

# Country Guide

## Mauritius

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**A BRIEF GUIDE TO  
DOING BUSINESS IN  
MAURITIUS, 2021**



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## Foreword

This guide provides answers to questions that are frequently asked by Mauritian businesspeople and foreign investors with an interest in Mauritius. It gives a broad overview of the legislative regime applicable to business in the country.

It has been prepared by a team of our Mauritian lawyers who specialise in various relevant areas of law.

We hope you find it useful.

For further information or specific assistance, please do not hesitate to contact any one of our lawyers in Mauritius.

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Partner, Mauritius

*The contents of this guide are for reference only and should not be considered a substitute for detailed legal advice. It is correct as at October 2021*

# Introduction



## The Country at a Glance

Mauritius is located in the South-West Indian Ocean, making it an attractive gateway between Africa and Asia. Mauritius is easily accessible from all parts of the world.

With a population of 1.3 million, Mauritius has an estimated GDP growth rate of 3.8%, boasting a growing economy across different sectors including tourism, manufacturing, financial services and agriculture, with new sectors emerging such as healthcare and renewable energies. The mother tongue is Creole (Mauritian) but most of the workforce is bilingual in French and English and can speak other Asian languages such as Hindi and Mandarin.

Mauritius has one of the fastest-growing economies in Africa, backed by social and political stability. Successive governments have continued to show a commitment to a market-driven economy and encourage foreign investments. Policies and best practices adopted by the Government and authorities have resulted in Mauritius's reputation for being an excellent place to do business. It is ranked first on the Ibrahim Index of African Governance 2020 and 13th on the World Bank's Ease of Doing Business 2020 ranking.

## General Considerations

### 1. What is the legal system in Mauritius?

Mauritius has a 'hybrid' or 'mixed' legal system, inherited from its colonisation by the French and the British. The constitution of Mauritius is based on the Westminster model, while the substantive law (civil rights, property law, contract law) are French derived and procedural laws are English based.

Modern business laws such as company, insolvency and financial services law are modelled on the Anglo-Saxon jurisdictions.

### 2. What are the key recent developments affecting companies doing business in Mauritius?

Mauritius has recently enacted several pieces of legislation that have widely affected the corporate and financial sectors.

#### National Payment Systems (Authorisation and Licensing) Regulations 2021

The Bank of Mauritius (**BoM**) has recently issued the National Payment Systems (Authorisation and Licensing) Regulations 2021 (**Regulations**), which were made operational as from 1 June 2021. The Regulations were issued two years after the promulgation of the National Payment Systems Act 2018 (**NPS Act**) in January 2019.

The NPS Act sets the framework for the regulation, oversight and supervision of payment systems in Mauritius, and sparked the launching of the new National Payment System branded as MauCAS (Mauritius Central Automated Switch) by the BoM in August 2019.

In a nutshell, the Regulations provide for the authorisation process of operators of payment systems, clearing systems or settlement systems, the licensing of payment service providers, the form and manner for applying for an authorisation or a licence, and the applicable fee for obtaining an authorisation or licence.

### **Amendments to the Securities (Preferential Offer) Rules 2017**

The Financial Services Commission (**FSC**) recently made certain amendments to the Securities (Preferential Offer) Rules 2017 (**Rules**) through the issue of the Securities (Preferential Offer) (Amendment) Rules 2021 (**Amendment Rules**) on 3 April 2021.

Among others, the definition of issuer has been amended to mean (i) any issuer that issues securities to 25 or more investors in Mauritius; or (ii) any reporting issuer. This implies that an issuer which will make a preferential offer exclusively to investors residing outside of Mauritius will fall outside of the scope of the Rules and no longer be required to comply with its provisions.

In addition, the Amendment Rules set out that, going forward, the Rules shall not apply to any issuer which is incorporated or established outside of Mauritius. Further, shareholders' approval will not be needed for a preferential offer of debt securities, unless such approval is required under the constitutive documents of the issuer. Nonetheless, the requirement for shareholders' approval has been maintained for a preferential offer of equity securities.

These amendments are intended to promote Mauritius as a capital market destination by simplifying preferential offers to be made in or from Mauritius, and facilitating capital raising, particularly in the current times of general uncertainty and economic disruptions caused by COVID-19, and aligning the regulatory framework with international best practices.

### **Statement of Practice Issued by the Mauritius Revenue Authority**

The Mauritius Revenue Authority (**MRA**) issued a statement of practice (**SOP**) on 24 August 2021 to clarify the tax residency of trusts and foundations. This follows the abolition of the declaration of non-residence option for trusts and foundations through the Finance (Miscellaneous Provisions) Act 2021 (FA 2021).

Prior to the enactment of the FA 2021, qualifying trusts and foundations were entitled to declare non-residency with the MRA on a yearly basis by making a declaration of non-residency within three months of the end of each income year. With the changes made to the Income Tax Act 1995 (**ITA**) through the FA 2021, the declaration of non-residency for trusts and foundations has been abolished.

However, a grandfathering period up to the year of assessment has been granted to trusts and foundations established prior to 30 June 2021. During the grandfathering period, grandfathered trusts and foundations will not benefit from tax exemptions in respect of new assets or activities, such as intellectual property assets acquired and income from specific assets or projects started after 30 June 2021.

### **Amendments to the Securities Act**

The Mauritius Securities (Amendment) Act (**Amendment Act**) came into force on 31 July 2021 and has significantly relaxed the securities offering regulations. Companies operating in this space are no longer required to resort to a locally licensed capital markets intermediary, or to have a foreign fund recognised by the Mauritian regulator, in order to market securities and foreign funds only to 'sophisticated investors'.

Among others, the definition of 'sophisticated investor' itself has been broadened to include a collective investment scheme (**CIS**), a pension fund or its management company, and a closed-end fund. The Amendment Act has further facilitated the marketing of CISs established in a foreign jurisdiction to sophisticated investors in Mauritius. Additionally, the definition of 'reporting issuer' has been limited to an issuer who (i) by way of a prospectus, has made an offer of securities either before or after the commencement of the Securities Act; or (ii) has made a takeover offer by way of an exchange of securities or similar procedure.

The Amendment Act further enhances the competitiveness of Mauritius as a listing jurisdiction by facilitating securities offerings by foreign bodies, while finely balancing the need to protect retail investors.

# Establishing a Business



## Business Vehicles

### 3. What are the most common forms of business vehicles used in Mauritius?

#### Types of Business Vehicles

The most common forms of business vehicles in Mauritius are:

- companies, established under the Companies Act 2001;
- limited partnerships, established under the Limited Partnerships Act 2011;
- limited liability partnerships, established under the Limited Liability Partnerships Act 2016;
- protected cell companies, established under the Protected Cell Company Act 1999; and
- trusts, established under the Trusts Act 2001.

#### Companies

Companies can be public or private, limited (by shares, guarantees or both) or unlimited.

The most widely used form of business vehicle among foreign investors in Mauritius is a private company, which shall have a minimum of one and not more than 50 shareholders. The company may have Mauritian and non-Mauritian directors and shareholders but at least one director must be resident in Mauritius while shareholders may be legal or natural persons.

A company is tax opaque, i.e. it is liable to tax on its chargeable income at a rate of 15%.

Another common vehicle is a foreign-incorporated company that has a place of business or is carrying on business in Mauritius (more commonly referred to as a 'branch'). It is regulated largely as if it were incorporated under the laws of Mauritius.

#### Limited Partnerships

A limited partnership (**LP**) may be set up with or without a legal personality and requires (i) at least one general partner, who participates in the conduct or management of the business of the LP; and (ii) one or more limited partners who do not intervene in the management of the LP.

In terms of the liabilities of the partners, regardless of whether the LP elects to have a separate legal personality or not, the partners will be liable for the debts of the partnership; the general partners are jointly and severally liable for all the debts and obligations of the LP while the limited partners will be liable only to the maximum amount contributed or agreed to be contributed to the LP, so long as the limited partners do not become involved in the management of the partnership.

The common use of such a vehicle is to structure private equity funds whereby the LP offers the flexibility of electing or not electing to have a separate legal personality, and limited partners are able to invest and participate in the returns of the LP to the maximum amount of their contributions, without participating in the management of that LP.

LPs are tax transparent, i.e. they will not be liable to tax. However, each of the partners of the LP will be liable to pay tax to the extent of his/her share of the income in the partnership. If, however, the LP opts to hold a global business licence, it will be subject to tax on its chargeable income at a rate of 15%.

#### Limited Liability Partnerships

Another widely used business vehicle in Mauritius is the limited liability partnership (**LLP**) which incorporates features of both a company and a partnership. An LLP may be established by two or more partners, who can be individuals, an entity or an unincorporated body, whether resident or not in Mauritius. However, the LLP is required to have at least one manager, who must be resident in Mauritius at all times and must be qualified as a secretary. In the event that the LLP holds a global business licence, the manager must be a management company based in Mauritius.

An LLP is set up as a body corporate having a separate legal personality from its partners, whereby the partners are only liable to the amount of their respective contributions.

Where the LLP has its seat in Mauritius or has at least one partner who is resident in Mauritius, the LLP is tax transparent. Each of the partners who are resident will however be taxed on its share of income. It in turn follows that the LLP will not benefit from the double taxation treaties which Mauritius has entered into with other countries.

An LLP is commonly used for the purposes of holding assets, trading activities, structuring family wealth and for private equity investments.

The preferred partnership structure is usually the LLP since it bears the features of a partnership but also provides the comfort that the liabilities of the partners are limited to the extent of their contributions to the LLP. However, the choice between an LP and LLP will also hinge on the type of activities which it will be conducting.

**Protected Cell Companies**

A protected cell company (**PCC**) is a special type of corporate vehicle, made up of different ‘cells’ that are segregated from each other; each cell essentially having its own assets and liabilities. Since the liabilities are segregated from one cell to another, the different risks within a PCC are thereby ring-fenced.

There is no restriction as to the number of cells which can be created. In addition to cellular assets, the PCC also consists of non-cellular assets (core assets) which are used to meet those liabilities which cannot be assigned to an individual cell.

A PCC is liable for tax on its chargeable income at a rate of 15%, which may be reduced to 3% after application of the partial exemption regime of 85% to certain categories of income which qualify for such exemption.

PCCs are especially beneficial for a single investment entity that has several investment portfolios, each portfolio having its own strategy and risk profile, as well as insurance/re-insurance business and asset holding.

**Trusts**

A trust is an arrangement for holding and administering property, where the beneficial owner (known as the settlor) creates the trust and transfers property or legal rights to a trustee. In turn, the trustee has a fiduciary obligation to hold or deal with the property for or on behalf of the beneficiaries in accordance with the trust objectives (known as a beneficiaries trust) or for certain purposes (known as a purpose trust).

A trust can have up to four trustees, one of whom must be a qualified trustee (i.e. a management company or a person resident in Mauritius and authorised by the FSC to provide trusteeship services). The deed creating the trust must be in writing.

A trust is liable to tax on its chargeable income.

Trusts are commonly used to preserve family assets and are substantially free from taxation.

**Categories of Business Vehicles**

Except for a trust, it is possible for business vehicles to conduct business outside Mauritius by holding a global business licence (**GBL**) or a licence to operate as an ‘authorised company’ (**authorised company**).

