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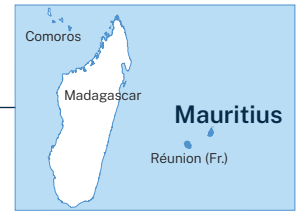

Law and Practice

Contributed by:
Bhavna Ramsurun, Pinki Mahata, Lorna Senivassen and Shreya Mungur
BLC Robert & Associates

Contents

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BLC Robert & Associates

BLC Robert & Associates is the leading independent business law firm in Mauritius, with the largest number of fee earners. The firm's membership of Africa Legal Network strengthens its position as the leading provider of legal services both locally and throughout the African continent, through the presence of member law firms in 15 African jurisdictions. BLC Robert & Associates has seven partners and four main practice areas: corporate and commercial, banking and finance, financial services and regulatory, and dispute resolution. The firm also has further specialised sub-practice groups, covering business law, M&A, employment, taxation, real estate and hospitality, insolvency, capital markets, and TMT. Clients include a vast number of funds, private equity houses, managers, insurance companies, fiduciary businesses and financial advisers. 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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1. Market Overview

1.1 State of the Market

Mauritius has established itself as a leading international financial services centre and has made it into 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, who can benefit from the well-established and advantageous ecosystem. Mauritius has so far concluded 46 tax treaties and is a party to 29 Investment Promotion and Protection Agreements, which provide extra assurance and protection for the country's potential investors. Mauritius has always proved itself to be a jurisdiction of economic substance.

Mauritius is a recognised jurisdiction for global investment funds, with 946 funds (both open-ended and closed-end), according to statistics published by the Financial Services Commission (FSC) in 2024. Mauritius has consistently improved its position in the Global Financial Centre Index (GFCI) over the years and features as a financial centre likely to become significant according to the 36th edition of the GFCI. Mauritius had around 932 global funds as of end October 2024, as per the monthly global business data sheet issued by the FSC.

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 launched its Fintech and Innovation webpage in order to meet the diverse needs of the financial services and fintech industries. This is a comprehensive resource hub and an additional feature on the FSC website, aiming to stay abreast of new product offerings and emerging trends in the fintech ecosystem.

As an international financial centre and growing fintech hub, Mauritius was one of the first countries in the Eastern and Southern African region to adopt comprehensive legislation on virtual assets and initial token offerings – namely, the Virtual Asset and Initial Token Offering Services Act 2021 in February 2022. This statute regulates the business activities of virtual asset service providers and initial token offerings.

In addition, Mauritius is a politically stable jurisdiction whose system of law is 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. At the same time, it 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 alternative investment funds (AIFs) – the latter of which are authorised as investment funds generally and further categorised as expert funds or professional collective investment schemes (professional CISs) under the laws of Mauritius. They are available only to sophisticated and expert investors and high net worth individuals, as well as being exempted from the stricter regulations applied to retail funds. Retail funds are offered to the public and are regulated as open-ended funds (known as CISs) or closed-end funds (CEFs). The FSC has also added additional fund categories such

as special purpose funds and real estate investment trusts (REITs).

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), trusts, or variable capital companies (VCCs). The typical vehicle used to structure a CEF is a company or a limited partnership, whereas a CIS is commonly structured as a company, unit trust or PCC. The new VCC structure now provides an alternative for fund structuring, giving fund managers the opportunity to operate several sub-funds (which can include a CIS and a CEF) and SPVs under an umbrella fund instead of having to set up separate structures.

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:

- they can be structured as limited life companies and/or limited by shares;
- 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. The company is treated as one taxable unit.

Limited Partnerships

This form of partnership is governed by the Limited Partnerships Act 2011. It 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, they will be treated as a general partner and be liable for the debts of the partnership. Participants' interests are referred to as partnership interests.

A private equity fund structured as a partnership would offer the benefits of:

- relative flexibility;
- 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 "cell shares" in the cell in which they invest. The segregation of assets and liabilities can be achieved by using a PCC.

PCCs are often structured to meet the objectives of investment – for example, 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 therein. 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 and are flexible vehicles, but do not have legal personality. The creation of a trust does not require any registration or incorporation – although an application to the FSC must be made in order to be authorised as a fund. Trustees are subject to fiduciary duties.

Variable Capital Companies

A VCC is incorporated under the Companies Act 2001 and carries out its activities through sub-funds and SPVs. A VCC needs to be authorised by the FSC as a "VCC fund", pursuant to the Variable Capital Companies Act 2022.

