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Investment Funds 2022

Mauritius: Law & Practice

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Law and Practice

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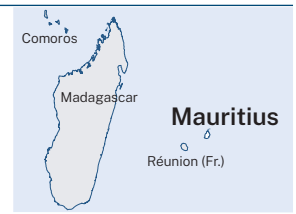

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1. MARKET OVERVIEW

1.1 State of the Market

Mauritius has established itself as a leading international financial services centre, and has made it to the pantheon of successful developing economies by adopting international norms and best practices and promoting a business-friendly environment. The choice of Mauritius as a domicile for structuring business into Africa and Asia is well established among fund managers and institutional investors. It has always proved itself as a jurisdiction of economic substance and has recently undertaken further regulatory reforms for global business entities as well as anti-money laundering and combatting terrorist financing laws to enhance its attractiveness as an investment platform. Various and innovative types of vehicles and structuring and financing products are available. The introduction of variable capital companies was announced in the budget speech 2020/2021, and a draft Variable Capital Companies Bill has also been issued for public consultation.

Mauritius is a recognised jurisdiction for global investment funds, with 992 funds (including both open-ended and closed-end funds at the end of December 2020) according to statistics published by the Financial Services Commission (FSC) in 2021. As per the monthly global business data sheet issued by the FSC, there were around 946 global funds as of December 2021.

Mauritius has been at the forefront of providing innovative products and solutions to investors. The FSC is keen to develop fintech-related initiatives in Mauritius, and has issued guidance to recognise digital assets including cryptocurrency as an asset class for investment by alternative investment funds (AIFs) (such as expert funds and professional collective investment schemes).

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

Mauritius' regulatory framework provides for both retail funds and AIFs, the latter of which are authorised as investment funds generally and further categorised as expert funds or professional collective investment schemes under the laws of Mauritius. They are available only to sophisticated and expert investors and high net worth persons, and are exempted from the stricter regulations applied to retail funds. Retail funds are offered to the public and are regulated as open-ended (collective investment schemes) or closed-end funds. Recently, the FSC has also added additional fund categories such as special purpose funds and real estate investment trusts.

2. ALTERNATIVE INVESTMENT FUNDS

2.1 Fund Formation

2.1.1 Fund Structures

Funds can be set up as companies, limited partnerships, protected cell companies (PCCs) or trusts. The typical vehicle used to structure a closed-end fund is a company or a limited partnership, whereas a collective investment

scheme is commonly structured as a company, unit trust or PCC.

Companies

Companies may be established as public or private and are incorporated under the Companies Act 2001. Participants are issued with shares of the company. A private company is limited to 50 shareholders and cannot offer shares to the public. Companies have the following features:

- the liability of a shareholder is limited to the extent of the amount unpaid on their shares;
- a board is subject to the doctrine of fiduciary responsibility;
- a separate legal personality is maintained; and
- statutory rules for filing and reporting ensure transparency and accountability.

Distribution to shareholders is subject to the company remaining solvent, and the company is treated as one taxable unit.

Limited Partnerships

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 contribution, provided that the limited partner takes no part in the management of the partnership. Where the limited partner does become involved 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. 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 the relative flexibility of the vehicle, the mitigation of fiduciary risks, the ability to account for profits and losses at limited partner level and tax transparency. The partnership also offers limited liability to limited partners, but the liability of a general partner is not capped.

Protected Cell Companies

A PCC is subject to the Protected Cell Companies Act 1999 and the Companies Act 2001. Participants in a PCC are issued with shares in the relevant cell in which they invest, which are referred to as "cell shares". The segregation of assets and liabilities can be achieved by using a PCC. 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 as companies, including limited liability for shareholders, a board that has fiduciary duties, separate legal personality and the same statutory rules for filing and reporting.

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, at least one of whom should be a qualified trustee (a person who is authorised as such by the FSC).

Trusts are relatively easy to set up, but do not have legal personality. The creation of a trust does not require any registration or incorporation, but an application to the FSC must be made in order to be authorised as a fund. Trustees are subject to fiduciary duties.

2.1.2 Common Process for Setting Up Investment Funds

A fund in Mauritius is regulated as a collective investment scheme or a closed-end fund, and a fund authorisation is required from the FSC. AIFs are typically sub-classified as expert funds or professional collective investment schemes.

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

It is mandatory 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 corporation secretary/registered agent, and will be responsible for liaising with the authorities on the setting up and licensing of the entity, as well as 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) and pay the relevant fee; 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, who will then notify the FSC of the application through the Online Submissions Platform (OSP). Following the receipt of this notification, the application for a GBL and authorisation to operate as a fund (open-ended or closed-end) will be lodged on the OSP.

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

- a duly completed application form for the registration/incorporation and licence;
- fund documents – a constitution and the shareholders' agreement (if adopted) for a company; a limited partnership agreement for a limited partnership; the trust deed for a trust; and the subscription agreement, the investment management agreement and any advisory agreement. Drafts of the fund documents may be submitted, but 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 partners or trustees (as applicable);
- certificates and confirmations required by law and the regulators;
- the appropriate government/licensing fees; and
- any additional documents the FSC might require.