**Global Business Company (GBC)**

To be eligible for a GBL, the following conditions must be fulfilled:

- the majority of shares or voting rights, or the legal or beneficial interest, are held and controlled by a person who is not a citizen of Mauritius; and
- that corporation proposes to conduct or conducts business principally outside Mauritius or with a certain category of persons specified in rules issued by the FSC.

In terms of directorships, a company holding a GBL shall have at least two directors who are resident in Mauritius.

A GBC must be administered by a management company in Mauritius, licensed by the FSC.

In terms of tax benefits, a GBC is considered to be tax resident and is therefore eligible for double tax treaties which Mauritius has entered into with other countries.

**Authorised Company**

To qualify as an authorised company in Mauritius, the following conditions must be fulfilled:

- the majority of shares or voting rights, or the legal or beneficial interest in a company, incorporated or registered under the Companies Act 2001, must be held and controlled by a person who is not a citizen of Mauritius;
- that person proposes to conduct or conducts business principally outside Mauritius or with a category of persons specified in the rules issued by the FSC; and
- the authorised company has its place of effective management outside Mauritius.

An authorised company is required to be administered by a registered agent in Mauritius that is a management company licensed by the FSC.

It is worth noting, however, that the activities which an authorised company is allowed to carry out are restricted. By law, it cannot conduct the following activities among others,:

- banking;
- financial services;
- the business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary;
- providing registered office facilities, nominee services, directorship services, secretarial services or other services for corporations;
- providing trusteeship services by way of business; and
- any other activities that the FSC may determine as being detrimental to the good repute of Mauritius as a centre for financial services or contrary to public interest.

An authorised company is however not considered to be a tax resident and therefore not liable to pay taxes in Mauritius. It does not thus benefit from any double taxation treaties to which Mauritius is a party.

**4. In relation to the most common forms of corporate business vehicle used by foreign companies in Mauritius, what are the registration and reporting requirements?**

**Companies**

- Registration of Companies

The procedure for the incorporation of a company is as follows:

- A prospective company makes an application to the Registrar of Companies of Mauritius (**ROC**) for reservation of a company name by completing a prescribed form and lodging it with the ROC.
- No fees are payable if the name is reserved for seven days; in the event that the reservation extends to two months, the prescribed fee for such application is MUR.100 (approximately USD 2.52).
- Following the approval of the suggested company name and upon payment of the aforementioned fees (if required), a receipt is issued (usually within one day of the application being lodged). This receipt shall also constitute a notice of reservation and will be valid for a period of up to two months after the approval date.

- Incorporation of a Company at the ROC

Once the notice of reservation is issued to an authorised company or a company holding a GBL, it can, through its management company, apply for incorporation by completing prescribed forms and submitting the application to the ROC.



The application to the ROC is submitted online and must state, among others:

- the name of the proposed company;
- the nature of business;
- whether the company is limited or unlimited;
- whether the company is a private company;
- the principal place of business of the company;
- the full name, nationality and the service and residential address of every director and any secretary of the company and particulars of any business occupation;
- the full name or company name (as applicable), the service and residential address of every shareholder of the company; and
- the number and class of shares to be issued to every shareholder and the amount to be paid or other consideration to be provided by that shareholder.

Along with the submission of the prescribed form, several documents must also be submitted, among which are the duly filled out consent forms of all directors, shareholders and the secretary. If the proposed company has a constitution, a copy of the constitution must accompany the application, together with a legal certificate certifying that the constitution complies with the laws of Mauritius (**legal certificate**).

- Registration of GBC/Authorised Company at the FSC

An application to the FSC is made where a company is to hold a GBL or become an authorised company. The application must be made by the management company and the registered agent respectively on a prescribed form. This must be accompanied by documents such as a certified copy of the constitution (where adopted) and a legal certificate, business plan and covering letter, together with the first annual licensing fees.

Once the application has been submitted to the ROC and subsequently the FSC, the FSC will usually take four working days to issue a GBL or a licence to operate as an authorised company, provided that the application filed with the FSC is complete and satisfactory.

Once the GBL/licence to operate as an authorised company has been obtained, the ROC will then, upon payment of a prescribed fee, issue a certificate of incorporation (usually within 30 minutes of payment). No fee is payable when a certificate of incorporation is issued electronically; however, a fee of MUR 300 (i.e. approximately USD 7.56) is payable for the issuance of a copy of the certificate of incorporation signed by the ROC.

#### LPs/LLPs

Registration of an LP and LLP requires an application to be submitted with the Registrar of Limited Partnerships of Mauritius, which is also the ROC. A declaration signed by one or more general partners must be filed with the ROC, stating the name of the LP/LLP, the nature of the business, the registered office and the principal place of business, and the duration of the LP/LLP.

The partnership agreement between the partners, setting out the conduct of the business of the partnership and the rights and duties of the partners, among others, may or may not be filed with the ROC.

Upon registration, the ROC will issue a certificate of registration to the general partners.

In the event that the LP/LLP intends to conduct a major part of its business outside of Mauritius, it shall apply for a GBL by lodging an application at the FSC.

Where an LP or LLP holds a GBL or at least one of its partner holds a GBL, information contained in registers at the ROC which includes details of the partner will no longer be in the public domain, save for the name and address of the registered office of the LP/LLP and that of its management company.

#### PCCs

A PCC can be set up as a domestic company or incorporated as a GBC in Mauritius. An existing Mauritian company or a foreign company may also be registered as a PCC by way of continuation, subject to fulfilling incorporation and registration requirements under the Companies Act 2001 and the Protected Cell Company Act 1999. Applications for incorporation are made to the FSC as per a prescribed form through a management company, licensed by the FSC.

#### Trusts

A trust incorporated in Mauritius does not have to be registered and/or incorporated and no filing is required to be made, thereby making it easy to incorporate and ensuring confidentiality.

A trust can be set up in one working day.

#### Reporting Requirements

A company must notify the ROC of any changes within the company that relate to its:

- constitution;
- director/s;
- company secretary (if any);
- auditor;
- registered office;
- company name;
- authorised agent or their addresses; or
- company assets.

Mauritian public and private companies, other than small private companies, must complete financial statements within six months after their balance sheet date. These must be filed with the ROC, together with a copy of the auditors' report, within 28 days of the date on which the statements are signed.

Annual returns must also be filed with the ROC within 28 days of the annual meeting of the company.

Small private companies whose turnover in respect of their last accounting period is less than MUR 10 million are not required to file an annual return; rather they can file a financial summary or financial statements. A company holding a GBL is only required to file its financial statements and auditors' report, while an authorised company must only file a financial summary with the FSC every year.

A foreign company is required to file its balance sheet annually within three months of its annual meeting of shareholders, together with such particulars and documents that are required to be filed in the company's country of incorporation or origin.

#### 5. What grants or incentives are available to investors?

Mauritius offers numerous grants and incentives to investors, domestic and foreign alike. The noteworthy ones are set forth below:

##### Investment Incentives

- No minimum foreign capital is required.

##### Fiscal Incentives Generally

- Mauritius is presently party to around 44 tax treaties, including with Botswana, Congo, France, Germany, Italy, Lesotho, Luxembourg, Madagascar, Mozambique, Namibia, Rwanda, South Africa, Swaziland, the United Kingdom, Zimbabwe and Uganda. In addition, a series of treaties is under negotiation.
- The corporate income tax in Mauritius is 15% on chargeable income except for companies engaged in the export of goods or manufacturing activities in the freeport zone, which are taxed at 3%.
- There are no withholding or capital gains taxes.
- No approval is required for the repatriation of profits, dividends or capital gains earned by a foreign investor in Mauritius.

- For companies set up on or after 1 July 2017 that are involved in innovation-driven activities, there is an eight-year income tax holiday in respect of their income derived from intellectual property assets developed in Mauritius on or after 10 June 2019.
- An eight-year income tax holiday applies to companies incorporated after 8 June 2017, and engaged in the manufacture of medical devices, pharmaceutical and high-tech products;
- Companies receive exemption for five successive income years from the income year in which the investment was made in respect of income derived by:
  - an individual who is a non-citizen investing not less than USD 25 million in Mauritius on or after 1 September 2016, provided that the terms and conditions requiring approval by the Economic Development Board (**EDB**) are complied with; or
  - a company wholly owned by a non-citizen investing not less than USD 25 million in the company, provided that the terms and conditions requiring approval by the EDB are complied with.

**Occupation Permits**

- Investment to acquire an occupation permit as an investor and live in Mauritius as a non-citizen has been reduced from USD 100 000 to USD 50 000.
- An occupation permit is now valid for up to 10 years (previously the validity period was three years) and the spouses of such permit holders will henceforth not require a separate permit to invest or work in Mauritius.

**Investments in Real Estate**

- A non-citizen is eligible for a residence permit upon purchasing a villa worth more than USD 500 000 under the Property Development Scheme.
- Investors, their spouses and dependents are granted residence permits to live in Mauritius when a residential property is acquired for more than USD 500 000.

**6. Are there any restrictions on foreign investments (including authorisations required by the central or local government)?**

There are generally no restrictions on foreign investment in Mauritius, save when foreigners are seeking to invest in property. This includes immovable property in Mauritius or in shares of a company which holds immovable property in Mauritius. The restrictions are set out in the Non-Citizens (Property Restriction) Act 1975 (**Act**).

The Act provides that approval from the Prime Minister's Office is required in such instances.

An application must be made to the Minister of Internal Affairs (the **Minister**) and upon his approval, a certificate is issued authorising the non-citizen investor to purchase, acquire or hold the property, on terms and conditions as the Minister may impose.

No such certificate is required to enable a non-citizen to hold property in respect of:

- a lease agreement for industrial or commercial purposes for a term not exceeding 20 years;
- a deed of concession under the Fisheries and Marine Resources Act 2007;
- a tenancy agreement for a term not exceeding four years;
- purchasing luxury villas, apartments, penthouses or other similar properties under the Invest Hotel Scheme, Property Development Scheme and Smart City Scheme;
- purchasing or otherwise acquiring immovable property with approval from the EDB for use in business after it has obtained the approval of the Minister; and
- purchasing or otherwise acquiring an apartment used, or available for use, as a residence, in a building of at least two storeys above ground-floor level, on condition that the purchase price is not less than MUR 6 million or its equivalent in any other hard convertible foreign currency, on production of an authorisation from the EDB granted after it has obtained the approval of the Minister.

**Exchange Controls**

**7. Are there any exchange controls or currency regulations?**

There are no such enactments/regulations presently in force in Mauritius. The Foreign Exchange Control Act in 1994 has been abolished thereby allowing free repatriation of capital.

No approval is therefore required for the repatriation of profits, dividends, or capital gains earned by a foreign investor in Mauritius.

**Import/Export Regulations**

**8. Are there any import/ export regulations?**

There are no restrictions on imports and exports save for certain product-specific restrictions on imports from certain countries.

# Operating a Business



## Employment

### 9. What are the main laws regulating employment relations?

The main law governing employment in Mauritius is the Workers' Rights Act 2019 (**WRA**). There are also various other pieces of legislation and regulations that apply to employment in Mauritius, notably:

- Additional Remuneration and Other Allowances Act;
- Employment Relations Act 2008;
- End of Year Gratuity Act;
- Non-Citizens (Employment Restriction) Act; and
- Occupational Safety and Health Act 2005 (and corresponding regulations).