A VCC can operate as a standalone investment fund or can be structured as an umbrella fund through its sub-funds and/or its SPVs. The assets and liabilities of one sub-fund or SPV are segregated from those of another and, as such, the liabilities of a sub-fund under an umbrella VCC can only be discharged from its assets and not out of the assets of the other sub-funds or SPVs.

Unlike a PCC, one sub-fund of a VCC fund can be structured as a CIS, while another sub-fund of the same VCC fund can be structured as a CEF. Therefore, a VCC fund can accommodate both open-ended and closed-end structures under one "umbrella" structure. In addition, the sub-fund or SPV of a VCC fund may have a separate legal personality from that of the VCC fund (ie, separate name and legal entity) – in which case, it must be incorporated as a company under the Companies Act 2001. A sub-fund of a VCC fund can also act as a feeder fund or a master fund. On the other hand, SPVs can only operate as a vehicle ancillary to the VCC or a sub-fund of the VCC, and not as a fund on their own.

2.1.2 Common Process for Setting Up Investment Funds

Funds in Mauritius are regulated as CISs or CEFs and requires= fund authorisation from the FSC. AIFs are typically sub-classified as expert funds or professional CISs.

A fund that conducts business principally outside 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). Any corporation holding a GBL must be administered by a management company that is duly licensed by the FSC (the "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 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 (the "Registrar") and pay the relevant fee. If approved, the proposed name is valid for two months from the date of notice of reservation of the 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 FSC One Platform ("FSC One"). Following 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 FSC One.

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, as follows:
  - (a) a constitution and the shareholders' agreement (if adopted) for a company;
  - (b) a limited partnership agreement for a limited partnership;
  - (c) the trust deed for a trust; and
  - (d) 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;
- KYC documentation on promoters and beneficial owners as well as 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, assuming the application is complete and related queries are cleared on time.

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

- a registration fee for CISs (open-ended) and CEFs (for a single fund) of USD1,000 and an annual fee (payable in advance) of USD3,000;
- a registration fee for CISs (open-ended) and CEFs that are structured as umbrella funds or PCCs and have more than one fund/cell of USD1,000 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;
- a registration fee for CISs (open-ended) and CEFs that are structured as VCCs of USD1,000 for the first sub-fund and USD500 for each additional sub-fund or SPV;
- an annual fee of USD3,000 for the VCC (inclusive of the first sub-fund), then USD1,000 each for the second to fifth sub-funds/SPVs, and USD1,950 for each additional sub-fund or SPV;
- an annual fee of USD5,000 for a fund categorised as a special purpose fund or a REIT; 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 MUR3,000 and an annual fee of MUR9,000 are payable to the Registrar of Companies in the case of a company, and a registration fee of

MUR3,000 and an annual fee of MUR2,500 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 whereby their liability is limited. These investments generally take the form of either shares in a company limited by shares or partnership interests in a limited partnership. The liability of investors will be limited to the amount they 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 if 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 (and 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. However, 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/Registrar of 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 a code of ethics and a code of conduct in place that are binding on its officers, advisers and employees; and
- comply with AML 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 **2.3.10 Investor Protection Rules**); or
- any investor similarly defined in the securities legislation of another country.

A professional CIS is not available to the public but can be offered to sophisticated investors, 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. For a CEF, the subscription amount is generally more than USD200,000.

To qualify as a professional CIS, 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: CISs and CEFs. As defined in the Securities Act 2005, a CIS is obliged to redeem a participant's shares at their request, at a price corresponding to the net asset value (NAV) of those investments (minus fees and commissions). This obligation does not exist for CEFs, which are characterised principally by the fact that the investors do not have control over when and how they exit the fund. A CIS or CEF is set up mainly to invest in portfolios of securities, money market instruments, or debt instruments (including loans, debt obligations or similar instruments) 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 CIS manager by the FSC. A fund holding a GBL may appoint a foreign investment manager subject to the approval of the FSC. 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 CISs (which can be either 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 CIS on a weekly basis.

To qualify for categorisation as a professional CIS, 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 Mauritian 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 usually no licensing requirement will 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 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 must 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 for a fund authorisation is around 60 business days from the time the application is submitted to the authorities, assuming the application is complete and related queries are cleared on time.

