

To enjoy limited liability, the underlying principle in both structures is for the investor to have a passive participation. An investor risks losing its limited liability status where he or she participates in the management of the business of the fund. In doing so, he or she may be viewed as acting as the general partner or a director (depending on the structure) and thus attracting unlimited liability which generally attaches to a general partner or be personally liable as a director.

Legal opinions on limited liability (as well as on matters such as due incorporation/registration, power, capacity and authority of the fund to execute the fund agreements) of investors are typically provided upon request by the shareholders/limited partners.

1.6 Common Tax Regimes

The tax regime will be dependent on the type of the vehicle and the type of the fund.

The typical vehicle used to structure a closed-end fund is a private company limited by shares or a limited partnership, whereas a collective investment scheme is commonly structured as a public or private company or protected cell company. A company or a protected cell company will be tax opaque and be taxed in Mauritius.

A limited partnership will be tax transparent and therefore will not be taxable in Mauritius if it qualifies as a resident société under the Income Tax Act 1995 (ITA). A limited partnership will meet the criteria of a resident société as understood under the ITA, namely that the seat of the limited partnership is in Mauritius; and the limited partnership has at least one partner or manager resident in Mauritius.

In addition, a limited partnership holding a GBL may elect not to be tax transparent and rather pay tax in Mauritius like a company. The common tax regime for GBL limited partnership funds is to adopt a tax transparent structure.

1.7 Investment Sponsors

Mauritius as a domicile for structuring business into Africa and Asia is quite well established and known among fund managers and institutional investors. Investors not only take comfort from the advantageous tax system (and namely the non-taxation of capital gains and dividend distributions) but also that Mauritius is a recognised financial services centre and has various attributes which are outlined in the response to **1.1 Formation of Investment Funds**.

In addition, Mauritius is a politically stable jurisdiction with a system of law inspired from English common law and French civil law with a final right of judicial recourse to the English Privy Council, but at the same time being geographically and culturally close to countries in Africa and in Asia, making it a preferred platform for establishing holding structures in emerging markets of these continents. Mauritius is a member of the Southern African Development Community (SADC), the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC) and the Common Market for Eastern and Southern Africa (COMESA).

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1.8 Disclosure Requirements

A fund authorised in Mauritius needs to file an offering document with the FSC. The type of offering document and the relevant disclosure in this document will vary depending on the category of the fund and the target investors.

The offering document should contain all information on the securities to be offered and the fund which would be required to allow investors to make an informed assessment of the investment.

A prospectus is required for funds targeting the public or retail investors and needs to comply with a list of prescribed disclosure requirements, including the matters required by the Mauritius Securities Act 2005 (the Act) and the rules and regulations made thereunder, for instance:

- investment objectives and restrictions;
- details and functions of the investment manager;
- events concerning termination of a manager's appointment;
- types of investors targeted and recommended lock-in periods, terms of subscription (including minimum initial or subsequent investment, distribution rights, entry or exit fees, method/procedure of subscription or redemption, method and frequency of net asset value calculations); and
- any fees or charges to be attributed to the fund.

The disclosure requirements for funds being offered by way of private placement or to sophisticated investors, high net worth investors or expert investors will be reduced. However, the offer document must contain requisite disclaimers and generally sufficient information to investors, to allow them to make an informed decision on investment in the fund.

1.9 Legal Forms

Funds can be set up as companies, limited partnerships, protected cell companies (PCC) or trusts. The typical vehicle used to structure a closed-end fund is a private company limited by shares or a limited partnership, whereas a collective investment scheme is commonly structured as a public or private company, unit trust or PCC.

Companies

Companies may be established as public and private and 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. Companies have the following features:

- liability only up to the extent of investment;
- a board responsible to investors for their decisions under the doctrine of fiduciary responsibility;
- a legal personality; and
- statutory rules for filing and reporting ensure transparency and accountability.

The flexible rules of Mauritius company legislation allow a company to be used in the same manner as a limited partnership. Distribution of income is subject to the company remaining solvent and the company is treated as one taxable unit.