There are also regulations drawn up under the various acts which cater for specific situations and sectors such as the (Remunerations) Regulations, the (Additional Remuneration)(2021) Regulations 2021, (Payment of Special Allowance 2021) Regulations 2021, (Working from Home) Regulations 2020, (Atypical Work) Regulations 2019 and many more.

As in France, employment is also governed by contractual obligations that may exist between the employer and employee, provided the terms and conditions stipulated in the contract are in compliance with the mandatory provisions of the WRA. Note that an employer can set out contractual arrangements providing for terms more favourable than the mandatory minimum but cannot provide for terms less favourable. In the event of a conflict with a mandatory provision of the WRA, the provision of the WRA would prevail over the contractual provision.

### 10. Is a written contract of employment required? If so, what terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

In the case of a worker (an employee earning less than MUR 600 000 a year) who has been engaged for more than one month, the WRA requires an employer to provide a written statement of employment within 14 days of the completion

of the first calendar month. This statement shall take the form prescribed, and a copy must be submitted to the supervising officer of the Ministry of Labour within 30 days. That being said, even without a written contract of employment, the Industrial Court may find that an employment relationship exists. Such findings would be made on a case-by-case basis, depending on the facts and evidence proving the existence of such a relationship.

### 11. Do foreign employees require work permits and/or residency permits?

Yes. Foreign employees require a work permit under the Non-Citizens Employment Restriction Act 1973. They will also need a residence permit. To facilitate the process, a combined application form for both permits is submitted. Various factors are taken into consideration before a work permit is issued, such as the type of sector, obtaining health clearance, the curriculum vitae of the employee and so on. Foreign employees can instead (subject to fulfilling certain specific criteria) apply for an occupation permit, which is a combined work and residence permit allowing foreign nationals to work and reside in Mauritius. The foreign national should however fall within one of these three categories: Investor, Professional or Self-Employed.

There are specific requirements for each category. For example:

- to fall within the category of Investor, the foreign national should make an initial transfer of an equivalent of USD 100 000 to the bank account of the company under which the application will be made. That company should have a turnover of at least MUR 2 million per year and generate a cumulative turnover of at least MUR 12 million during three consecutive years;
- to fall within the category of Professional, the foreign national should earn a basic salary of at least MUR 60 000 (save for the ICT sector, where the basic salary is reduced to MUR 30 000 per month); and

- to fall within the category of Self-Employed, the foreign national should make an initial transfer of USD 35 000 (or its equivalent) to his or her bank account in Mauritius. His/her business activity should generate a business income of at least MUR 600 000 per year, and a cumulative business income of at least MUR 2 400 000 during the three years preceding the application for an occupation permit.

**12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?**

Under the WRA, an employer (employing not fewer than 15 employees or having an annual turnover of at least MUR 25 million) who intends to reduce the number of employees in its employment, either temporarily or permanently, or close down the enterprise, has to first notify and negotiate with either the trade union or a workers' representative to explore the possibility of avoiding the reduction of workforce or closing down.

Where no agreement is reached, the employer who wants to reduce its workforce will have to give written notice to the Redundancy Board, together with a statement showing cause for the reduction or closure, at least 30 days before the intended reduction or closing down, as the case may be. The Redundancy Board will then give an order as to the course of action.

It is to be noted that in the wake of the COVID-19 pandemic, there were amendments to the laws, with a view to prevent mass layoffs. The amendments provide that for such period as may be prescribed, save for the provided exceptions, an employer (employing not fewer than 15 employees or having an annual turnover of at least Rs 25 million) shall not reduce the number of employees in its employment.

**13. How is the termination of individual employment contracts regulated?**

**Consent of the Employee**

An employee can resign from a contract of employment at any time. Alternatively, the agreement entered into can terminate on the last day of the period mutually agreed upon by the employer and the employee.

However, if an employer wants to unilaterally terminate a contract of employment, it can do so but will have to pay a severance allowance to the employee.

There are also situations where the employee can claim his/her employment agreement has been terminated by his employer in situations where:

- the employee is ill-treated by the employer;
- the employer fails to pay the remuneration due;
- the employer fails to provide work and to pay remuneration under an agreement; or
- the employee is made to resign by fraud or duress or is made to sign a letter of resignation or such document in writing.

Alternatively, it is also possible for the employer and the employee to enter into a compromise agreement/settlement agreement to terminate the employment.

**Alleged Misconduct**

In cases of alleged misconduct there are specific procedures that will need to be followed before an employer can terminate a worker's agreement. The employer must, within 10 days of the day on which it becomes aware of the alleged misconduct, notify the employee of the charge made against the employee. Should the employer want to carry out an investigation in the circumstances of the case, before a charge of alleged misconduct is levelled, the period of 10 days shall not commence until the completion of the investigation.

The employee should be given at least seven days' notice to answer to any charge made against him or her in relation to the alleged misconduct. After receiving the employee's response, if the employer cannot in good faith take any other course of action than to terminate the employment, termination is effected not later than seven days after the employee has answered the charge made, or, where the charge is the subject of an oral hearing, after the completion of such hearing.

**Poor Performance**

Similarly, in cases of poor performance, there are specific procedures that will need to be followed before an employer may terminate a worker's agreement. Again, the employee must be given at least seven days' notice to answer any charge made against him or her. If the employer cannot, in good faith, take any other course of action than termination of employment, termination must be effected within seven days of the completion of the disciplinary hearing. It is to be noted that, as seen in case law over the years, it is hard to argue that the employer cannot, in good faith, take any other course of action than termination.

**14. What remedies apply when termination of employment is unjustified?**

Where a worker believes that the termination of his employment is unjustified, he or she may apply to the Industrial Court to request that:

- the employer be ordered to reinstate the employee in his or her former employment with payment of remuneration from the date of the termination of employment to the date of reinstatement; or
- the employer be ordered to pay the employee a severance allowance.

The severance allowance rate is as set in the WRA and is calculated on the basis of a sum equivalent to three months' remuneration for every period of 12 months of continuous employment.

Moreover, the Court may potentially also order an employer to pay interest at a rate not exceeding 12% a year on the amount of severance allowance payable from the date of the termination of the agreement to the date of payment.

**15. Are redundancies and mass layoffs regulated?**

Yes, redundancies and mass layoffs are regulated under Part VI Sub-Part III of the WRA. According to section 72, an employer intending to reduce the number of workers in its employment, either temporarily or permanently, is required to notify and negotiate with either the trade union or a trade union having representational status, or, where there is no trade union, the workers' representatives. Such an employer must discuss the possibility of avoiding the reduction of the workforce by means of restrictions on recruitment, retirement of workers, reduction in overtime, shorter working hours to cover temporary fluctuations in manpower needs, provision of training for other work within the same undertaking, or by way of redeployment of workers if the undertaking forms part of a holding company.

In the event that the trade union and the employer are unable to reach an agreement in respect of the avoidance of a workforce reduction through the abovementioned or any other methods, the employer is required to furnish a written notice to the Redundancy Board set up under the WRA. This notice must be submitted within 30 days from the intended date of reduction of the workforce.

Where the employment of a worker is terminated in breach of the provisions of the WRA, the worker may apply to the Redundancy Board for an order directing the employer to reinstate the worker in his or her former employment. In such cases, the employer must, in accordance with the WRA, pay the worker a severance allowance, calculated from the date of termination of employment to the date of reinstatement. Further, where the employer terminates the employment of a worker following an order of the Redundancy Board, the worker shall be entitled to 30 days' wages.

Under section 72A of the WRA, an employer may be exempted from the application of section 72. Section 72A allows for a faster resolution by the Redundancy Board. As at the date of publishing, the aviation and airlines services section has been exempted under this provision.

## Tax

### 16. When is a business vehicle subject to tax in Mauritius and what are the main taxes that apply to a business?

Mauritius runs a self-assessment system. A resident of Mauritius is taxable on worldwide income, the exception being an individual whose foreign-sourced income is taxable only if it is remitted to Mauritius.

#### Companies

A resident company is chargeable to tax in respect of its worldwide income, whether or not its foreign-sourced income is remitted to Mauritius. A non-resident is taxable in respect of the Mauritius-source income. A company is resident in Mauritius if it is incorporated in Mauritius or has its central management and control in Mauritius. A company incorporated in Mauritius is treated as non-resident for tax purposes if it is centrally managed and controlled outside Mauritius. A tax resident company is taxed at a corporate rate of 15% on business profits. Foreign tax credits will be allowed to the full extent on the Mauritius tax for taxes paid at source, provided that evidence of this is produced. Alternatively, a tax resident company is entitled to an 80% exemption in respect of the following types of income subject to the satisfaction of the 'prescribed substance requirements'.

The table alongside sets out some of the income which benefits from the 80% exemption and the applicable substance requirements.

Type of Income	Substance Requirements
Foreign source dividend provided that such dividend is not allowed as a tax-deductible item in the source country	<p>The entity must satisfy the conditions relating to the substance of its activities by:</p> <ul style="list-style-type: none"> <li>• complying with its filing obligations under the Companies Act 2001 or the Financial Services Act 2007 of Mauritius; and</li> <li>• having adequate resources for holding and managing share participations.</li> </ul>
Interest income derived by a company (other than a bank, non-bank deposit-taking institution, money changer, foreign exchange dealer, insurance company, leasing company and company providing factoring, hire purchase facilities or credit sales facilities)	<p>The entity must:</p> <ul style="list-style-type: none"> <li>• carry out its core income-generating activities in Mauritius. These activities include agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks; and</li> <li>• employ directly or indirectly an adequate number of suitably qualified persons to conduct its core income-generating activities; and incur a minimum expenditure proportionate to its level of activities.</li> </ul>
All income derived by a collective investment scheme (CIS), closed-end fund, CIS manager, CIS administrator, investment adviser or asset manager licensed or approved by the FSC	<p>The entity must satisfy the conditions relating to the substance of its activities by:</p> <ul style="list-style-type: none"> <li>• carrying out its core income-generating activities in Mauritius. These activities include the following: <ul style="list-style-type: none"> <li>• For CIS – investment of funds in portfolios of securities, or other financial assets, real property or non-financial assets; diversification of risks; redemption on the request of the holder.</li> <li>• For closed-end funds – investment of funds collected from sophisticated investors, in portfolios of securities, or in other financial or non-financial assets, or real estate property.</li> <li>• For CIS managers – management of a CIS; taking decisions on the holding and selling of investments; calculating risks and reserves; taking decisions on currency or interest fluctuations and hedging positions; and preparing relevant regulatory or other reports for Government authorities and investors.</li> <li>• For CIS administrators – providing services with respect to the operations and administrative affairs of a CIS, including accounting, valuation or reporting services.</li> <li>• For investment advisers or asset managers – advising, guiding or recommending other persons, or holding himself/herself out to advise, guide or recommend other persons, whether personally or through printed materials or by other means, to enter into securities transactions; managing or holding himself or herself out to manage, under a mandate, whether discretionary or not, portfolios of securities; giving advice on corporate finance advisory matters concerning securities transactions.</li> </ul> </li> <li>• employing directly or indirectly an adequate number of suitably qualified persons to conduct its core income-generating activities; and</li> <li>• incurring a minimum expenditure proportionate to its level of activities.</li> </ul>