The timeframe for the application for a fund authorisation is around 60 business days from the time the application is submitted to the authorities.

The following fees are payable to the FSC for the licensing process:

- a registration fee for collective investment schemes (open-ended) and closed-end funds (for a single fund) of USD1,000 and an annual fee (payable in advance) of USD3,000;
- a registration fee for collective investment schemes (open-ended) and closed-end funds that are structured as umbrella funds or PCCs and have more than one fund/cell – USD1000 for the first fund/cell and USD300 for each additional fund/cell;

- an annual fee of USD3,000 for the first fund/cell and USD600 for each additional fund/cell;
- an additional annual fee of USD5,000 for a fund categorised as a Special Purpose Fund or a Real Estate Investment Trust; and
- for the GBL, a processing fee of USD500 and an annual fee of USD1,950.

In addition to FSC fees, an incorporation fee of USD76 and an annual fee of USD229 are payable to the Registrar of Companies in the case of a company, and a registration fee of USD107 and an annual fee of USD64 are payable to the Registrar of Limited Partnerships in the case of a limited partnership.

2.1.3 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. Investors risk losing their limited liability status where they participate in the management of the business of the fund. In doing so, they may be viewed as acting as the general partner or a director (depending on the structure) and thus attract the unlimited liability that generally attaches to a general partner, or they may become personally liable as a director.

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

2.1.4 Disclosure Requirements

A fund authorised in Mauritius needs to file an offering document with the FSC. Any update to these documents must also be filed 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 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 the requisite disclaimers and generally sufficient information to allow investors to make an informed decision on investment in the fund.

Reporting Requirements

Non-retail funds are required to file audited financial statements with the regulator within six months of the balance sheet date, but such accounts do not need to 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).

2.2 Fund Investment

2.2.1 Types of Investors in Alternative Funds

There is a diverse range of investors in Mauritius, including institutional investors, development finance institutions, family offices and financial institutions.

2.2.2 Legal Structures Used by Fund Managers

An investment manager licensed by the FSC must:

- be incorporated or registered as a body corporate in Mauritius;
- be engaged principally in the business of managing funds;
- have directors, officers and beneficial owners who meet the fit and proper test;
- have appropriately qualified staff;
- maintain a minimum stated capital of at least MUR1 million (or an equivalent amount in a different currency) at all times;
- have proper insurance cover in place;
- establish and document its rules of internal control to ensure that it is legally compliant and sufficiently supervised;
- have in place a code of ethics and a code of conduct that are binding on its officers, advisers and employees; and
- comply with anti-money laundering laws.

Fund managers are typically set up as companies incorporated under the Companies Act 2001.

2.2.3 Restrictions on Investors

An expert fund is only available to an investor making an initial investment on its own account of no less than USD100,000, a sophisticated investor (as defined in **2.3.7 Investor Protection Rules**) 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 on a private placement basis 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 USD200,000.

To qualify for the categorisation of a professional collective investment scheme, the following restrictions apply:

- shares acquired by the participants may not be resold to the public and the participants are advised of this restriction at the moment of subscription; and
- the fund may not be listed for trading on a securities exchange.

A special purpose fund (which can be open-ended or closed-end) is only permitted to offer its shares by way of private placements to competent investors with significant experience and knowledge of fund investment. It can have a maximum of 50 investors and a minimum subscription of USD100,000 per investor.

2.3 Regulatory Environment

2.3.1 Regulatory Regime

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 (minus fees and commissions). This obligation does not exist with closed-end funds, which are characterised principally by the fact that the investors do not have control on exiting the fund. A collective investment scheme is set up mainly to invest in portfolios of securities or other financial assets, real property or non-financial assets, subject to the approval of the FSC.

A fund is required to be managed by an investment manager licensed as a collective investment scheme manager by the FSC or by a foreign investment manager with the approval of the FSC in the case of a fund holding a GBL. A fund that is constituted as a company may be

self-managed (ie, managed by its board of directors), with the approval of the FSC.

AIFs are classified as expert funds (which must be open-ended) or professional collective investment schemes (which can be both open-ended and closed-end), and are entitled to exemptions from the following detailed regulations that apply to retail funds:

- 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 the prices of interests in the collective investment scheme on a weekly basis.

To qualify for the categorisation of a professional collective investment scheme, the restrictions set out under **2.2.3 Restrictions on Investors** would apply.

2.3.2 Requirements for Non-local Service Providers

Non-local service providers cannot provide services as administrators, custodians, director services providers, etc, in Mauritius by way of business. They will need to set up either a branch or a subsidiary in Mauritius, which will need to apply for a licence from the FSC in order to conduct business in Mauritius.