2.3.5 Rules Concerning Pre-Marketing of Alternative Funds

The production and offering of marketing materials are regulated by the Securities Act 2005 and the regulations and rules thereunder, as well as by the FSC's Guidelines for Advertising and Marketing of Financial Products 2014. These guidelines regulate the conduct of the marketing and the content of advertisements and marketing materials. They also require certain specific disclosures and disclaimers on the product and the persons promoting them.

The regulatory framework does not provide specific rules on the pre-marketing of alterna-

tive funds; however, any fund-related document provided to investors should clearly disclose the status of such document (for instance, if it is still in draft form) and the regulatory status of the person marketing the document, as well as the regulatory statuses of the fund and the manager. Investors must be expressly informed of the foregoing and should be warned to only rely on the final constitutive documents of the fund when making any investment decision.

2.3.6 Rules Concerning Marketing of Alternative Funds

As mentioned in **2.3.5 Rules Concerning Pre-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 by the FSC's Guidelines for Advertising and Marketing of Financial Products 2014.

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 their place of residence or work or in public places;
- contacting a retail investor by telephone, letter, circular, the internet or other electronic means or telecommunications 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.

These guidelines regulate the conduct of the marketing and the content of advertisements and marketing materials. They also 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.

2.3.7 Marketing of Alternative Funds

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

2.3.8 Marketing Authorisation/Notification Process

As mentioned in **2.3.6 Rules Concerning Marketing of Alternative Funds**, all marketing materials need to be submitted to the FSC prior to dissemination.

A professional CIS (open-ended or closed-end) must notify the FSC 15 days before the offering is made and simultaneously file a copy of the offering document prepared for the purpose of the offering. Moreover, a professional CIS (open-ended or closed-end) is required to inform the FSC of the conclusion of an offering, indicating the total amount and value of shares sold.

2.3.9 Post-Marketing Ongoing Requirements

In Mauritius, there are no prescribed ongoing requirements for firms that have marketed an alternative fund other than the contractual obligations they have entered into and the general licensing obligations specifically applicable to them by virtue of the capacity under which they have marketed the fund.

2.3.10 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 and of no less than USD100,000) or sophisticated investors, as defined in the Securities Act 2005 (or any investor similarly defined 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, by a statutory authority or by 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 CIS;
- a fund manager (licensed by the FSC);
- a pension fund or its management company;
- a CEF;
- an insurer (licensed by the FSC);
- an investment adviser (licensed by the FSC);
- an investment dealer (licensed by the FSC);
- an investor that guarantees, at the time of entering into a securities transaction, that:
  (a) its ordinary business or professional activity includes entering into securities transactions, whether as principal or agent;
  (b) 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
  (c) 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.

As mentioned in **2.2.3 Restrictions on Investors**, professional CIS cannot be offered to the public and is only available to a sophisticated investor, as defined in the Securities Act 2005, or as a private placement. In the case of an open-ended fund, the minimum subscription amount must be at least USD200,000 and – for a CEF – 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.

2.3.11 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 contains general information, up-to-date legislation and regulations, and statistics on licensed entities operating in Mauritius.

The FSC conducts investigations and imposes sanctions (including the revocation or suspen-

sion of licences) where it has reasonable cause to believe that a licensee is:

- committing or has committed a breach of the relevant laws; or
- 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 regard to fund applications, the FSC will usually raise such queries with the administrators via email. 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 on whether such fund would be authorised.

An open-ended fund categorised as an expert fund or a professional CIS 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 appointed custodian must act independently from the fund manager and the fund. However, CEFs 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 a fund must disclose all material risks to potential investors so as to enable them 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. Given that they can only be offered to sophisticated or high net worth investors, they are spared the application of the various prudential 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. Nonetheless, they 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 (inspired by the Financial Action Task Force principles);
- the Financial Intelligence and Anti-Money Laundering Regulations 2018; 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 AML 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 prohibits 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 USA have signed an Agreement for the Exchange of Information Relating to Taxes (the "Agreement") and the Inter-Governmental Agreement ("Model 1 IGA") to improve international tax compliance and implement the FATCA. The Agreement provides for the exchange of tax information (upon request, spontaneously, and automatically) between Mauritius and the USA, whereas the IGA provides for:

- the automatic reporting and exchange of information in relation to accounts held with Mauritian 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-sourced income if they comply with the requirements of the FATCA.