Type of Income	Substance Requirements
Income derived by companies engaged in ship and aircraft leasing	<p>The entity must satisfy the conditions relating to the substance of its activities by:</p> <ul style="list-style-type: none"> <li>carrying out its core income-generating activities in Mauritius. These activities include agreeing on funding terms, identifying and acquiring assets to be leased, setting out the terms and duration of any leasing, monitoring and revising any agreements, and managing any risks;</li> <li>employing directly or indirectly an adequate number of suitably qualified persons to conduct its core income-generating activities; and</li> <li>incurring a minimum expenditure proportionate to its level of activities.</li> </ul>
Income derived by a company from reinsurance and reinsurance brokering activities	<p>The entity must satisfy the conditions relating to the substance of its activities by:</p> <ul style="list-style-type: none"> <li>carrying out its core income-generating activities in Mauritius. "Core income-generating activities" includes agreeing predicting and calculating risk, reinsuring against risks, administrating clients' cell, providing related services, preparing regulatory reports, and providing clients technical advice in respect of reinsurance of liabilities;</li> <li>employing directly or indirectly an adequate number of suitably qualified persons to conduct its core income-generating activities; and</li> <li>incurring a minimum expenditure proportionate to its level of activities.</li> </ul>
Income derived by a company from leasing and provision of international fibre capacity	<p>The entity must satisfy the conditions relating to the substance of its activities by:</p> <ul style="list-style-type: none"> <li>carrying out its core income-generating activities in Mauritius. These activities include agreeing funding terms, identifying and acquiring capacity to be leased or otherwise provided, setting out the terms and duration of any leasing or right of use contracts, monitoring and revising any agreements, and managing any risks;</li> <li>employing, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income-generating activities; and</li> <li>incurring a minimum expenditure proportionate to its level of activities.</li> </ul>
Income derived by a company from the sale, financing arrangement, asset management of aircraft and spare parts, and related aviation advisory services	<p>The entity must satisfy the conditions relating to the substance of its activities by:</p> <ul style="list-style-type: none"> <li>carrying out its core income-generating activities in Mauritius. These activities include negotiating the terms of purchase and sale of aircraft and spare parts, arranging for the sale and leasing of aircraft, agreeing funding terms and providing advisory services in aviation-related services;</li> <li>employing, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income-generating activities; and</li> <li>incurring a minimum expenditure proportionate to its level of activities.</li> </ul>

### GBCs

A GBC must be managed and controlled in Mauritius and be resident in Mauritius for tax purposes.

### Authorised companies

An authorised company must have its central management and control outside Mauritius and is not resident in Mauritius for tax purposes.

### Partnerships

Limited partnerships are tax transparent and are therefore not taxable under the laws of Mauritius, unless they hold a GBL, in which case they can elect to be taxpayers. Where a limited partnership is tax transparent, only the partners who are residents of Mauritius are liable to pay tax in Mauritius at the rate of 15% (subject to any available tax credit or exemption). Limited partners who are non-residents of Mauritius are only liable to 15% tax on income that is derived in Mauritius but have no tax liability on foreign-sourced income.

### Trusts and Foundations

The income tax laws make a distinction between resident and non-resident trusts and between a resident foundation and a non-resident foundation.

A non-resident trust is a trust of which the settlor and the beneficiaries are not resident in Mauritius, or in the case of a purpose trust, where such purpose is carried out wholly outside Mauritius. Such trusts are not subject to taxation in Mauritius.

A foundation will be non-resident when the founder is a non-resident and all the beneficiaries appointed under the terms of a charter or a will are, throughout an income year, non-resident in Mauritius. A non-resident foundation is exempt from taxation in Mauritius. A non-resident trust or foundation has to file a declaration of 'non-residency' on an annual basis with the MRA.

Charitable trusts and foundations are also exempt from income tax in Mauritius.

A non-charitable trust, a non-charitable foundation or a non-charitable institution that is tax resident in Mauritius is taxable on its chargeable income at the rate of 15% per annum, although it will be entitled to tax credits on foreign tax paid or a partial exemption of 80% of the Mauritius tax liability on certain specific types of income.

### 17. How are the following taxed: Capital gains, dividends and interest paid?

#### Capital Gains

Capital gains are exempt from tax in Mauritius.

#### Dividends

Dividends paid by a Mauritius resident company are exempt from tax. Foreign-sourced dividends are taxed at the rate of 15% but may be eligible for an exemption of 80% if the requirements set out in the table on page 23 to 24 are met.

#### Interest Paid

Interest paid by a person other than an individual, to any person other than a company resident in Mauritius, is subject to a withholding tax of 15% of the gross amount of the interest. However, interest paid by a global business company out of its foreign-sourced income to a foreign shareholder not carrying on any business in Mauritius, is exempt from tax.

### 18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

There are no thin capitalisation rules in Mauritius.

### 19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in Mauritius (controlled foreign company rules)?

No. Only income derived from Mauritius is taxable in Mauritius for companies not incorporated under the laws of Mauritius.

**20. Are there any transfer pricing rules?**

There are no transfer pricing rules or regulations in Mauritius. The Income Tax Act 1995 nevertheless provides that the MRA can reassess the tax liability of a party where it is of the view that a transaction has created rights or obligations that would not normally be created between persons dealing at arm's length.

Where the MRA considers the transaction to not be at arm's length, the Authority can reassess the liability:

- as if the transaction has not been entered into; or
- in an appropriate manner to counteract the tax benefit.

In determining whether the transaction was carried out at arm's length, the MRA will decide whether the business produces less net income than the amount of net income expected to be derived from that business.

**21. How are imports and exports taxed?**

Mauritius has a relatively streamlined trade regime and over the past several years, the Government has taken steps to liberalise trade by lowering import tariffs over a wide range of products. Import tariffs are levied as specific tariffs and ad valorem tariffs.

Taxes on imports from the preferred list are levied at 0% to 80%. Imports of goods from other countries, at the 55% rate or higher, are subject to an additional 10% duty. A value-added tax (VAT) of 12% is levied on all imports. Vehicles, petroleum, alcohol, cigarettes and furniture are subject to special excise duties of up to 360%.

Most imports require a licence and state enterprises control the import of rice, wheat, flour, petroleum, cement, tea, tobacco and sugar. There are few export controls, except the requirement for licences to export sugar, tea, vegetables, fruits, meat, fish, textiles, pharmaceuticals, gold, live animals, coral and shells.

**22. Is there a wide network of double tax treaties?**

Mauritius has 44 tax treaties that are currently in force and there is a series of treaties that are currently under negotiation. Six treaties await ratification and six treaties await signature. The tax treaties currently in force include Australia (partial), Botswana, Croatia, France, India, Lesotho, Malaysia, Mozambique, Oman, China, Seychelles, UK, Germany, Italy, Luxembourg, Uganda, South Africa, Sweden, Barbados, Cape Verde, Cyprus, Malta, Namibia, Pakistan, Rwanda, Singapore, Qatar, Thailand, UAE, Zimbabwe, Belgium, Congo, Egypt, Guernsey, Kuwait, Madagascar, Monaco, Nepal, Bangladesh, Sri Lanka, Ghana, Jersey, Swaziland and Tunisia.

**23. In what circumstances are employees taxed in Mauritius and what criteria are used?**

All income derived from employment exercised in Mauritius is liable to tax in Mauritius, regardless of where payment is made or who the employer is. Employment income includes salaries, wages, leave pay, fees, overtime pay, perquisites, allowances, bonuses, gratuities, commissions, compensation for loss of office, tax borne by employer, pensions, retiring allowances, annuities, all benefits in kind, and reward or remuneration in relation to employment.

**Pay As You Earn**

Pay As You Earn (**PAYE**) is a system whereby employers are required to withhold tax from the emoluments of employees chargeable to tax at the time the emoluments are received by or made available to the employees.

To arrive at an employee's chargeable income, an individual is entitled to deduct from his or her net income the appropriate Income Exemption Threshold based on the number of dependents of the employee, or other reliefs.

**Exemptions and Reliefs**

The following reliefs or exemptions may be claimed by an employee under the tax laws of Mauritius:

- exemption in respect of a dependent child pursuing an undergraduate course;
- deduction for household employees;
- interest relief on a secured housing loan;
- relief for medical insurance premiums or contributions;
- solar energy investment allowance;
- rainwater harvesting investment allowance; and
- deduction for contribution to the COVID-19 Solidarity Fund.

**Calculation of Tax**

The employee is required to fill in and submit to their employer an Employee Declaration Form (**EDF**), claiming the Exemptions and Reliefs to which they are entitled. Their Employer will then deduct 1/13 of the Income Exemptions and Reliefs claimed from the employee's monthly emoluments to obtain the chargeable income on which to apply the corresponding rates of 10% or 15%. Employees drawing monthly emoluments not exceeding Rs 25 000 are not affected by PAYE.

In cases where an employee's emoluments exceed MUR 25 000 and the employee has not furnished an EDF to the employer, tax will be withheld from their emoluments at the flat rate of 15% without any deduction whatsoever.

For determining the applicable tax rate, an employer should calculate, for each month, the average cumulative emoluments of the employee by dividing the cumulative emolument by the number of pay periods to which it relates. Where the average cumulative emolument in a month does not exceed MUR 50 000 the reduced tax rate of 10% should be applied, and 15% when it exceeds MUR 50 000.

An employee may, depending on his or her average cumulative emoluments, have PAYE tax deducted at 10% in one month and 15% in another. When shifting from the tax rate of 10% to 15%, an employee will have to catch up on tax underpaid in preceding pay periods. However, a ceiling applies to limit tax deductions under PAYE in a month to 15% of an employee's salary.

**Claiming Expenses**

From an employee's total emoluments, he or she can deduct any transport allowance which is equivalent to the return bus fare between residence and place of work; or petrol allowance, commuted travelling allowance and travel grant payable by the Government of Mauritius and the local authority to the employee; or the actual petrol or travelling allowance paid or 25% of the monthly basic salary up to a maximum of MUR 11 500, whichever is the lesser, provided that the employee makes use of a private car registered in his or her own name for attending duty and for the performance of the duties of his or her office or employment.

**Liability to Pay Additional Tax**

An employee may have to pay additional tax if:

- he or she has not submitted a proper EDF;
- PAYE has been wrongly calculated by the employer;
- he or she has earned other income during the year.

**24. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?**

Each month, every employer is required to submit to the Director-General of the MRA, a statement giving the details of every employee who was employed during the preceding month and pay over the amount of contributions in accordance with the National Pensions Act, National Savings Fund Act and Human Resource Development Act.

Contributions are payable as from the month in which an employee takes up employment, whether on a part-time or full-time basis, and whether on probation or not. No contribution is payable in respect of:

- an employee who has not attained the age of 18;
- an employee who has attained the final retirement age (70 years); and
- a non-Mauritian citizen employee of an export manufacturing enterprise in respect of the first two years of employment.

## Competition

### 25. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single firm) conduct regulated by competition law?

Competition law in Mauritius is regulated by the Competition Act 2007 (**Act**) and the guidelines made thereunder. The Act has established the Competition Commission of Mauritius (**CCM**), which is responsible for monitoring and regulating competition and implementing the Act in Mauritius.

The Act expressly prohibits collusive agreements and other restrictive agreements which adversely affect competition in Mauritius, to the extent of their restrictive clauses. Collusive agreements can be penalised, while other restrictive practices and abuse of monopoly situations can only be remedied. The financial penalty to be imposed may not exceed 10% of the turnover of the enterprise in Mauritius for each year of the breach, up to a maximum of five years.