Where there is no business establishment in Mauritius and the service provider does not solicit Mauritius retail investors in respect of services related to the marketing of securities, there will be no prohibition on the service provider dealing with such persons, and no licensing requirement will normally be triggered for such non-local service provider. However, depending on the services being provided and the categorisation of the fund granted by the FSC, the fund may be limited to local service providers or may require the approval of the FSC prior to the appointment of a non-local service provider.

2.3.3 Local Regulatory Requirements for Non-local Managers

Prior FSC approval is required to appoint a foreign manager to manage a fund authorised in Mauritius. However, this option is only available where the fund holds a GBL.

The FSC will assess whether the licence of the foreign investment manager is issued by a regulatory body in a jurisdiction that has a comparable regulation to 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, alongside details of the management team's appropriate competence and relevant fund management experience.

2.3.4 Regulatory Approval Process

The timeframe for the application of a fund authorisation is around 60 business days from the time the application is submitted to the authorities.

2.3.5 Rules Concerning Marketing of Alternative Funds

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

The law limits any solicitation to invite or induce a retail investor in Mauritius to buy, sell or exchange securities to be done solely by licensed persons. The following activities may be carried out only by locally licensed intermediaries:

- seeking to meet a retail investor at his or her place of residence, work or public places;
- contacting a retail investor by telephone, letter, circular, the internet or other electronic means or telecommunication system; or
- 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.

The Guidelines regulate the conduct of the marketing and the content of advertisements and marketing materials, and require certain specific disclosures and disclaimers on the product and the persons promoting them.

All marketing materials need to be submitted to the FSC prior to dissemination.

2.3.6 Marketing of Alternative Funds

Shares or interests in funds that are authorised as professional collective investment schemes or expert funds can only be offered to specific types of investors, as described in **2.2.3 Restrictions on Investors**.

2.3.7 Investor Protection Rules

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

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

Under the Securities Act 2005, sophisticated investors include the following:

- the government of Mauritius;
- a statutory authority, or an agency established by an enactment for a public purpose;
- a company whose shares are wholly 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 collective investment scheme;
- a fund manager (licensed by the FSC);
- a pension fund or its management company;
- a closed-end fund;
- an insurer (licensed by the FSC);
- an investment adviser (licensed by the FSC);
- an investment dealer (licensed by the FSC);
- an investor that warrants, at the time of entering into a securities transaction, that (i) its ordinary business or professional activity includes the entering into securities transactions, whether as principal or agent; (ii) for a natural person, the individual net worth or joint net worth with a spouse exceeds USD1 million or its equivalent in another currency; or (iii) it is an institution with a minimum amount of assets under discretionary management of USD5 million or its equivalent in another currency; and
- a person declared by the FSC to be a sophisticated investor.

A professional collective investment scheme is only available to a sophisticated investor, as defined in the Securities Act 2005, or as a pri-

vate 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 USD200,000.

Investors are not protected by any statutory compensation arrangements in Mauritius in the event of the fund's failure, and it is mandatory for the offer document to include such disclosures along with other disclosures specific to the type of fund as required by the FSC.

2.3.8 Approach of the Regulator

The FSC is mandated under the Financial Services Act 2007 to, inter alia, ensure the orderly administration of 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. To achieve its objectives, the FSC elaborates policies that aim to ensure the fairness, efficiency, transparency and stability of the financial system in Mauritius. It also publishes monthly newsletters, FAQs and circular letters to provide regular updates and guidance. The regulator's online portal accurately contains general information, up-to-date legislation and regulations, as well as statistics on licensed entities operating in Mauritius.

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

Where additional information or clarifications are required by the FSC with respect to fund applications, the FSC will usually raise such queries via email to the administrators. It is also possible to request face-to-face meetings with the FSC.

2.4 Operational Requirements

There are no particular regulatory restrictions or requirements in relation to the types of investments for AIFs. Any person wishing to establish a specialised fund that invests in real estate, derivatives, commodities or any other product must apply to the FSC for a decision as to whether such fund would be authorised.

An open-ended fund categorised as an expert fund or a professional collective investment scheme is required to appoint a custodian that holds a custodian licence under the Securities Act 2005 to hold and safekeep the assets of the fund. Only banks and trust companies that are subsidiaries of banks are eligible for a custodian licence. If the fund holds a GBL, it may appoint a foreign custodian with the approval of the FSC. The custodian appointed must act independently from the fund manager and the fund. However, closed-end funds are exempt from the requirement to appoint a custodian, with the assets being held in the name of the fund itself.

Risk

Although there are no specific rules on risks for exempted funds, the offering memorandum of such fund must disclose all material risks to potential investors, to enable any potential investor to make an informed decision on whether or not to invest in the fund.

Valuation and Pricing

AIFs are free to specify the method and frequency of their valuations.

System and Controls

AIFs are not regulated as strictly as retail funds. On the basis that they can only be offered to sophisticated or high net worth investors, they are spared the application of the various pru-

dential and conduct of business rules that are generally applicable to retail funds.