Limited Partnership

This is a form of partnership governed by the Limited Partnerships Act 2011. A limited partnership can be set up with or without legal personality and will have at least one general partner and one or more limited partners. The general partner is responsible for the management of the limited partnership and has unlimited liability for the debts and obligations of the partnership. The liability of the limited partner is limited to the maximum amount of its commitment, provided that the limited partner takes no part in the management of the partnership. The limited partner will be treated as a general partner and be liable for the debts of the partnership, to the extent the limited partner is involved in the management of the partnership. Participants' interests are referred to as partnership interests. In terms of advantages, a private equity fund structured as a partnership would offer the benefits of relative flexibility of the vehicle, the mitigation of fiduciary risks, the ability to account for profits and losses at limited partner (LP) level and tax transparency. The partnership also offers limited liability to LPs, but the liability of a general partner is not capped.

Protected Cell Company (PCC)

A PCC is subject to the Protected Cell Companies Act 1999 and the Companies Act 2001. Participants in a protected cell company are issued with shares in the relevant cell in which they invest and are referred to as 'cell shares'. Segregation of assets and liabilities can be achieved by using a protected cell company. In particular, PCCs are often structured to meet the objectives of investment, such as providing for investor returns from specific cells, distinct separation of non-cellular assets and cellular assets and restricting liability arising from one cell to that cell only. PCCs have the same advantages that a company has.

Trusts

Trusts are created under the Trusts Act 2001 and participants are issued with units in the trust. A trust established in Mauritius can have up to four trustees, of which at least one should be a qualified trustee (a person who is authorised as such per the FSC).

Trusts are easy to set up, but do not have legal personality. The creation of a trust does not require any registration or incorporation. No corporate filings are required and 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.

1.10 Regulatory Status

There are two main categories of funds: collective investment schemes and closed end funds. A collective investment scheme, as defined in the Securities Act 2005, has 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, which are characterised principally by the fact that the investors do not have control on exiting the fund.

Collective investment schemes and closed-end funds can be 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), 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 collective investment scheme has a number of investment restrictions which may be lifted with the approval of the FSC, where it is satisfied that the fund has justification to borrow or make the investment, including 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;
- subscribe to securities offered by a company in formation;
- lend money, securities or other assets; and
- purchase a security or sell a security to the investment manager, the custodian, an officer of the investment manager or the custodian and an affiliate of the foregoing persons, unless the purchase or sale is carried out at arm's length.

It should also be noted that a collective investment scheme 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, or the charge secures a claim for fees and expenses incurred for services rendered while redeeming those securities.

The investment and borrowing restrictions do not apply to closed-end funds.

Funds can be further categorised as 'expert funds' (which must be an open-ended fund) or 'professional collective investment scheme' (which can be both open-ended and closed-ended) and are exempted from certain regulations. The following are some examples:

- 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;
- the requirement to prepare and file management reports and quarterly reports;
- the requirement to conduct daily valuations; and
- the requirement to publish, on a weekly basis, the prices of interests in the collective investment scheme.

An expert fund is only available to either an investor making an initial investment on its own account of no less than USD100,000, a sophisticated investor (as defined in **3.6 Approach of the Regulator**) or any similarly defined investor in the securities legislation of another country.

A professional collective investment scheme is only available to a sophisticated investor, as defined in the Securities Act 2005, or a private placement in the case of an open-ended fund where the minimum subscription amount is at least USD200,000 and for a closed-end fund where the subscription amount is generally more than USD100,000.

To qualify for the categorisation of a professional collective investment scheme the following conditions should be met: shares acquired by the participants shall not be resold to the public and the participants are advised of this restriction at the moment of subscription, or the fund is not listed for trading on a securities exchange.

1.11 Legal, Regulatory or Tax Legislative Changes

Reforms to the global business sector are as follows.