#### Collusive Agreements

Collusive agreements are further classified into horizontal agreements, bid rigging and vertical agreements.

Horizontal agreements exist between enterprises that supply or acquire goods or services of the same description and have the object of fixing prices, sharing markets or sources of supply, or restricting supply to or acquisition from any person. Horizontal agreements or provision of such agreements which significantly prevent, restrict or distort competition are prohibited and void under the Act.

Agreements wherein one party to the agreement agrees not to submit bids or tenders in response to an invitation for bids or tenders, or agrees upon the price, terms or conditions of a bid or tender to be submitted in response to such a call or request, are prohibited and void and are termed as bid rigging. However, an agreement wherein the person making invitations for bids or tenders is made aware of the terms of such an agreement shall not fall under the purview of this provision of the Act.

Vertical agreements exist between enterprises operating at different levels of the supply chain. Any such agreement shall only be prohibited and void if it involves resale price maintenance. A supplier or producer may recommend a minimum resale price to the reseller of goods or services provided that such recommendation is not binding.

#### Other Restrictive Practices

A non-collusive horizontal agreement may also be subject to the review of the CCM where the parties to the agreement together supply or acquire 30% or more of goods and services of any description on the market, and the CCM has reasonable grounds to believe that the agreement may result in prevention, restriction or distortion of competition in Mauritius.

Vertical agreements which do not involve resale price maintenance may also be subject to the review of the CCM where the CCM has reasonable grounds to believe that one or more parties to the agreement are in a monopoly situation.

#### Unilateral Conduct and Abuse of Dominance

The unilateral conduct of an enterprise is subject to regulation under the Act. The Act does not prohibit monopoly. It is not in itself any breach of the law for an enterprise to be in a monopoly situation but such enterprises have a responsibility to ensure they are not abusing or exploiting any market power this position confers upon them. It is the responsibility of the CCM to analyse whether such enterprises are engaged in conduct which restricts, prevents or distorts competition (such as using their market position to exclude rival enterprises) or otherwise exploiting the monopoly situation.

A monopoly situation exists in relation to the supply of goods or services of any description where 30% or more of those goods or services are supplied or acquired on the market by one enterprise, or 70% or more of those goods or services are supplied or acquired on the market by three or fewer enterprises. A monopoly situation is only subject to review by the CCM if the CCM has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that has the object or effect of preventing, restricting or distorting competition in Mauritius, or constitutes exploitation of the monopoly situation.

Where the CCM has determined that the conduct of an enterprise falls under the provisions of the Act in relation to monopoly situations, the CCM may give the enterprise such directions as it considers necessary, reasonable and practicable to remedy, mitigate or prevent the adverse effects on competition that the CCM has identified, or remedy, mitigate or prevent any detrimental effects on users and consumers in so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition in Mauritius.

### 26. Are mergers and acquisitions subject to merger control?

The CCM regulates mergers and acquisitions in Mauritius in accordance with the Competition Act. A merger situation arises when two or more enterprises, of which at least one operates in or through a company incorporated in Mauritius, are brought together under common ownership and control.

There are broadly three ways in which a person may gain control of an enterprise:

- **Material influence:** The acquirer in this case is able to influence the policy of the target to a material extent, thereby affecting the target's behaviour in the market. This is the lowest level of control.
- **De facto control:** The acquirer is able to control the target's behaviour on the market without actually acquiring the majority of shares in the share capital of the target.
- **Controlling interest:** Also known as legal control, this applies when the acquirer is able to control the target by virtue of having acquired more than the majority shares in the share capital of the target.

Any change in the level of control held by a person into a new one may create a new merger situation.

A merger situation shall be subject to review by the CCM where all parties to the merger already supply or acquire goods and services and all parties together will supply or acquire 30% or more of goods and services post-merger, or one of the parties to the merger situation, prior to the merger supplies or acquires 30% or more of goods and services, and the CCM has reason to believe that the creation of the merger situation has resulted in or is likely to result in a substantial lessening of competition within the market.

Notification of mergers is not mandatory under the Act. In a proposed merger situation, any one of the enterprises may apply to the CCM for guidance as to whether the proposed merger is likely to result in a substantial lessening of competition within any market for goods or services.

## Intellectual Property

### 27. What are the main laws regulating intellectual property (IP) in Mauritius?

IP in Mauritius is principally governed by the following primary pieces of legislation:

- the Copyright Act 2014 (substantially amended by the Copyright (amendment) Act 2017 (**Copyright Act**));
- the Patents, Industrial Designs and Trademarks Act 2002 (**PIDT Act**); and
- the Protection Against Unfair Practices (Industrial Property Rights) Act 2002 (**PAUP Act**).

The Copyright Act regulates the protection of economic and moral rights subsisting in literary, artistic or scientific works in Mauritius. Generally, copyright protection in Mauritius is granted during the lifetime of the author of the works and for 50 years after his/her death. The Copyright Act also imposes criminal liability for specific breaches and empowers the relevant courts in Mauritius to order the forfeiture of any apparatus used in the commission of a copyright offence.



The PIDT Act for its part deals with IP rights such as industrial designs, trade marks and patents. With regard to trademarks (marks, collective marks and trade names), the PIDT Act provides for the eligibility criteria, along with the procedures to be completed for the registration of a mark with the Industrial Property Office of Mauritius. Once registered, the owner of the registered mark is conferred with the exclusive right to exploit, use and licence the mark in accordance with the provisions of the PIDT Act. In Mauritius, the registration of a mark is valid for a period of 10 years with the possibility to renew it for a further 10 years.

The PIDT Act also covers the application and grants of patents in Mauritius. Generally, patents granted in Mauritius are valid for a period of 20 years subject to payment of annual maintenance fees. As for industrial designs registered under the PIDT Act, they will remain valid for a period of five years and are renewable for further periods of five years subject to payment of renewal fees and compliance with any such conditions as may be prescribed.

The PAUP Act covers unfair practices which arise in respect of breaches of industrial property rights and sets out the procedure for aggrieved rights holders to initiate civil claims for unfair practice under the PAUP Act. It is to be noted that, in any claim initiated under the PIDT Act, the Mauritian court may grant any remedy as it sees fit by way of damages, injunctions, forfeitures or otherwise.

**The Upcoming Industrial Property Act 2019**

On 30 July 2019, the Mauritian National Assembly passed the Industrial Property Act 2019 (**IPA**), which received assent on 9 August 2019. However, at the time of publishing, the IPA is not yet in force and no effective date has been set for its entry into force.

The IPA is effectively a new piece of legislation which will cover all IP rights (except copyrights) and aims at updating the current law to be in line with the latest technological advances and conform to the ongoing development in the field of industrial property. The IPA will replace the PIDT Act in the process. The IPA also goes beyond the classic conception of IP rights and extends the legal framework to include protection to other rights such as breeders' rights for new plants varieties, utility models, layout designs and geographical indications. Finally, the IPA aims at setting up various administrative bodies to regulate IP in Mauritius.

Some of the main legislative updates brought about by the IPA are as follows:

- **Patents, Utility Models and Layout Designs**

*Patents*

The IPA now provides that an aggrieved party may oppose an application for registration of a patent, something which does not appear in the current legislation.

With regards to ownership of patents, the IPA provides that, in the absence of any contractual agreement stating otherwise, the employer is the owner of any patents created by its employees. However, if the employer has made 'economic gains which are disproportionately high as compared to the employee's salary and the reasonable expectations of gain that the employer had from his employee's inventive output at the time the employer hired the employee, the employee is entitled to appropriate compensation'.

*Utility Models*

The IPA introduces the registration of utility models for an initial period of six years followed by two consecutive renewals of two years each.

*Layout Designs of Integrated Circuits*

While the PIDT Act did include a section on layout designs, that section was never proclaimed and therefore never in force. The IPA has again provided for the registration of layout designs.

- **Breeders' Rights and Geographical Indications**

*Breeders' Rights*

The IPA introduces the registration of breeders' rights for new plant varieties. The general requirements are that the plant variety must be new, distinct, uniform and stable.

The IPA makes provision for nationals of a member of the Union for the Protection of New Varieties of Plants (**UPOV**), founded by the International Convention for the Protection of New Varieties of Plants of 1961, holding breeders' rights in a UPOV country, to enjoy the same treatment as is accorded to nationals of Mauritius.

Upon registration, the rights granted under the IPA cover the production/reproduction, conditioning, sale, marketing, importation, exportation and stocking of a protected variety.

*Geographical Indications*

The IPA also protects 'geographical indications', meaning an indication which identifies goods as originating in the territory of a country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Once registered, no person other than producers carrying out an activity in the relevant geographical area shall have the right to use a registered geographical indication in the course of trade and in relation to goods specified in the relevant register.

A registered geographical indication shall be protected for a period of 10 years, renewable for another period of 10 years.

- **Administrative Bodies: the Mauritius Intellectual Property Council and the Industrial Property Tribunal**

*The Industrial Property Office of Mauritius*

While the Industrial Property Office of Mauritius (**IPOM**) was already established under the PIDT Act and acts as registry for rights registered, the IPA creates the position of Director of IPOM (**Director**) with powers to investigate any industrial property offence under the IPA or the PAUP Act.

*Mauritius Intellectual Property Council*

The IPA also provides for the establishment of the Mauritius Intellectual Property Council (**Council**). The Council, when established, will consist of members from the private and public sectors. The Council will have the function of advising the Minister on any affairs and policy relating to IP.

*The Industrial Property Tribunal*

A major inclusion in the IPA is the provisions for the setting up of an Industrial Property Tribunal (**Tribunal**). As per the IPA, the Tribunal shall have the jurisdiction to deal with any appeal by a person aggrieved by the decision of the Director to reject an application or an opposition to the registration of an industrial property. The Tribunal will also have the jurisdiction to hear an application by any interested person to invalidate the granting of a patent, the protection of a plant variety or the registration of a mark, geographical indication, industrial design, utility model or layout design.

- **Accession to Treaties and Protocols**

Despite not being a contracting party/member as of the time of publishing, Mauritius has included in the IPA express legislative provisions paving the way for the national recognition and application of the following treaties and protocols:

- the Patent Cooperation Treaty (**PCT**), which enables applicants to file one patent application internationally and be afforded protection simultaneously in each of the PCT contracting states;
- the Madrid Protocol, which enables applicants to file a single application for registration of a trade mark and be afforded protection in up to 123 of its contracting states; and

- the Hague Agreement, which enables applicants to register an industrial design internationally and be afforded protection in its contracting states.

The inclusion of the above treaties and protocols in the IPA clearly hints at major upcoming developments in the field of IP in Mauritius.

## Consumer Protection

### 28. How is advertising regulated in Mauritius?

The FSC has published guidelines on advertising and marketing of financial products (**guidelines**). The aim of the guidelines is to promote responsible, ethical and professional conduct by promoters in relation to the advertising and marketing of non-banking financial products and services, targeting consumers of financial services in Mauritius. Promoters are required to provide clear, accurate and balanced information in their advertising and marketing materials, and should not engage in misleading or deceptive conduct.

The Independent Broadcasting Authority Act 2000 makes provision for a Code of Advertising Practice. The Code acts as a guide for the design, production and broadcast of advertisements.

The Bank of Mauritius has published guidelines on control of advertisements. The guidelines set out the broad principles on advertising and marketing of banking products.