Insider Dealing and Market Abuse

The Securities Act 2005 contains a chapter on market abuse, which creates the offences of insider dealing, false trading, market rigging, fraud and deceptive conduct involving securities. The prohibition on insider dealing is a general prohibition applicable to any person who uses insider information to deal in the securities of a reporting issuer (directly or indirectly), or who discloses insider information unlawfully.

Transparency

AIFs have reduced filing and publication requirements, but are still required to file annual financial statements and to keep the regulator informed of any material change in the AIF.

Money Laundering

All funds must comply with the Financial Intelligence and Anti-Money Laundering Act 2002 (a law inspired by the Financial Action Task Force (FATF) principles), the Financial Intelligence and Anti-Money Laundering Regulations 2018 (made under the Act) and the Financial Services Commission Anti-Money Laundering and Countering the Financing of Terrorism Handbook 2020 (issued by the FSC, which is the supervisory authority of funds for money laundering and related purposes).

Funds must carry out customer due diligence (CDD) in accordance with the law, including verifying the identity of investors and being satisfied that the source of funds is lawful. For corporate investors, the fund must obtain copies of incorporation documents to establish the existence of the fund and the identity of its principals. The fund must also provide CDD information on the investor(s), directors and other principals, including beneficiaries, account signatories and any person operating under a power of attorney. Reduced or enhanced CDD may be applied depending on the profile of the investors, whether they are regulated institutions, and their country of domicile. Moreover, funds are required to appoint a money laundering reporting officer, a deputy money laundering reporting officer and a compliance officer, who are conversant with the anti-money laundering laws of Mauritius.

Funds are also required to comply with the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019 (the UN Sanctions Act), which imposes a prohibition on dealing with funds or other assets of, or making funds or other assets available to, a party listed on a United Nations Sanctions List or a Designated Party declared as such under the UN Sanctions Act. The UN Sanctions Act also establishes several reporting obligations and authorisation mechanisms, which reporting persons (including funds) must implement.

Short Selling

There are no rules that specifically address short selling.

Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) Regimes

FATCA

The Republic of Mauritius and the government of the United States of America have signed an Agreement for the Exchange of Information Relating to Taxes (the Agreement) to set the legal framework to enable the exchange of tax information between the two countries and the Inter-Governmental Agreement (Model 1 IGA) to improve international tax compliance and to implement FATCA. The Agreement provides for the exchange of tax information (upon request, spontaneous and automatic) between Mauritius and the USA, while 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. Following the IGA, Mauritius financial institutions will not be subject to the 30% withholding tax on US source income if they comply with the requirements of FATCA.

CRS

Mauritius has signed the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) developed by the Organisation for Economic and Co-operation and Development (OECD), under which information can be exchanged on request, spontaneously or automatically. Thus, Mauritius will be able to exchange information automatically on a reciprocal basis with all the jurisdictions that have signed the Convention. Mauritius financial institutions have to report annually to the Mauritius Revenue Authority on the financial accounts held by non-residents for eventual exchange with relevant treaty partners. Funds in Mauritius must assess their FATCA and CRS classification to determine their reporting requirements to the Mauritius Revenue Authority.

2.5 Fund Finance

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

There are no regulatory restrictions in relation to borrowings for funds categorised as expert funds or professional collective investment schemes; these requirements will be guided by the fund documentation.

Typically, a fund finance transaction related to private equity funds will be secured by security over bank accounts of the fund and the 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.

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

2.6 Tax Regime

The tax status will depend on the type of vehicle used to structure a fund. Funds are generally structured as companies or limited partnerships.

Companies

Companies are tax opaque. Where a fund is structured as a company, it is liable to pay tax on its chargeable income at the rate of 15%. However, a closed-end fund or collective investment scheme duly authorised by the FSC may be entitled to benefit from a partial exemption of 80% on all its income if it satisfies the following conditions relating to the substance of its activities:

- it carries out its core income-generating activities in Mauritius;
- it employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income-generating activities; and
- it incurs a minimum expenditure proportionate to its level of activities.

Alternatively, a company fund may be entitled to claim foreign tax paid on its foreign source income as credits against the income tax payable in Mauritius (up to a maximum of 15%) in respect of that income where this can be evidenced (Foreign Tax Credit). The Mauritius Income Tax Act

1995 (ITA) defines "foreign source income" as income that is not derived in Mauritius.

There is no withholding tax on dividends distributed by a fund established as a company to its shareholders. Furthermore, 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. There is no tax applicable on capital gains in Mauritius.

Limited Partnership

A fund structured as a limited partnership will be tax transparent, unless it also holds a GBL, in which case it can elect to be tax opaque and the tax treatment will be similar to that of 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, as set out below.

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

Tax opaque entities are entitled to benefit from the various tax treaties that Mauritius has with other countries.

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

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

- distribution by the fund to its resident and non-resident investors;
- in respect of a fund holding a GBL, interest paid to non-residents out of the foreign source income of the fund; or
- interest paid to a company resident in Mauritius.