- Changes have been brought to the licensing of entities holding Global Business Licences Categories 1 and 2. The major change to the Financial Services Act 2007 (FSA) is that the Global Business Category 1 Licence (GBL1) is now known as the Global Business Licence (GBL) while the Category 2 Global Business Licence (GBL2) has been abolished and replaced by the Authorised Company.
- Any corporation, other than an Authorised Company which proposes to conduct or conducts business principally outside Mauritius, or with such a category of persons as may be specified in the rules issued by the FSC and of which the majority of shares or voting rights or the legal or beneficial interest (other than a bank licensed

by the Bank of Mauritius and such other corporation as may be specified in rules issued by the FSC) are held or controlled, as the case may be, by a person who is not a citizen of Mauritius, will need to apply for a GBL from the FSC.
- New substance requirements for a GBL – a corporation which holds a GBL must at all times carry out its core income generating activities in, or from, Mauritius by employing, either directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities and having a minimum level of expenditure, which is proportionate to its level of activities. The previous requirements for a corporation to hold a GBL1, namely that it is managed and controlled from Mauritius and administered by a management company licensed by the FSC, will continue to apply to the newly styled GBL entity.
- Introduction of the Authorised Company – 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 interest (other than bank, licensed by the Bank of Mauritius, and incorporated under the Companies Act 2001) are held or controlled by a non-citizen of Mauritius, must apply to the FSC, through a management company, for an authorisation.
- However, the holder of a GBL1 or a GBL2, which was issued by the FSC on or before 16 October 2017, will not be impacted by the reforms until 30 June 2021.

Amendment of Income Tax Act are as follows.

- The Deemed Foreign Tax Credit regime available to entities holding a GBL1 has been abolished with effect from 1 January 2019 and replaced with a partial exemption regime that is available to all companies resident in Mauritius for tax purposes. The partial exemption regime provides an 80% exemption in respect of the following types of income:

- foreign source dividend, provided that such dividend is not allowed as a tax deductible item in the source country;
  (a) foreign source interest income;
  (b) profit attributable to a permanent establishment which a resident company has in a foreign country;
  (c) income derived by a Collective Investment Scheme, Closed end fund, CIS manager, CIS administrator, investment adviser or assets manager licensed or approved by the Financial Services Commission; and
    (i) income derived by companies engaged in ship and aircraft leasing.
    (ii) However, the holder of a GBL1 which was issued by the FSC on or before 16 October 2017 may opt to continue to take advantage of the Deemed Foreign Tax Credit regime until 30 June 2021.

- Further, a GBL1 was considered a tax resident if it had its central management and control in Mauritius. Henceforth, in addition to having its central management and control in Mauritius, a GBL will need to ensure that its place of effective management also is in Mauritius so as to be considered tax resident in Mauritius.

2. Fund Investment

2.1 Types of Investors

The market cannot be said to be dominated by mainly one type of investor, as we see a diverse range of investors in Mauritius. However, in recent times, due to Mauritius' efforts to be compliant with international taxation and reporting regimes, a lot more institutional investors seem to have gained confidence in using Mauritius.

2.2 Legal, Regulatory and Investment Structures

The choice of investment structure would depend on:

- the operational requirements of the investor;
- their inhouse requirements in the case of developmental financial institutions;
- their appetite for profits (factors such as administration costs need to be taken into account); and
- their need for tax optimisation.

This firm tends to see a mix of structures, and investment funds are tailor-made to the requirements of the investor, as such there is no one structure that is preferred above all. However, with the enactment of the Limited Partnerships Act 2011, the firm tends to see more private equity funds being structured as limited partnerships.

2.3 Legal, Regulatory or Tax Themes/Issues

There are no particular legal, regulatory or tax issues which are typically raised by investors in Mauritius; however, investors will typically request for confirmations as to any limited liability or tax risks.

2.4 Restrictions on Investors

Investment funds should be duly registered with the FSC, pursuant to the Securities Act 2005 and the regulations thereunder (if applicable) to be offered to the public in Mauritius. Unregistered funds can only be marketed through locally licensed intermediary, either by way of private placement or to sophisticated investors. Direct marketing of the fund to the public will trigger compliance with the prospectus regulations.

For open-ended and closed-ended retail funds, offerings are made either by a licensed investment intermediary (such as an investment dealer or investment adviser, 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 retail funds.

In the case of a public offering, the fund must register itself as a reporting issuer and is subject to an additional disclosure requirement (to the FSC). Reporting issuers must notify the FSC of any material changes to their affairs and must also declare how many of their shares or interests 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.

Open-ended and closed-ended retail funds can be offered to the public, and they need to provide a prospectus. There are no differences between how local or foreign funds are marketed, as they must both appoint licensed intermediaries. 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.