CRS

Mauritius has signed the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") developed by the 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 jurisdictions that have signed the Convention. Mauritian financial institutions must 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 CISs; 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 the fund's bank accounts and the assignment of rights to make capital calls. The latter 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. These restrictions may be set out in the private equity fund's 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 of alternative funds established in Mauritius 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% and may be subject to a corporate climate responsibility levy of 2% on its chargeable income where its turnover exceeds MUR50 million.

However, a CEF or CIS duly authorised by the FSC may be entitled to benefit from a partial exemption of 80% on all its income (except interest income) and a partial exemption at the rate of 95% on interest income if it satisfies the following conditions relating to the substance of its activities, among other things. The partial exemption of 80% on all income is also available to a CIS manager, CIS administrator, investment adviser, investment dealer or asset manager duly authorised by the FSC.

The substance conditions are that the company:

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

Alternatively, a company 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% or up to 17% where a corporate climate responsibility levy is applicable) 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 company to its shareholders. Furthermore, any interest paid to a non-resident not carrying out any business in Mauritius by a company holding a GBL will be exempt from withholding tax to the extent that the interest is paid out of the fund's foreign source income. There is no tax applicable to capital gains in Mauritius.

Limited Partnerships

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 (but may be subject to a corporate climate responsibility levy of 2%) if they qualify as a resident *société* under the ITA; instead, their partners are liable to income tax on their share of income. 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 resident in Mauritius.

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

The above-mentioned tax considerations would be applicable to a fund established as a CIS and to a CEF.

There is no withholding tax on the following payments by a fund established as a company or as 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 fund's foreign source income; or
- interest paid to a company resident in Mauritius.

Special Purpose Funds

In line with the ITA, a special purpose fund is a tax-exempt vehicle under Mauritian law. Any interest, rents, royalties, compensation and other amounts paid to a non-resident by a special purpose fund established under the Financial Services Act 2007 will also be exempt from Mauritian 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. Such an investor is not required to make any tax filing in Mauritius.

In respect of limited partnership funds, insofar as the fund derives foreign source income, the partners who are not tax resident in Mauritius will not be subject to tax by reason of being a partner in the fund. Partners who are tax resident in Mauritius will be subject to tax in Mauritius, as set out further in "Resident Investors".

Where a non-resident investor derives Mauritian source income, the investor will be required to file an income tax return in Mauritius.

Resident Investors

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

- at the rate of 15% for a body corporate; or

- if the investor is an individual, the chargeable income of the investor will be subject to a progressive tax ranging from 0% to 20%.

Further, a tax-resident investor may be subject to a corporate climate responsibility levy of 2% on its chargeable income in respect of each year of assessment (first year commencing on 1 July 2024) where their turnover for that year of assessment exceeds MUR50 million.

A tax-resident investor that is a body corporate will be entitled to benefit from the Foreign Tax Credit or as 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 CIS, CEF, CIS manager, CIS administrator, investment adviser or asset 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, and asset management of an aircraft and its spare parts (and the provision of aviation advisory services related thereto), subject to satisfying any prescribed conditions relating to the substance of its activities.

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

- Foreign Tax Credit;
- deduct the applicable amount of personal reliefs and deductions from their net income in each income year; and
- 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.

3. Retail Funds

3.1 Fund Formation

3.1.1 Fund Structures

Retail funds can be set up as companies, limited partnerships, PCCs, trusts or VCCs, as 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 CIS or a CEF 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 detailed in **2.1.3 Limited Liability**.

3.1.4 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 the prescribed disclosure requirements, including the matters required by the Mauritius Securities Act 2005 and the rules and regulations made thereunder, such as:

- 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 the 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, and method and frequency of NAV calculations); and
- any fees or charges to be attributed to the fund.

Reporting Requirements

Collective investment schemes (retail funds)

An open-ended retail fund must file audited financial statements and an annual management report with the regulator, containing matters prescribed by the fund regulations. The audited financial statements should be made public unless the fund holds a GBL.

Closed-end funds (retail funds)

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

- comparative quarterly financial statements prepared in accordance with the International Financial Reporting Standards (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 the IFRS and audited as per International Standards on Auditing (or such other permitted standards), no later than 90 days after the fund's balance sheet date.

The quarterly reports and annual reports of 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 the IFRS), no later than 45 days from its interim period; and
- an annual report, including audited comparative financial statements prepared in accordance with the IFRS and audited in accordance with the International Standards on Auditing (or such other permitted standards), 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

CISs and CEFs that are retail funds have no limitation on the type of investor or minimum investment by investors. However, 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: CISs and CEFs.