Special Purpose Fund

In line with the ITA, a Special Purpose Fund is a tax-exempt vehicle under Mauritius law, and any interest, rents, royalties, compensations and other amounts paid by a special purpose fund established under the Financial Services Act 2007 to a non-resident will also be exempt from Mauritius income tax.

Non-resident Investors

An investor who is not tax resident in Mauritius and who does not otherwise derive any income from Mauritius is not required to pay any tax in Mauritius, whether in respect of income or gains (including distributions) received from a fund, its worldwide income or otherwise, and is not required to make any tax filing in Mauritius.

Resident Investors

An investor who is tax resident in Mauritius will be liable to income tax as follows:

- if the investor is a body corporate, at the rate of 15%; or
- if the investor is an individual, at the rate of 10% on his or her annual net income not exceeding MUR650,000 and at the rate of 15% for any annual net income exceeding MUR650,000.

A tax resident investor that is a body corporate will be entitled to benefit from the Foreign Tax Credit and a partial exemption of 80% 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 and the company satisfies the conditions relating to the substance of its activities as prescribed;
- interest derived by a company other than a bank referred to in section 44C of the ITA, a non-bank deposit-taking institution, a money changer, a foreign exchange dealer, an insurance company, a leasing company or a company providing factoring, hire purchase facilities or credit sales facilities, provided that the company satisfies the conditions relating to the substance of its activities as prescribed;
- profit attributable to a permanent establishment held by a resident company in a foreign country;
- income derived by a collective investment scheme, closed-end fund, collective investment scheme manager, collective investment scheme administrator, investment adviser or assets manager licensed or approved by the FSC;
- income derived by companies engaged in ship and aircraft leasing;
- income derived by a company from reinsurance and reinsurance brokering activities, subject to satisfying any conditions prescribed relating to the substance of its activities;
- income derived by a company from the leasing and provision of international fibre capacity, subject to satisfying any conditions prescribed relating to the substance of its activities;
- interest derived by a person from money lent through a peer-to-peer lending platform; and
- income derived by a company from the sale, financing arrangement, asset management of aircraft and its spare parts and aviation advisory services related thereto, subject to satisfying any conditions prescribed relating to the substance of its activities.

A tax resident investor who is an individual will be entitled to the following:

- Foreign Tax Credit;
- to deduct the applicable amount of income exemption threshold from his or her net income in each income year; and
- to any other reliefs, allowances and deductions as apply.

Any dividend income received or gains made by any Mauritian investor from a fund established as a company in Mauritius are exempt from income tax.

A tax resident investor whose leviable income exceeds MUR3 million in an income year shall be liable to pay a solidarity levy, in addition to income tax. The solidarity levy shall be calculated at the rate of 25% of the leviable income in excess of MUR3 million and shall not exceed 10% of the sum of net income and dividends, as further set out in section 16C of the ITA. The leviable income includes the chargeable income of an individual, the dividends paid to that individual by a resident company and the share of dividends of that individual in a resident société.

3. RETAIL FUNDS

3.1 Fund Formation

3.1.1 Fund Structures

Retail funds can be set up as companies, limited partnerships, PCCs or trusts, as further described in **2.1.1 Fund Structures**.

3.1.2 Common Process for Setting Up Investment Funds

A fund in Mauritius is regulated as a collective investment scheme or a closed-end fund, and a fund authorisation is required from the FSC.

A retail fund conducting business principally outside of Mauritius, the majority of whose shares/voting rights/legal or beneficial interests are held by non-citizens, will also be required to apply for a GBL.

The process for setting up retail funds would entail making a similar name reservation and formal application to the authorities as described in **2.1.2 Common Process for Setting Up Investment Funds**, and the same timeframe and fees would apply.

3.1.3 Limited Liability

The liability of investors participating in structures such as companies limited by shares or limited partnerships will be limited to the amount they have contractually undertaken to pay to the fund, so long as their participation remains passive, as further expounded in **2.1.3 Limited Liability**.

3.1.4 Disclosure Requirements

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 the necessary information on the securities to be offered and the fund to enable 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;
- the details and functions of the investment manager;
- events concerning the termination of a manager's appointment;
- the types of investors targeted and recommended lock-in periods;
- the 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.

Reporting Requirements

Collective investment scheme (retail fund)

An open-ended retail fund must file with the regulator and make public the following:

- quarterly unaudited financial statements prepared in accordance with the International Financial Reporting Standards (IFRS), which contain matters prescribed by fund regulations; and
- annual reports, including audited financial statements, containing matters prescribed by fund regulations.

Closed-end fund (retail fund)

A closed-end retail fund must file with the regulator and make public the following:

- comparative quarterly financial statements prepared in accordance with IFRS, no later than 45 days after the end of each quarter; and
- 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.

The quarterly reports and annual reports of open-ended or closed-end retail funds (other

than those funds that hold a GBL) must also be made public.

In the case of a public offering, the retail 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.