The production and offering of marketing materials are governed by the Securities Act 2005, the rules and regulations made under it and the Guidelines for Advertising and Marketing of Financial Products 2014.

2.5 Marketing Restrictions

The production and offering of marketing materials are governed by the Securities Act 2005 and the regulations and rules thereunder and the Guidelines for Advertising and Marketing of Financial Products 2014.

For fund offerings that are made either by a licensed investment intermediary (such as an investment dealer or investment adviser, 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.

Shares or interests in funds that are authorised as professional CIS or expert funds can only be offered to specific types of investors and are subject to the exemptions as described in **1.10 Regulatory Status** above.

3. Regulatory Environment

3.1 Regulatory Regime

A fund is required to be managed by an investment manager licensed as a CIS Manager by the FSC. The fund where it is constituted as a company may be self-managed (ie, managed by its board of directors), with the approval of the FSC; however, in the case where the fund holds a GBL, it is open to this fund to appoint a foreign manager, subject to the approval of the FSC.

An application for a licence of a CIS manager is to be made in the prescribed form to the FSC, and must be accompanied by documents such as:

- the governing documents of the CIS manager;
- a code of ethical principles to govern it;
- an internal procedures manual, which should also contain contingency planning and disaster recovery;
- the anti-money laundering framework;
- a conflict of interest policy; and
- credentials of the principals, CVs and the prescribed personal questionnaire and normal KYC information.

On submission of the application pack, the FSC takes around approximately four weeks to consider the application and may raise queries and request for clarifications.

A CIS manager is required to comply with certain conditions, which include:

- it has to be a body corporate;
- it has to be principally engaged in the business of managing funds (or pension schemes);
- it has to maintain a minimum stated unimpaired capital of at least MUR1 million or an equivalent amount;
- to take out professional indemnity insurance in respect of fraud and professional breaches and negligence;
- to have in place a reasonable written policy to cater for conflict of interest, code of ethics and conduct and rules of internal control;
- the manager has to comply with prescribed duties and functions, for instance:

  (a) act in the best interests of the participants in the scheme and, where there is a conflict between the interest of the participants and their own interests, give priority to the participants' interests;

  (iii) exercise the degree of care and diligence that would be reasonably expected of a person in that position;

  (iv) ensure that the assets of a scheme are clearly identified and held separately from the assets of the CIS manager and the assets of any other scheme managed by the CIS manager; and

  (b) not make use of information acquired through being

a manager to gain an improper advantage or cause detriment to the participants in the scheme.

(c) To be a self-managed fund, the approval of the FSC is required. Self-management entails the board of directors of the fund performing the functions of a CIS manager and that such directors are jointly bound and responsible to perform the functions of the CIS manager.

For appointment of foreign managers, please refer to **3.2 Territorial Reach of Regulators**.

3.2 Territorial Reach of Regulators

The FSC may approve a foreign manager to manage a fund authorised in Mauritius. The FSC will consider if the licence of the foreign investment manager is issued by a regulatory body in a jurisdiction having a comparable regulation as Mauritius for investor protection. In support of the application for prior approval, a draft of an investment management agreement between the fund and foreign investment manager, and evidence of the licensed status of the manager need to be submitted to the FSC.

In addition, the FSC has the power to recognise such a fund established in a foreign jurisdiction and permit it to operate in Mauritius if it is satisfied that the fund is regulated in its country of domicile. The foreign fund has to furnish documentary evidence of its constitution, establishment and good standing in the relevant jurisdiction, including complete details of the authoritative body having the regulatory and supervisory functions in the jurisdiction the scheme is established.

3.3 Regulatory Approval

Investment funds should be duly registered with or authorised by the FSC, pursuant to the Securities Act 2005 and the regulations thereunder to be marketed in Mauritius. In addition, a person distributing or promoting the fund is required to be licensed by the FSC and should notify and make a prior submission of marketing material to the FSC for any marketing.