A CIS 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 CIS 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 NAV in shares of another CIS;

- acquire more than 10% of the shares of any single CIS; nor
- purchase a security nor 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 CIS can only borrow money or create a charge over its assets when:

- 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 CEFs.

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

The FSC has issued the Securities (Real Estate Investment Trusts) Rules 2021, which provide a specific regime for licensing and regulating REITs. A REIT is a CIS or CEF 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 that 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 whether the licence of the foreign investment manager is issued by a regulatory body in a jurisdiction that has comparable regulation to Mauritius for investor protection.

3.3.4 Regulatory Approval Process

The timeframe for the application of a fund authorisation is generally around 60 business days from the time the application is submitted to the authorities, assuming the application is complete and related queries are cleared on time. However, the application for a retail fund may be lengthier.

3.3.5 Rules Concerning Pre-Marketing of Retail Funds

Please see **2.3.5 Rules Concerning Pre-Marketing of Alternative Funds**.

In addition, for a retail CEF, unless the prospectus has been approved by the FSC, no application form should accompany the prospectus, no offer for subscription should be entertained, and only indications of interest without a firm commitment may be entertained.

3.3.6 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 detailed in **2.3.6 Rules Concerning Marketing of Alternative Funds**.

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

3.3.7 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.

3.3.8 Marketing Authorisation/Notification Process

A retail CIS cannot issue, use, or cause to be issued or used – for any purpose – any advertisement in connection with the CIS, unless a copy of the advertisement is forwarded to the FSC no later than five working days prior to the issue or use. All marketing materials must be submitted to the FSC prior to dissemination.

3.3.9 Post-Marketing Ongoing Requirements

Where any significant change occurs or any new information arises that should be stated in the offer document of a CIS after it has been filed with the FSC, the offer document may be amended by inserting an addendum and notifying the FSC by filing a copy of the addendum therewith. Investors should also be informed of the significant change.

3.3.10 Investor Protection Rules

Given that retail funds target the public, extensive disclosure is required in the prospectus of such funds in order for potential investors 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, such as:

- 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 the 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, so as to ensure the investor is fully aware of the overall investment.

3.3.11 Approach of the Regulator

The approach of the regulator is as provided in **2.3.11 Approach of the Regulator**.

3.4 Operational Requirements

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

A retail fund formed as a CIS 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 appointed custodian must act independently from the fund manager and the fund.

CEFs 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 CISs 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, and investment in illiquid securities risk.

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 NAV.

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 makes a provision for 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 AML laws, as detailed 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** for further details.

3.5 Fund Finance

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

A retail fund formed as a CIS can only borrow money or create a charge over its assets when:

- 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.

CEFs are not subject to any borrowing restriction. Retail CEFs would follow the usual lending practices and take into account the assets and receivables of the fund. There can be issues in financing CEFs 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

Introduction of Corporate Climate Responsibility Levy

Starting from 1 July 2024, every company (as defined in the Income Tax Act and which includes a *société*) is liable to pay a corporate climate responsibility levy of 2% on its chargeable income in respect of each year of assessment where the turnover of the company for that year of assessment exceeds MUR50 million.

Entities such as companies, PCCs, VCCs, resident *sociétés* (including limited partnerships), foundations and trusts that are tax resident in Mauritius and derive chargeable income from any source and entities that are not tax resident but derive chargeable income from a Mauritian source, shall be subject to the corporate climate responsibility levy if they meet the minimum turnover criteria. This includes entities holding a GBL that derive chargeable income from any sources.

New Post-Licensing Fees

Effective as of 1 August 2024, new post-licensing fees to be paid to the FSC will be applicable in relation to certain matters. These matters include but are not limited to applying for duplicate licences, as well as processing a change of name, a change in management company, and a change in registered agent.

Applications for FSC Licences

The Financial Services Act 2007 was amended to include a new section that provides that applications for licences will be expedited and must be granted within ten working days from the date

the application is determined to be complete by the FSC.

The FSC issued the Financial Services (Determination of Application) Rules 2024 in September 2024. The purpose of these guidelines is to provide guidance on how the FSC determines the completeness of an application for a licence (including authorisation, registration or approval), what constitutes a complete application, and the process for granting an application.