REITs

A REIT must file with the regulator and distribute to participants the following:

- a half-yearly report (including financial statements prepared in accordance with IFRS), no later than 45 days from its interim period; and
- an annual report, including audited comparative financial statements prepared in accordance with IFRS, no later than six months from its balance sheet date.

3.2 Fund Investment

3.2.1 Types of Investors in Retail Funds

There is a diverse range of investors for retail funds, from individuals and corporates to institutional investors, development finance institutions, family offices and financial institutions.

3.2.2 Legal Structures Used by Fund Managers

Fund managers are typically set up as companies incorporated under the Companies Act 2001. Please see **2.2.2 Legal Structures Used by Fund Managers**.

3.2.3 Restrictions on Investors

Collective investment schemes and closed-end funds that are retail funds have no limitation on the type of investor or minimum investment by investors, but the prospectus can set out specific eligibility criteria for investors or any minimum investment.

3.3 Regulatory Environment

3.3.1 Regulatory Regime

There are two main categories of funds: collective investment schemes and closed-end funds.

A collective investment scheme has a number of restrictions on its investment and practices, which may be lifted with the approval of the FSC if it is satisfied that the fund has justification and provided that the fund makes adequate disclosure in its prospectus as to investment rules and risks. For instance, without the FSC's approval, a collective investment scheme cannot:

- invest more than 5% of its net assets in the security of the issuer, unless it is a debt security issued by the government of Mauritius or the government of any other country;
- purchase and hold more than 10% of a class of securities of that issuer;
- purchase real estate;
- purchase a mortgage;
- purchase a security for the purpose of exercising control or management over the issuer of that security;
- have more than 10% of its net assets in illiquid assets;
- purchase or sell derivatives or physical commodities, except within limits established by the FSC;
- subscribe to securities offered by a company in formation;
- lend money, securities or other assets;
- invest in aggregate more than 10% of its net asset value in shares of another collective investment scheme;
- acquire more than 10% of the shares of any single collective investment scheme; or
- purchase a security or sell a security to the investment manager, the custodian, an officer of the investment manager or the custodian or any affiliate of such 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.

Through its guidelines, the FSC has announced that, due to the high-risk nature of investments in digital assets and cryptocurrency, such asset class may not be suitable for retail investors; however, digital assets including cryptocurrency may constitute an asset class for investment by funds that are authorised as expert funds, professional collective investment schemes or specialised collective investment schemes.

The FSC recently issued the Securities (Real Estate Investment Trusts) Rules 2021, which provide a specific regime for licensing and regulating REITs. A REIT is a collective investment scheme or closed-end fund that invests primarily in real estate assets with the aim of providing returns to holders derived from the rental income of the real estate asset.

3.3.2 Requirements for Non-local Service Providers

The position is the same as described in **2.3.2 Requirements for Non-local Service Providers**.

3.3.3 Local Regulatory Requirements for Non-local Managers

The position is the same as described in **2.3.3 Local Regulatory Requirements for Non-local Managers**.

Where a retail fund holds a GBL, it will be able to appoint a foreign manager subject to the prior approval of the FSC. The FSC will consider if the licence of the foreign investment manager is issued by a regulatory body in a jurisdiction that has a comparable regulation to Mauritius for investor protection.

3.3.4 Regulatory Approval Process

The timeframe for the application of a fund authorisation is around 60 business days from the time the application is submitted to the authorities.

3.3.5 Rules Concerning Marketing of Retail Funds

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, as provided in **2.3.5 Rules Concerning Marketing of Alternative Funds**.

In addition, a retail collective investment scheme cannot issue, use or cause to be issued or used for any purpose any advertisement in connection with a collective investment scheme, unless a copy is forwarded to the FSC no later than five working days prior to the issue or use.

3.3.6 Marketing of Retail Funds

Once authorised, there are no restrictions on the categories of persons to whom retail funds can be marketed, which will follow any eligibility criteria set out in the fund's offer document.

3.3.7 Investor Protection Rules

Since retail funds target the public, extensive disclosure is required in the prospectus of such funds in order to understand the investment and risks. Retail funds need to comply with a list of prescribed disclosure requirements, including the matters required by the Mauritius Securities Act 2005 and the rules and regulations made thereunder – for instance:

- investment objectives and restrictions;
- the details and functions of the investment manager;
- events concerning the termination of a manager's appointment;
- the types of investors targeted and recommended lock-in periods,
- the terms of subscription;
- an explanation of the nature of the risks; and
- any fees or charges to be attributed to the fund.

In addition, the prospectus should specify the type of investors for whom investment in the fund is suitable.

The fund manager must also send an account statement to each investor with full information regarding investment, to ensure the investor is fully aware of the overall investment.

3.3.8 Approach of the Regulator

The approach of the regulator is as provided in **2.3.8 Approach of the Regulator**.

3.4 Operational Requirements

Retail funds have investment and borrowing restrictions, as further described in **3.3.1 Regulatory Regime**.