3.4 Authorisation of Marketing Activities

The law limits any solicitation to invite or induce a person in Mauritius to buy, sell or exchange securities to be done solely by licensed persons. Activities such as (i) seeking to meet this person at his place of residence, work or public places; (ii) contacting this person by telephone, letters, circulars, the internet or other electronic means or telecommunication system; or (iii) publishing or causing an advertisement to be published or circulated by a person to induce another person to buy, sell or exchange securities or to participate in transactions involving securities, or offering such a person services, recommendations or advice for those purposes, may be carried out only by locally licensed intermediary.

The Guidelines for Advertising and Marketing of Financial Products issued by the FSC regulate the advertising and promotion of financial instruments, including fund products. The Guidelines regulate the conduct of the marketing and the content of advertisements, marketing materials and require certain specific disclosures and disclaimers on the product and the persons promoting them.

All marketing material needs to be submitted to the FSC prior to dissemination.

3.5 Investor-Protection Rules

There are specific categorisations of funds which are targeted only to specific investors and thus enjoy exemption from the regulations on the ground that they are only offered to sophisticated, institutional or high net worth investors.

'Expert funds' can only be offered to expert investors being an investor which makes initial investment for its own account of no less than USD100,000; or a sophisticated investor, as defined in the Securities Act 2005 (or any similarly defined investor in the securities legislation of another country).

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 that government;
- a bank (licensed by the Bank of Mauritius);
- a fund manager (licensed by the FSC);
- an insurer (licensed by the FSC);
- an investment adviser (licensed by the FSC);
- an investment dealer (licensed by the FSC); and
- a person declared by the FSC to be a sophisticated investor.

A professional collective investment scheme is available to the public and only available to a sophisticated investor, as defined in the Securities Act 2005; or a private placement in the case of an open-ended fund where the minimum subscription amount is at least USD200,000 and for an closed-end fund where the subscription amount is generally more than USD100,000.

3.6 Approach of the Regulator

The Financial Services Commission is mandated under the Financial Services Act to, inter alia, ensure the orderly administration of the financial services and global business activities and to ensure the sound conduct of business in the financial services sector and in the global business sector. In

order to achieve its objectives, the FSC elaborates policies which aim at ensuring fairness, efficiency, transparency and stability of the financial system in Mauritius. It also publishes monthly newsletters, FAQs and circular letters to provide for regular updates and guidance. The regulator's online portal is well maintained and accurately contains general information, up-to-date legislations and regulations, as well as statistics on licensed entities operating in Mauritius at any one time.

The FSC conducts investigations and imposes sanctions (including revocation or suspension of the licences) where it has reasonable cause to believe that a licensee (i) is committing or has committed a breach of the relevant laws; or (ii) is carrying or has carried on an activity which may cause prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system.

4. Fund Finance

4.1 Access to Fund Finance

Funds in Mauritius can access fund finance for subscription financing and/or leverage.

4.2 Borrowing Restrictions/Requirements

There are no regulatory restrictions or requirements in relation to borrowings save for certain categories of funds as set out in **1.10 Regulatory Status**.

4.3 Securing Finance

Typically a fund finance transaction will be secured by security over bank accounts of the fund and assignment of rights to make capital calls, which is accompanied by a power of attorney in favour of the lender to exercise such rights on behalf of the fund/general partner and/or manager (as the case may be) in addition to the assignment.

4.4 Common Issues in Relation to Fund Finance

The main issues are the restrictions to the creation of security rights over capital commitments/calls or use of investor's contributions which may be set out in the funds' documentations and more especially the side letters between the fund and a particular investor. It is also common that investors will resist acknowledging any notice of assignment and will refuse to pay the lender directly.

5. Tax Environment

5.1 Tax Framework

Funds are generally structured as companies or limited partnerships. Companies are tax opaque, whereas a limited partnership holding a GBL may elect to be tax transparent or tax opaque.

A fund that is established as a company that holds a GBL will be taxed on its income at the rate of 15%, although it would be entitled to claim either foreign tax paid on its foreign source income as credits against the income tax payable in Mauritius (ie, up to a maximum of 15%) in respect of that income where this can be evidenced, or effective as from 1 January 2019, an 80% exemption on income derived from overseas by the fund.

There is no withholding tax on dividend distributed by a fund established as a company to its shareholders. Further, any interest paid by a fund that is established as a company holding a GBL will be exempt from withholding tax to the extent that the interest is paid out of the foreign source income of the fund.