### 29. Are there consumer protection laws and if so, what are they?

#### Consumer Protection (Price and Supplies Control) Act 1998

The Consumer Protection Act makes provision for the control of trading practices and prices in Mauritius and establishes a Profiteering Division at the Supreme Court. The Act grants powers to the Minister to control prices of goods specified in the First Schedule to this Act and, in order to prevent hoarding, requires a trader who wishes to store any goods specified in the Third Schedule in any warehouse to apply to the Permanent Secretary for a certificate of registration of the warehouse.

A holder of a certificate shall keep in his or her warehouse only goods of the class of goods specified in the certificate, shall not use other places for the storage of such goods and shall remove goods only in the course of normal trading practices. The Profiteering Division of the Supreme Court shall have exclusive jurisdiction to try any person charged with an offence under this Act and the Fair Trading Act. The Act applies to various food items.

#### Fair Trading Act 1979

This Act makes provision for measures to ensure fair trading in Mauritius and prevent practices that mislead or confuse consumers.

The Fair Trading Act prescribes rules of fair trade and empowers the Minister to: (i) appoint technical committees; (ii) make regulations for the purpose of this Act and for the purpose of regulating consumer trade practices; and (iii) issue compulsory codes of practice. Where a compulsory code of practice has been declared, no person involved at any stage of the production or supply of goods or services to which the code refers shall act in breach of the compulsory code of practice. Offences and measures of enforcement are also prescribed.

The Ministry of Commerce and Consumer Protection has warned consumers that they may have no right of complaint in cases where –

- they were informed of the fault;
- they could have reasonably known of the fault at the time of purchase;
- the consumer damages the product as a result of misuse;
- the consumer makes a mistake while purchasing the goods or services; and
- the consumer no longer requires the product for its intended purpose.

### 30. How are product liability and product safety regulated?

The following are the main laws and prescripts that regulate product liability and product safety:

- The Mauritian Civil Code gives consumers a maximum period of two years within which they may bring an action under contract for defective products unless a contract prescribes a lesser period. The seller may be required by the court to either (i) accept the return of the product and refund the purchase price; or (ii) give the consumer a reduction in the purchase price if they elect to keep the goods.
- The Fair Trading Act 1979 provides for better control of consumer trade practices and ensures fair trading in Mauritius. Trade practices which confuse or mislead consumers are prohibited.
- The Consumer Protection Act 1991 provides protection for consumers against faulty goods. A person is prohibited from supplying or importing any goods which suffer from any fault with regard to any proscribed quality, quantity, potency, purity or standard, or, in the case of any machinery or motor vehicle, with regard to the quality, nature or manner of its performance. This prohibition is not applicable to certain types of goods such as (i) growing crops or things comprised in land by virtue of being attached to it, (ii) water, food, animal feed or chemical fertilizer, (iii) aircraft, (iv) drugs or medicine, (v) tobacco; and (vi) goods intended exclusively for export under an Export Processing Zone Certificate.
- The Essential Commodities Act 1991 sets out the reasonable quantity of essential commodities (foodstuffs) to be kept by licensed general retailers in store at all times and the requirement for general retailers to keep registers.
- The Consumer Protection (Price and Supplies Control) Act 1998 protects consumers and regulates prices and mark-ups of specified goods such as bread, butter, canned meat and cement.

- The Hire Purchase and Credit Sale Act 1964 governs credit sales in Mauritius and provides for the protection of consumers making credit purchases. It sets out provisions relating to requirements for hire purchase and credit sale agreements, the right of hirer and buyer to determine agreements, the duty of hirer and dealer to inform and certain implied conditions and warranties.

## Insurance

### 31. How is insurance regulated?

The insurance business is regulated and supervised by the FSC. The main legislation regulating the insurance and reinsurance business is the Insurance Act 2005 (**Act**), supplemented by the provisions of the Financial Services Act 2007, the Mauritian Civil Code (in respect of insurance contracts), the Captive Insurance Act 2015 and the subsidiary rules and regulations.

The objectives of the Act are to maintain fair, safe, stable and efficient insurance markets for the benefit and protection of the public, to promote confidence in and the orderly growth of the insurance industry, to ensure fair treatment of policyholders and to reduce the risk of misuse of the insurance business for financial crimes. The FSC adopts a risk-based approach to regulation and is responsible for administering the Act.

The Act provides a rather broad definition of the insurance business, namely the business of undertaking liability, by way of insurance or reinsurance, under long-term insurance policies or general insurance policies, as the case may be, and includes external insurance business and the business of a professional reinsurer. Following on from this definition, the Act categorises the insurance business as long-term insurance business, which includes life assurance business, pension business, permanent health insurance business and linked long-term insurance business, and general insurance business which consists of any other classes of insurance business other than those for long-term insurance, and includes accident and health, engineering, guarantees, liability, motor, property and transportation.

A person is required to apply for a licence issued by the FSC under the Act in order to carry on, or hold themselves out as carrying on, insurance business of any category or class, in or from within Mauritius. Insurers must abide by numerous legal requirements of the FSC including, among others, seeking approval from the FSC for appointing its officers, directly or indirectly borrowing assets and/or allowing encumbrances on its assets, as well as complying with the obligations relating to the Financial Intelligence and Anti-Money Laundering Act 2002.

## Data Protection

### 32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Data protection laws in Mauritius are governed by the Data Protection Act 2017 (**Act**), which came into force on 15 January 2018, replacing the Data Protection Act 2004. The Act has been enacted to strengthen the control and personal autonomy of data subjects over their personal data, in line with current relevant international standards, and for related matters. The objective of the Act was guided by the founding principle enshrined in the European General Data Protection Regulations (**GDPR**), namely the protection and safeguarding of privacy rights of individuals in relation to requirements for collection, processing, storage, transfer and handling of personal information/sensitive personal information.

The Act is sector neutral in that it applies to all categories of industries, and seeks to ensure lawfulness, fairness and transparency such that individuals are well informed and afforded protection for the confidentiality of their personal data in order to reduce the growing risks of data leaks.

The Act applies to a controller or a processor who is established in Mauritius (i.e. a person who is ordinarily resident in Mauritius or carries out data processing operations through an office branch or agency in Mauritius) and processes data in the context of that establishment. The Act also applies to a controller or processor who is not

established in Mauritius if they use equipment in Mauritius for processing data, other than for the purpose of transit through Mauritius, in which case the controller or processor will have to nominate a representative which is established in Mauritius.

The Data Protection Office is the national data protection authority in Mauritius, and the Data Protection Commissioner (the **Commissioner**) is responsible for the enforcement of the Act. Any person who contravenes the Act commits an offence. Where no specific penalty (e.g. in cases of unlawful disclosure of data) is provided for an offence, the person will on conviction, be liable to a fine and imprisonment.

### 33. Are there laws protecting personal information?

The Act provides a set of core principles for the treatment of personal data, i.e. that personal data must be processed lawfully, fairly and in a transparent manner in relation to any data subject; collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes; adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed; accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data are erased or rectified without delay; kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; and processed in accordance with the rights of data subjects.

Under the Act, personal data is defined as any information relating to a data subject, which is described as a natural person who is identified or identifiable, in particular by reference to an identifier such as a name, identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that individual.

'Special categories of personal data' in relation to a data subject are defined under the Act as personal data pertaining to the subject's: (i) racial or ethnic origin; (ii) political opinion or adherence; (iii) religious or philosophical beliefs; (iv) membership of a trade union; (v) physical or mental health or condition; (vi) sexual orientation, practices or preferences; (vii) genetic data or biometric data uniquely identifying him or her; (viii) the commission or alleged commission of an offence by the subject; (ix) any proceedings for an offence committed or alleged to have been committed by him or her, the disposal of such proceedings or the sentence of any Court in the proceedings; or (x) such other personal data as the Commissioner may determine to be sensitive personal data. There are further conditions to comply with for the special categories of personal data to be processed.

Personal data cannot be processed unless the data subject consents to the processing, and such is necessary for the performance of a contract to which the data subject is a party or will be party to; for compliance with any legal obligation of the controller; to protect the vital interests of the data subject or another person; for the performance of a task carried out in the public interest or by a public authority; for the legitimate interests pursued by the controller or third party; or for historical, statistical or scientific research. The controller bears the burden of proof for establishing the data subject's consent, and the data subject has the right to withdraw his or her consent at any time.

## E-Commerce

### 34. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

In Mauritius, the main legislation relating to e-commerce is the Electronic Transactions Act 2000, which provides for the recognition of electronic signatures. Under the Act, an electronic signature shall be treated as a secure electronic signature if it can be verified through the application of a prescribed security procedure or a commercially reasonable security procedure agreed to by the parties involved, so long as the signature is:

- unique to the person using it;
- capable of identifying such person;
- created in a manner or using a means under the sole control of the person using it; and
- linked to the electronic record to which it relates in a manner such that if the record is changed, the digital signature would be invalidated.

In addition, the Economic Development Board (e-Commerce Scheme) Regulations 2020 provide the regulatory framework in respect of e-commerce activities to:

- enable e-commerce operators to conduct commercial transactions through electronic networks; and
- provide information in respect of marketing, supply, trade, order and delivery of goods or services.

## Fintech

### 35. Is fintech regulated? If so, how?

The Government of Mauritius is making great strides in positioning itself as a hub for African fintech. The two main supervisory bodies in the financial services sector enabling such progress are the Bank of Mauritius (the **BoM**), which is the regulator and supervisor of financial institutions, and the FSC, which is the regulator for non-bank financial services sector and the global business sector.

Among its several initiatives, the Government has set up the EDB, whose objectives include promoting fintech in Mauritius.

One of the popular regulatory initiatives is the introduction of the Regulatory Sandbox Licence (**RSL**) in Mauritius for innovative projects for which there are no legal frameworks or no adequate provisions under any legislation.

An RSL allows eligible companies to invest in innovative projects and operations of a particular type of fintech activity, under a set of terms and conditions issued by the EDB for a defined period. It is especially beneficial for fintech start-ups as such licence provides a flexible regulatory framework for testing and developing innovative projects as compared to a rigid set of legalisation and regulations.

In 2017, the then Board of Investment (now EDB) issued the first RSL with respect to a crowdfunding platform.

Among several innovation incentives for fintech in Mauritius, a noteworthy incentive is the eight-year tax holiday for innovation-driven activities on income derived by a company from IP assets developed in Mauritius.

As for the FSC, it has put in place a Fintech and Innovation-driven Financial Services Regulatory Committee to further develop regulatory frameworks within the fintech sector. To date, the FSC has developed guidance for:

- the recognition of and investment in **Digital Assets**, which is an asset class for investment by sophisticated investors, expert investors, expert funds, specialised collective investment schemes and professional collective investment schemes. Assets in this class are used as a medium of exchange, to represent assets such as debt or equity and to provide access to a blockchain-based application, service or product. It includes cryptocurrencies, which are considered to be a sub-category of Digital Assets.
- the custody of Digital Assets, through a licensing framework that provides a regulated environment for the custody of Digital Assets and operations arising directly from the custody.
- securities tokens offerings (**STOs**), involving the issuing of security tokens, which are essentially securities in digital formats, and fall under the definition of 'securities' under the Securities Act 2005 of Mauritius. An STO is the issue of security tokens to raise funds from investors in exchange for the ownership or economic rights in relation to assets.
- security token trading systems (**STTS**), which are trading systems designed to allow for the trading of security tokens. These trading systems are different from traditional securities exchanges inasmuch as they do not require any clearing and settlement facilities. The STTS are pre-funded, thereby allowing transactions to be cleared automatically in real time using a distributed ledger technology.