Retail funds formed as a collective investment scheme must appoint a custodian that holds a custodian licence under the Securities Act 2005 to hold and safekeep the assets of the fund. Only banks and trust companies that are subsidiaries of banks are eligible for a custodian licence. If the fund holds a GBL, it may appoint a foreign custodian with the approval of the FSC. The custodian appointed must act independently from the fund manager and the fund.

Closed-end funds are exempt from the requirement to appoint a custodian, with the assets being held in the name of the fund itself.

Risk

The prospectus of the retail fund must disclose all material risks to potential investors. For retail collective investment schemes in particular, the prospectus must explain the nature of the risks, including minimum exposure to stock market, sensitivity to rate of interest risk, exposure to currency risk, concentration risk, derivative risk, foreign investment risk, investment in illiquid securities risk, etc.

Valuation and Pricing

An open-ended retail fund must conduct a valuation on a daily basis or at such other intervals as agreed with the FSC. The prospectus must describe the valuation method that such fund will employ in valuing its portfolio to arrive at a net asset value.

System and Controls

Various prudential and conduct of business rules apply to an open-ended retail fund, such as:

- minimum funding requirements;
- regulation of its constitutive documents and prospectus;
- regulation of its book-keeping principles;
- regulation of transactions with related parties; and
- mandatory investors' voting powers.

Insider Dealing and Market Abuse

The Securities Act 2005 contains a chapter on market abuse, which creates the offences of insider dealing, false trading, market rigging, fraud and deceptive conduct involving securities. The prohibition on insider dealing is a general prohibition applicable to any person who uses insider information to deal in the securities of a reporting issuer (directly or indirectly) or who discloses insider information unlawfully.

Transparency

Retail funds have several disclosure and reporting requirements, as detailed in **3.1.4 Disclosure Requirements**. In addition, an open-ended retail fund must publish the issue, sale, repurchase and redemption prices at least once a week or at such frequency as the FSC may approve.

Money Laundering

There is no difference in the obligations of AIFs and retail funds under the anti-money laundering laws, as further expounded in **2.4 Operational Requirements**.

Short selling

There are no rules that specifically address short selling. For retail funds, securities lent and collateral received by the fund must be disclosed in the financial statements.

FATCA and CRS Regimes

Funds in Mauritius must assess their FATCA and CRS classification to determine their reporting requirements to the Mauritius Revenue Authority; please see **2.4 Operational Requirements**.

3.5 Fund Finance

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

A retail fund formed as 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.

Closed-end funds are not subject to any borrowing restriction.

Retail closed-end funds would follow the usual lending practices and take into account the assets and receivables of the fund.

There can be issues in financing closed-end funds where the fund documents set out limitations on the creation of security over assets of the fund.

3.6 Tax Regime

The tax regime that applies to AIFs also applies to retail funds in the manner described in **2.6 Tax Regime**.

An investor in a retail fund is taxed in the same manner as an investor in an AIF, as described in **2.6 Tax Regime**, and there is no special or preferential tax regime for investors participating in retail funds.

4. LEGAL, REGULATORY OR TAX CHANGES

4.1 Recent Developments and Proposals for Reform

Updates to the Anti-Money Laundering and Combatting the Financing of Terrorism Handbook 2020

The FSC updated its Anti-Money Laundering and Combatting the Financing of Terrorism Handbook (AML/CFT Handbook) on 31 March 2021. Further to the first AML/CFT supervisory cycle

of 2020-2021 conducted by the FSC, the AML/CFT Handbook was issued on 13 January 2020, and has been updated in line with the statutory requirements under the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA) and the Financial Intelligence and Anti-Money Laundering Regulations 2018 (FIAML Regulations 2018) as follows:

- additional provisions to Chapter 4 relating to the "Risk-Based Approach", with the aim of assisting financial institutions in implementing an adequate business risk assessment; and
- a new Chapter 13 on Independent Audits, with the main objective of giving financial institutions interpretive guidance on how to conduct a successful independent audit.

By virtue of the FIAMLA and FIAML Regulations 2018, these are considered two important components of the AML/CFT compliance programme with which financial institutions are required to comply.

Removal of Mauritius from the FATF Grey List

In February 2020, Mauritius was placed on the FATF list of Jurisdictions under Increased Monitoring (ie, the grey list). As a result, the European Commission identified and included Mauritius on the revised EU AML list of high-risk third countries for "strategic deficiencies in their AML-CFT framework". The EU "blacklisting" applied as of 1 October 2020.

Following these listings and with a view to enhancing the effectiveness of AML/CFT measures, and pursuant to Mauritius' Action Plan, several working groups were constituted at a national level to tackle the deficiencies identified in the jurisdiction's AML/CFT regime.

In its June 2021 Plenary Session, the FATF decided that Mauritius had "substantially completed" its Action Plan under difficult circumstances caused by the COVID-19 pandemic. Critically, the FATF observed that Mauritius had made key reforms by:

- conducting outreach to promote the understanding of money laundering and terrorism financing risks and obligations;
- effectively developing risk-based supervision plans;
- ensuring access to accurate basic and beneficial ownership information by competent authorities in a timely manner; and
- providing training to law enforcement authorities to ensure that they have the capability to conduct AML investigations.