Funds structured as limited partnerships that have elected to be tax opaque will be treated similar to a fund established as a company. Funds structured as limited partnerships that have elected to be tax transparent will not be taxable in Mauritius if they qualify as a resident société under the ITA, but instead their partners who are tax resident in Mauritius will be subject to tax in Mauritius at the rate of 15% (although they will be entitled to the foreign tax credit and partial exemption available to companies) on their respective share of profits. Non-resident partners of a fund established as a limited partnership that has elected to be tax transparent will not be liable to tax in Mauritius in respect of foreign income received from the fund, or be liable to tax at the rate of 15% on income derived by the fund from Mauritius.

A limited partnership will meet the criteria of a resident société as understood under the ITA, namely when the seat of the limited partnership is in Mauritius and the limited partnership has at least one partner or manager resident in Mauritius.

The above tax considerations would be applicable to a fund established as a collective investment scheme as well to a closed-end fund.

5.2 Tax Treaty Network

As per the website of the Mauritius Revenue Authority (MRA), as at 12 February 2019, Mauritius has entered into 45 tax treaties and there are a series of treaties that are currently under negotiation. Six treaties await ratification. Four treaties await signature. The tax treaties currently in force include:

- Australia (partial);
- Barbados;
- Belgium;
- Botswana;
- Cabo Verde;
- Congo;
- Croatia;
- Cyprus;
- Egypt;
- France;
- Germany;
- Guernsey;
- India;
- Italy;

- Jersey;
- Kuwait;
- Lesotho;
- Luxembourg;
- Madagascar;
- Malaysia;
- Malta;
- Monaco;
- Mozambique;
- Namibia;
- Nepal;
- Oman;
- Pakistan;
- People's Republic of Bangladesh;
- People's Republic of China;
- Rwanda;
- Senegal;
- Seychelles;
- Singapore;
- South Africa;
- Sri Lanka;
- State of Qatar;
- Swaziland;
- Sweden;
- Thailand;
- Tunisia;
- UAE;
- Uganda;
- United Kingdom;
- Zambia; and
- Zimbabwe.

The tax treaties provide extra assurance and security for the country's potential investors. The extensive and expanding network of these treaties confirms the genuineness of Mauritius as a tax-efficient jurisdiction for structuring investment.

5.3 FATCA and CRS Regimes

FATCA

On 27 December 2013, the government of the Republic of Mauritius and the government of the United States of America signed an Agreement for the Exchange of Information Relating to Taxes (the Agreement) to set the legal framework to enable exchange of tax information between the two countries. This was followed by the signing of another agreement known as the Inter-Governmental Agreement (Model 1 IGA) to improve international tax compliance and to implement FATCA. Both agreements have been published in the Government Gazette No 61 of 5 July 2014 as GN 135 of 2014. Both the Agreement and the IGA entered into force on 29 August 2014.

The Agreement provides for exchange of tax information (upon request, spontaneous and automatic) between Mauritius and the USA. The IGA provides for the automatic reporting and exchange of information in relation to accounts held with Mauritius financial institutions by US persons and the reciprocal exchange of information regarding financial accounts held by Mauritius residents in the USA.

The MRA has issued guidance notes (available on MRA's website) to provide practical assistance to financial institutions, businesses, their advisers, and officials dealing with the application of FATCA.

Following the IGA, Mauritius Financial Institutions will not be subject to the 30% withholding tax on US source income provided they comply with the requirements of FATCA.

CRS

In June 2015, Mauritius signed the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) developed by the Organisation for Economic and Co-operation and Development (OECD). Formalities for the bringing into force of the Convention had been completed for the Convention to enter into force as from 1 December 2015. Under the Convention, information can be exchanged on request, spontaneously or automatically. Thus, Mauritius will be able to exchange information automatically on a reciprocal basis with all those jurisdictions that have signed the Convention. To enable the implementation of the CRS, the Income Tax Act has been amended accordingly and the MRA is the competent authority to administer the process. The effective date of 1 January 2016 was subsequently deferred to 1 January 2017, and the first reporting started from 31 July 2018.