As part of its objective in establishing Mauritius as a fintech hub in the African region, the EDB and the Government of Mauritius have set up a non-profit organisation, namely the Mauritius Africa Fintech Hub. It serves as a platform to bring together innovators, entrepreneurs, government agencies and corporates and, at the same time, works with other African fintech hubs to develop innovative products.

Presently, another popular technology is the use of mobile applications for mobile banking and other day-to-day activities in the lives of Mauritians.

As future innovative projects in its pipeline, the FSC has a project to design a framework to facilitate advisory services in robotics and artificial intelligence while the BoM is currently working on the creation of a central bank digital currency and the development of a modern technology-driven payment system.

## Financial Services

### 36. Is the financial services sector regulated? If so, how?

In the past decade, Mauritius has successfully established its financial services sector as an international financial centre.

The FSC, as the regulator of the non-bank financial markets in Mauritius, which includes regulating the insurance, captive insurance and pension industries, is mandated to license, regulate, monitor and supervise the conduct of business activities in the financial services sector.

The current regime caters for an array of different licences, favourable for the operation of multiple types of financial services entities, the popular ones being the GLB, licence to operate as an authorised company and other licences as set forth below:

- **Investment Banking Licence**

A person holding an Investment Banking Licence may conduct the activities of an investment dealer (full-service dealer including underwriting), investment adviser (unrestricted), investment adviser (corporate finance advisory), asset management, the distribution of financial services and the distribution of financial products. An applicant shall be a company incorporated under the Companies Act 2001 or registered as a branch of a foreign company in Mauritius.

- **Foreign Investment Dealer Licence**

People seeking to deal on a securities exchange in Mauritius may do so by applying for a foreign investment dealer licence, together with a GBL. The FSC may authorise an applicant to act as an investment dealer if it is satisfied that the applicant is exercising the functions of an investment dealer in a jurisdiction where there is a regulatory or supervisory framework consistent with international best practice.

- **Collective Investment Scheme**

A Collective Investment Scheme (**CIS**) may be constituted as a company, trust or other legal form approved by the FSC. It usually has a CIS manager, a Custodian and CIS Administrator. An application for a CIS shall be made by the CIS manager or, where the CIS is a trust, jointly by the CIS manager and the trustee of that trust.

A CIS manager must be a body corporate, incorporated or registered, with its place of business in Mauritius and engaged solely in CIS business. It is required to be licenced by the FSC.

The legal duties and obligations imposed upon it are, among others, to: (i) have appropriate qualified staff; (ii) establish internal control rules; (iii) maintain a minimum stated unimpaired capital of at least MUR 1 million (or an equivalent amount in a different currency); (iv) ensure that the assets of the fund are clearly identified and held separately from the assets of that CIS manager and the assets of any other scheme manager by that CIS manager; and (v) adopt relevant and reasonable written policies to minimise the risk of assets being used for money laundering purposes and to cater for situations of conflict of interest.

The assets of the CIS shall only be held for safekeeping by a Custodian, who shall also be licensed by the FSC. A bank, trust company as subsidiary of the bank or a trustee of the trust are eligible for a custodian licence and shall have and maintain a minimum stated unimpaired capital of MUR 10 million.

A CIS administrator shall be a body corporate and may be appointed to provide administrative services to a CIS such as accounting, valuation or reporting services or the provision of the principal office of a CIS.

- **Closed-end Funds**

An application for a closed-end fund must be made to the FSC by the CIS manager or, where the CIS is a trust, jointly by the CIS manager and the trustee of that trust. If the closed-end fund is to hold a GBL, the application must be made in accordance with rule 16 in the third schedule of the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008. There is no requirement for a Custodian to be appointed; a CIS Manager shall be appointed, however, and shall be subject to similar legal duties and obligations as those required for a CIS manager of a CIS.

- **Insurance**

Under the Insurance Act 2005, no person can carry on insurance business in or from within Mauritius without a licence from the FSC. This will generally concern insurance/reinsurance companies, as well as insurance service providers (claims professional, insurance agent (company/individual), insurance broker, insurance manager and insurance salesperson). The insurance business is divided into either long-term insurance business (e.g life assurance business, pension business, permanent health insurance business, etc) or general insurance business (e.g accident and health policy, motor policy, property policy, etc).

- **Pure Captive Insurance**

The Captive Insurance Act 2016 (**CI Act**) provides for the licensing, regulation and supervision of captive insurance business in Mauritius. It is defined under the CI Act as the business of undertaking liability, by way of insurance or reinsurance, under a specific category.

An application for a captive insurance business licence has to be made through a captive insurance agent. The application form will have to include several documents, including a business plan; the investment policy of the captive insurance business; information on the adequacy of the expertise, experience and character of the persons who will manage the captive insurance business; information on the adequacy of the loss prevention programmes of the policyholders of the applicant; a certified copy of the incorporation documents of the applicant; particulars of

any substantial shareholder, director, captive insurance agent or of any person being proposed to act as an officer of the captive insurer; and a prescribed non-refundable fee.

The captive insurance agent has to be in Mauritius. Only an actuary, an insurance manager, a legal practitioner, a management company, a public accountant or such other person as may be prescribed can act as a captive insurance agent.

- **Pensions Schemes**

A pension scheme under the Private Pension Schemes Act 2012 (**PPA**) is a scheme whose primary aim is providing pension benefits to beneficiaries. While the PPA is fairly recent, it is to be noted that private companies in Mauritius have used pensions schemes for decades to provide pensions for their employees.

The objectives of the PPA are, among others, to maintain a fair, safe, stable and efficient private pension industry for the benefit and protection of beneficiaries and to promote confidence in the private pension industry by ensuring its orderly growth in Mauritius.

The PPA is aligned with the standards of international organisations such as the International Organisation of Pension Supervisors and the Organisation for Economic Co-operation and Development.

- **Custodian Services (Digital Asset) Licence**

This is a relatively new licence which the FSC is now issuing as part of promoting the fintech sector in Mauritius. An application is required to be submitted to the FSC and the regulations issued to that effect limit the object of the custodian to the safekeeping of digital assets and the operations arising directly from it. The custodian shall at all times have an office in Mauritius to perform its core functions, as well as a representative who shall be knowledgeable in the operations of custodianship. It shall be required to have and maintain a minimum stated unimpaired capital of MUR 35 million or an amount representing six months' operating expenses, whichever is higher.

- **Peer to Peer Lending Licence**

The Peer to Peer Lending licence has also been recently introduced to develop the fintech sector in Mauritius. An application is required to be made to the FSC by a peer-to-peer operator (**P2P** operator) in order to operate a Peer to Peer Lending platform. The P2P operator shall be incorporated in Mauritius and have a minimum unimpaired stated capital of MUR 2 million or its equivalent in any other currency. The legislation further provides that a P2P operator may establish a branch outside Mauritius, subject to the prior approval of the FSC.

The P2P operator shall be required to establish escrow account arrangements with a licensed financial institution in Mauritius in order to facilitate the transfer of funds between lenders and borrowers through the Peer to Peer Lending platform.

Regulations imposed by the FSC impose limits on lending and borrowing through P2P operators; the minimum amount that may be borrowed is MUR 50 000 and the aggregate maximum amount is MUR 1 million for a natural person and MUR 3 million for a legal person. Such limits apply until at least one-third of the amount borrowed is reimbursed.

## Environmental Considerations

### 37. Are there laws protecting the environment? If so, what are they?

Mauritius has a multitude of laws and policies relating to the management of the environment. Mauritius has a hybrid law system based on French civil and English common laws, on which all laws are based. The Constitution of Mauritius does not have expressed provisions relating to the protection of the environment. However, there are rights such as the right to life and health that are found in the Constitution.

The main legislation developed with the aim of protecting the environment is the Environment Protection Act 2002 (**EPA**). The EPA sets out a licensing regime requiring either preliminary environmental approval or an environmental impact assessment (**EIA**) licence before certain activities can be carried out.

There are also other laws dealing with the protection of the environment. Among them are the Environment and Land Use Appeal Tribunal Act 2012, Noise Prevention Act, Pesticides Control Act, Public Health Act, and Wildlife and National Parks Act.

The most recent regulations made under the EPA include the Environment Protection (Banning of Plastic Bags) Regulations 2020, Environment Protection (Control of Single Use Plastic Products) Regulations 2020 and the Environment Protection (Display of Fuel Consumption and CO2 Emission Label) Regulations 2019.

### 38. How are activities categorised under the Environment Protection Act?

Under the EPA, there are several categories of activities which require different steps to be taken before a person can carry out these activities. Part A of the Fifth schedule of the EPA sets out a list of undertakings which would require a preliminary environmental report. This report is a simplified version of an EIA. Part A lists undertakings which would normally not impact too heavily on the environment such as rearing of livestock, including cattle, goats, pig and sheep, coral crushing and processing, slaughterhouse operation, etc.

Part B of the Fifth schedule of the EPA sets out a list of undertakings requiring an EIA. These are mainly major undertakings that could have a serious impact on the environment such as construction of dams and dykes, manufacturing of dangerous chemicals, chemical fertilizers and pesticides, and power-generating plants, etc.

## Dispute Resolution

### 39. How are disputes resolved in Mauritius?

Litigation remains the popular choice for dispute resolution in Mauritius; however, alternatives to litigation are gradually picking up in the corporate and commercial sector. The main dispute resolution methods in Mauritius are:-

- Court dispute resolution: litigation and mediation; and
- Out-of-court dispute resolution: mediation and arbitration.

#### Court dispute resolution

##### *Litigation*

The Supreme Court is the principal court and has exclusive jurisdiction in most civil suits where the claim is above MUR 2 million. The Subordinate Courts consist of the Court of Rodrigues, the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court, the Criminal and Mediation Court and the Commercial Court. The Chief Justice is head of the judiciary. The Constitution of Mauritius is the supreme legal document of the country. The jurisdiction of the courts is regulated mainly by the Courts Act. The applicable procedural rules governing proceedings before the Supreme Court are the Supreme Court Rules 2000 (**SCR**), under the Courts Act.

Generally, large commercial disputes involve claims that are within the sole jurisdiction of the Supreme Court and are lodged and heard before its Commercial Division. Any commencement of proceedings and further pleadings before the Commercial Division of the Supreme Court is to be made online via the electronic filing system (Courts (Electronic Filing of Documents) Rules 2012). While the rules that set up the electronic filing of documents apply to all courts, the electronic filing system is currently only available at the Commercial Division of the Supreme Court.

The Supreme Court has full original jurisdiction to hear, conduct and pass decisions in civil suits, actions, causes and any matters that are brought and are pending before the Supreme Court. The Supreme Court (and the judges) must sit, conduct proceedings and carry on business in the same manner as the High Court of Justice in England and its judges.

Any appeals from the Supreme Court sitting in its original jurisdiction must be lodged with the Court of Civil Appeal, which is a division of the Supreme Court and is composed of the Judges of the Supreme Court, presided over by the Chief Justice or the Senior Puisne Judge in accordance with section 80 of the Constitution and section 2 of the Court of Civil Appeal Act. An appeal against the decision of the Court of Civil Appeal within the Supreme Court must be lodged with the Judicial Committee of the Privy Council in England.