Mauritius was listed as being "Compliant" or "Largely Compliant" with 39 out of the 40 FATF recommendations.

The President of the FATF, Marcus Pleyer, announced that, "after completing its action plan and a successful onsite visit by the FATF team, Mauritius has been removed from the grey list".

Furthermore, on 7 January 2022, the European Commission approved the removal of Mauritius from its list of high-risk third countries by acknowledging that it no longer presents strategic deficiencies. The European Council and Parliament have a scrutiny period of one month in which to object to the relevant delegated regulation; if there is no objection, the regulation will be published in the EU Official Journal, and it will enter into force 20 days thereafter. This is expected to be in February 2022.

Launch of the New Special Purpose Fund (SPF)

In line with measures announced in the 2019/2020 National Budget to modernise the existing Special Purpose Fund regime to provide further flexibility and ease access to new markets, the FSC has issued the Financial Services

(Special Purpose Fund) Rules 2021 to govern SPFs, effective as of 6 March 2021. These new rules have replaced the Financial Services (Special Purpose Fund) Rules 2013.

An SPF is a collective investment scheme or a closed-end fund that is authorised as such by the FSC. Under the Rules, SPFs are required to:

- offer their shares, solely by way of private placements, to competent investors with significant experience and knowledge of fund investment;
- have a maximum of 50 investors and a minimum subscription of USD100,000 per investor; and
- be managed by a collective investment scheme manager and administered by a collective investment scheme administrator, at all times.

SPFs and a certain category of investors in an SPF will benefit from tax exemptions as provided in the ITA.

REITs

The 2019/2020 National Budget announced the setting up of a new regulatory framework to promote the development of REITs, following which the FSC issued a consultation paper on the proposed licensing regime for REITs in Mauritius. The Securities (Real Estate Investment Trusts) Rules 2021 came into force on 4 September 2021.

Under the rules, a REIT is a collective investment scheme or closed-end fund that invests primarily in real estate (the REIT shall invest at least 75% of its gross asset value in income-producing real estate), with the aim of providing returns to holders derived from the rental income of the real estate.

The main characteristics of a REIT are as follows:

- a REIT shall be listed on an Official Exchange in Mauritius within six months of being duly authorised to operate as a REIT by the Commission;
- a REIT shall appoint and have, at all times, a collective investment scheme manager holding a licence issued by the FSC and having a place of business in Mauritius;
- every REIT authorised by the FSC shall appoint a valuer to conduct a full valuation of each of the real estate assets held under the REIT; and
- unless it qualifies for certain derogations, a REIT must invest at least 75% of its gross asset value in income-producing real estate assets; it may borrow for financing or operating purposes but aggregate borrowing cannot exceed 45% of its gross asset value, and it must distribute at least 75% of its distributable income to its participants (subject to satisfying prescribed solvency requirements).

Variable Capital Companies

The introduction of Variable Capital Companies (VCCs) was announced in the National Budget Speech 2020–2021. The draft Variable Capital Companies Bill (the Bill) was posted on the FSC website for public consultation in October 2021.

The sole object of a VCC or umbrella VCC is to operate as a fund, which may have sub-funds or special purpose sub-funds that are part of an umbrella VCC.

The Bill also sets out the specific reporting obligations that apply to a VCC, including the requirement for a VCC to:

- keep separate records for the VCC and, where applicable, each sub-fund and segregated portfolio company (SPC) that suf-

ficiently explain the transactions and financial position of the VCC, the sub-funds and SPCs, and that would be necessary for the preparation of true and fair financial statements; and

- establish and maintain adequate internal accounting controls to ensure that the assets of the VCC and each sub-fund and SPC are safeguarded against loss from unauthorised use or disposition, and that the transactions of the VCC and each sub-fund and SPC are properly authorised and recorded as necessary to permit the preparation of true and fair financial statements of the VCC and to maintain accountability of assets.

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BLC Robert & Associates is the leading independent business law firm in Mauritius, with the largest number of fee earners. It is mandated to act on an ever-growing number of instructions, reflecting the fact that its services are highly sought after. The firm's membership of ALN strengthens its position as the leading provider of legal services both locally and into the African continent through the presence of member law firms in 15 African jurisdictions. The firm has eight partners and four main practice areas: corporate and commercial, banking and finance, financial services and regulatory, and dispute resolution. Due to its size, the firm has been able to create further specialised sub-practice groups: business law; M&A; employment; taxation; real estate and hospitality; insolvency; capital markets; and technology, media and telecommunications. The financial services group advises a vast number of funds, private equity houses, managers, insurance companies, fiduciary businesses and financial advisers involved in the sector. The firm has advised numerous collective investment schemes, private equity funds and real estate investment funds. Funds and funds-related work is a core area of the practice, with a dedicated team advising on all aspects of fund formation, closings, investor relationships, regulatory and tax structuring.

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