Under the CRS, financial institutions (FIs) will need to report accounts held by non-residents to the MRA, which will be used for eventual exchange with other jurisdictions. In line with the OECD commentaries and handbook on the CRS, the MRA published a set of guidance notes amended in June 2018 (MRA Guidance Notes) to help identify which FIs have reporting obligations as well as set out the type of financial information and accounts that will need to be reported.

5.4 Tax Structuring Preferences of Investors

There is no withholding tax on the following payments by a fund established as a company:

- dividends distributed by the fund to its resident and non-resident shareholders;
- interest paid to non-residents out of the foreign source income of the fund; or
- interest paid to a company resident in Mauritius.

Any dividend income received by a Mauritian investor from a fund established in Mauritius is exempt from income tax. Any interest received by a Mauritian investor from a fund established in Mauritius will be subject to income tax at the rate of 15%.

The tax considerations of investors investing in funds structured as limited partnerships that have elected to be tax opaque will be the same as the above.

Tax resident investors of a fund structured as a limited partnership that have elected to be tax transparent and that qualify as a resident société under the ITA will be subject to tax in Mauritius at the rate of 15% (although they will be entitled to the foreign tax credit and partial exemption available to companies) on their respective share of profits. Non-tax resident partners of a fund established as a limited partnership that has elected to be tax transparent and that qualify as a resident société under the ITA will not be liable

to tax in Mauritius in respect of foreign income received from the fund, or be liable to tax at the rate of 15% on income derived by the fund from Mauritius.

Tax opaque entities are entitled to benefit from the various tax treaties that Mauritius has with other countries. Investor's preference to structure in an entity that is tax opaque is where there is a tax treaty in place. Investors prefer to structure in tax transparent entities where they prefer to be taxed in the jurisdiction that they are tax resident.

6. Miscellaneous

6.1 Asset Management Industry Bodies

The Association of Trust and Management Companies is an association that represents management companies and trust companies operating in the global business sector in Mauritius. Fund administrators form part of management companies. There is no industry per se specifically for asset managers.

6.2 Preference for Courts or Arbitration

The preferred method of dispute resolution is arbitration, owing to the following considerations:

- very strict rules governing the delay within which an award should be rendered, arbitration is much faster than the court process;
- freedom to choose an arbitrator having specialist technical knowledge;
- confidentiality – an additional advantage of arbitration is that it is a private mode of dispute resolution and therefore keeps the confidential information of the parties private while at the same time avoiding any bad publicity which could potentially arise from court proceedings; and
- submission to an arbitration clause in Mauritius was previously one of the substance requirements for a fund holding a category 1 global business licence.

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6.3 Level of Litigation/Arbitration

There is an increased frequency of litigation against investment managers for alleged mismanagement of funds. While it may be a function of less buoyant economic conditions in jurisdictions where projections in the mid-2000s were very optimistic (eg, India and certain African jurisdictions), the tensions between investors and managers are becoming more apparent and fund documents will come under greater scrutiny.

6.4 Periodic Reporting Requirements

Collective Investment Scheme (Retail Fund)

An open-ended retail fund must both file with the regulator and make public (i) quarterly unaudited financial statements prepared in accordance with the International Financial Reporting Standards (IFRS), which contain matters prescribed by fund regulations, no later than 45 days after the end of each quarter; and annual reports, including audited financial statements and which contain matters prescribed by fund regulations, no later than 90 days after the fund's balance sheet date.

Closed-ended Fund (Retail Fund)

A closed-end retail fund must both file with the regulator and make public (i) comparative quarterly financial statements prepared in accordance with IFRS, no later than 45 days after the end of each quarter, and (ii) 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.

In the case of domestic open-ended or closed-end retail funds (ie, those funds which do not hold a GBL unless they are listed on a securities exchange in Mauritius), the quarterly reports and annual reports must also be made public.

Non-retail funds are required to file audited financial statements with the regulator within six months of the balance sheet date and such accounts need not be made public.

The annual financial statements of companies/limited partnerships (other than those holding a GBL) are available for public inspection at the Registrar of Companies/Limited Partnerships (as applicable).

6.5 Powers of Attorney

Investors may give powers of attorney in favour of the fund manager of the fund, provided that these are revocable.