Any IP, competition and maritime matters which are of a commercial nature are within the jurisdiction of the Commercial Division.

In judicial review matters, first instance proceedings must be heard by two judges. This is a departure from the single-judge rule under section 35 of the Courts Act. When a case is heard by two judges, appeal will only lie with the Judicial Committee of the Privy Council on leave being granted per section 81(1) of the Constitution and section 69 of the Courts Act, and not with the Court of Civil Appeal within the Supreme Court.

##### *Mediation*

The Supreme Court (Mediation) Rules 2010, under the Courts Act 1945, establishes the Mediation Court, a division of the Supreme Court. Any party that has a claim pending before the Supreme Court can make an application, with evidence, to the Chief Justice for the matter to be referred to mediation. The main purpose of mediation under the rules is for the parties, in all good faith, to dispose of the civil suit by a common agreement or to narrow down the issues in dispute.

The mediation judge regulates the proceedings while offering guidance with an informal and flexible approach. Any formal agreement reached is recorded by the mediation judge setting out the terms of the agreement in the form of a memorandum. In practice, there have not been many commercial disputes referred to the Mediation Court.

### 40. Are there any alternatives to litigation?

#### *Arbitration*

Arbitration as an alternative method of dispute resolution has become increasingly popular. Mauritian legislation caters for both domestic and international arbitration. Domestic arbitration is recognised and regulated by the Code of Civil Procedure. Mauritius also enacted the International Arbitration Act 2008 (**IAA**), which is inspired by the UNCITRAL Model Law on International Commercial Arbitration.

The IAA is expressly independent from domestic arbitration procedure and related domestic legislation. The IAA applies to arbitration proceedings initiated on or after its enactment under an arbitration agreement, irrespective of the date on which the arbitration agreement was entered into. Any recourse against an arbitral award under the IAA can be made only by an application to the Supreme Court to set aside the award. Arbitration-rendered jurisdictional decisions are final and binding (section 36(7), IAA).

An arbitration is deemed to be an international arbitration under the IAA where the arbitration takes place in Mauritius (the juridical seat) and one or more of the following apply:

- The parties to the arbitration agreement conduct their business in different jurisdictions at the conclusion of that agreement;
- One of the following is situated outside the jurisdiction in which the parties conduct their business:
  - the juridical seat of the arbitration under the arbitration agreement;
  - any place where a substantial part of the obligations of the commercial relationship is to be performed;
  - the place with which the subject matter of the dispute is most closely connected;
- The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country or that the IAA will apply to their arbitration; or
- The shareholders in a company holding a GBL under the Financial Services Act have determined that any dispute concerning the company's constitution or relating to the company must be referred to arbitration under the IAA.

One of the country's leading arbitration institutions, the MCCI Arbitration and Mediation Centre (**MARC**), has recently updated its arbitration rules to provide for expedited and less costly arbitration. More and more of its arbitration clauses are now being used, including in smaller commercial contracts. Another arbitration institution has recently been launched, called the Mauritius International Arbitration Centre (**MIAC**).

## Anti-Corruption, Money Laundering and Bribery

### 41. Are there laws against money laundering and corruption? If so, what are they?

Mauritius has a number of laws that endeavour to combat money laundering and corruption. The main laws are as follows:

- the Financial Intelligence and Anti-Money Laundering Act 2002;
- the Financial Intelligence and Anti-Money Laundering Regulations 2018;
- the Prevention of Corruption Act 2002;
- the Prevention of Terrorism Act 2002; and
- the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019.

#### **The Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA)**

The FIAMLA sets out the establishment and management of a Financial Intelligence Unit, offences of money laundering, reporting of suspicious transactions, the exchange of information in relation to money laundering and mutual assistance with overseas bodies in relation to money laundering and for matters connected or incidental to it.

#### **The Prevention of Corruption Act 2002 (POCA)**

The offences under POCA include bribery by a public official, bribery of a public official, taking a gratification to screen an offender from punishment, a public official using his or her office for gratification, bribery of or by a public official to influence the decision of a public body, influencing a public official, conflict of interests, corruption of an agent and corruption to provoke a serious offence.

**The Prevention of Terrorism Act 2002 (POTA)**

The POTA sets out provisions relating to the prevention, suppression and combating of terrorism and includes suppression of financing of terrorism and reinforcing intelligence gathering.

**The United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act 2019**

This Act enables the Government of Mauritius to implement targeted sanctions and other measures imposed by the United Nations Security Council under Chapter VII of the Charter of the United Nations.

**Dissolving a Business**

**42. Are there any considerations in terminating a business?**

There are two main laws that govern the dissolution of a company: the Companies Act 2001 and the Insolvency Act 2009.

*Removal of a Company from the Register of Companies*

A company may be removed from the register on the grounds that it has ceased to carry on business, has discharged in full its liabilities to all its known creditors and has distributed its surplus assets in accordance with its constitution and the Companies Act.

**Branch**

A branch of a foreign company may be deregistered where it ceases to have a place of business or to carry on business in Mauritius by filing a notice with the Registrar of Companies. The branch will be deregistered on the expiry of three months after the filing of the notice.

**Insolvency**

Under the Insolvency Act, there are three modes for winding up a company:

- a court winding up;
- a winding up commenced by shareholders; and
- a winding up commenced by creditors.

Solvency of a company is an important factor in determining which type of winding up will be applicable. Where the company is solvent (as defined in the Companies Act), the dissolution is carried out by way of a shareholders' winding up (shareholders pass a special resolution to wind up the company). In the event that the company is insolvent, the dissolution is by way of a creditors' winding up. It is to be noted that, in cases where the winding up has been commenced by way of a shareholders' winding up, and it appears to the liquidator that the company is not solvent, then the winding up process continues as a creditors' winding up.

*Alternatives to Winding Up*

The Insolvency Act provides for different concepts as alternatives to winding up, namely receivership and administration.

**Receivership**

A receiver is appointed by a secured creditor to take control and possession of the property in receivership to:

- protect the secured creditor's position; and
- manage or realise the asset for repayment of the debt to the secured creditor.

**Administration**

Administration provides an opportunity for the company, or as much as possible of its business, to continue in existence, or alternatively to ensure better returns for the company's creditors and shareholders.

**Our Firm**

We help our clients manage legal complexity and unlock opportunity in Africa.

We have an enviable track record of providing legal services to the highest professional standards in Africa. We work for clients across numerous African jurisdictions on corporate, finance, competition, taxation, employment, technology and dispute resolution matters.

With eight offices in six African countries and over 400 specialist lawyers, we draw on our unique knowledge of the business and socio-political environment to advise clients on a wide range of legal issues.

Everywhere we work, we offer clients a service that uniquely blends expertise in the law, knowledge of the local market, and an understanding of their businesses. Our aim is to assist clients to achieve their objectives as smoothly and efficiently as possible while minimising the legal and regulatory risks.

Our clients include domestic and foreign corporates, multinationals, funds and financial institutions, across almost all sectors of the economy, as well as state-owned enterprises and governments.

Our expertise is frequently recognised by independent research organisations. Most recently, we won three IFLR Africa Awards (2021) including National Firm of the Year for South Africa and for Zambia. At the 2021 Africa Legal Awards, we won five practice awards, more than any other law firm. In the 2020 Dealmakers East Africa Awards we ranked first for number of M&A transactions among which was the East Africa Deal of the Year. In 2020, Mergermarket identified us as the number one legal adviser in Africa by number of completed deals.

## Our Presence in Africa

Recognising the size and enormous diversity of Africa, our approach to providing legal services across the continent is intended to offer on-the-ground advice in the countries that matter for our clients. Our presence in Africa is always evolving to meet the changes that are shaping the future of this vast continent.

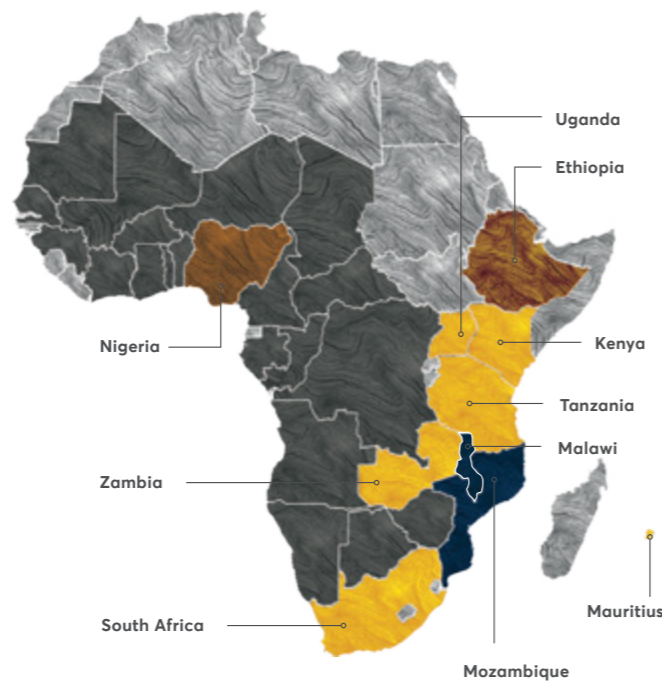
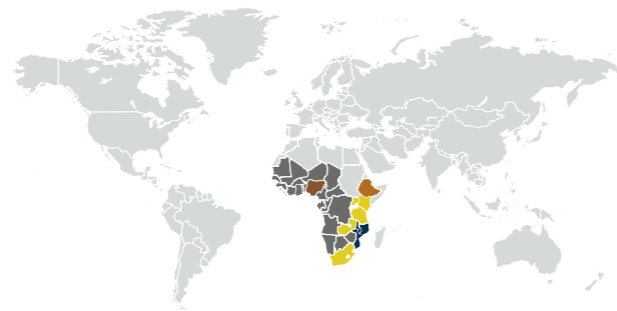
Currently, we have our own offices in six African countries: Kenya (Nairobi), Mauritius (Moka), South Africa (Cape Town, Durban, Johannesburg), Tanzania (Dar es Salaam), Uganda (Kampala) and Zambia (Lusaka).





We work closely with our Bowmans Alliance firms in Ethiopia (Aman Assefa & Associates Law Office) and Nigeria (Udo Udoma & Belo-Osagie). These are two of the leading corporate and commercial law firms in their jurisdictions.

We have special relationships with competent practitioners in Malawi and Mozambique. We also have a non-exclusive co-operation agreement with French international law firm Gide Loyrette Nouel that provides our clients access to assistance in francophone west and north Africa and Gide'. The arrangement provides complementary access for Gide's clients and lawyers to markets in central, southern and eastern Africa.

We ensure that, whenever our clients need legal advice in other parts of Africa, we can assist them by tapping into our comprehensive database of contacts of the best firms and practitioners across the continent.

On the global front, Bowmans has long-standing and excellent relationships with a range of international law firms with whom we often work on Africa-focussed client mandates. We are also a member firm of Lex Mundi, a global association of more than 160 independent law firms in all the major centres across the globe. Lex Mundi gives us the ability to connect our clients with the best law firms in each of the countries represented.



-  Bowmans offices
-  Alliance firms
-  Best friends
-  Significant transaction or advisory experience

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