

# Mauritius-based foreign investors face tougher norms

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MUMBAI: Foreign institutional investors (FIIs), funds and other entities which invest in India via the Mauritius route will soon have to meet additional regulatory norms to prove that they are 'controlled and managed in Mauritius'.

These additional norms, set by the Mauritius Financial Services Commission (FSC), which is the regulatory body for the non-banking financial services sector, vary from greater corporate governance requirements to an actual physical presence in Mauritius. The additional conditions are to be met by January 1, 2015.

Mauritius-based entities engaged in investment activities typically opt for a Global Business Company-1 (GBC-1) licence. This is primarily because GBC-1 companies are covered by tax treaties, including the 'investor friendly' India-Mauritius tax treaty.

GBC-1 entities were always required to be 'controlled and managed' in Mauritius. They were required to have at least two Mauritius-resident directors of sufficient calibre, the principal bank account was to be in Mauritius, and accounts were required to be kept and audited in Mauritius.

Now for passing the 'control and management' test, additional conditions have to be met. It requires that Mauritius-resident directors also be 'appropriately qualified' by way of relevant qualifications and experience. Mauritius-resident directors are also required to devote sufficient time and be adequately and actively involved in the control and management of the Mauritius-resident entities, of which they are directors.

Further, a GBC-1 licensed entity is required to satisfy at least one of the following conditions, viz: have an office premise in Mauritius; employ on a full-time basis at least one Mauritius-resident individual at an administrative or technical level; the GBC-1 entity's constitution (akin to an Indian company's Memorandum and Articles of Association) should provide for settlement of all disputes arising out of the constitution by way of arbitration in Mauritius; the GBC-1 entity should hold within the next twelve months assets of at least \$100,000 in Mauritius (excluding cash in bank accounts or securities in other GBC-1 entities); such an entity should be listed on a stock exchange licensed by FSC; it should have a reasonable annual expenditure in Mauritius. If a group has more than one GBC-1 entity, it suffices if only one of the GBC-1 entities meets any one of the above criteria.

A GBC-1 entity which is authorized as a collective investment scheme, closed-end fund or external pension scheme will also have to be administered from Mauritius. "Before recommending renewal of the tax residency certificate (TRC) to the Mauritius Revenue Authority, the FSC needs to be satisfied that control and management is being exercised from Mauritius," says Renu Audit, head of legal & compliance, CIM Global Management, a Mauritius-based financial services firm.

Indian tax laws require production of a TRC to claim tax treaty benefits. Thus, Mauritius-resident entities seeking renewal of TRCs after January 1, 2015, will need to meet the additional FSC requirements.

"From the light touch of regulation in the liberal days, we are moving to a more guarded three-pronged approach. Firstly, by promoting substance over form and requiring increased local presence with demonstrable impact on the local economy and employment. Secondly, by heightening corporate governance rules, and thirdly by calling for transparent and frank disclosures within a context of international supervisory efforts to combat abuses. FIIs who seek to tread the sleazy road to India, would have to walk off the Mauritius route," says Iqbal Rajahbalee, Mauritius-based senior counsel, BLC Chambers.

"Some of the GBC-1 entities have already implemented these new requirements, such as having office premises or employing local staff. Quite a few are also listed on the Mauritius stock exchange. The implementation is progressive and the flexibility offered by FSC to opt for the best suited option is a good initiative," says Gary Gowrea, tax head, CIM Global.

Mukesh Butani, chairman, BMR Advisors, explains, "The drivers behind the new substance requirements set by FSC perhaps are: preparedness for Indian GAAR, an overarching statement that Mauritius is serious about putting in place checks and balances, and addressing treaty shopping."

General Anti-Avoidance Rule (GAAR) comes into force in India from fiscal 2015-16. FIIs which opt for tax treaties are covered by GAAR. "As the final set of GAAR rules issued last month do not contain specific examples, qualitative tests would be applied to determine substance, which always becomes a judgmental exercise. The FSC substance requirements on many aspects are flexible. Whether meeting the FSC requirements will help FIIs meet the substance test from a GAAR perspective will have to be judged from the facts of each case," adds Butani.

A large portion of the inflows to India are routed via Mauritius. At \$75,519 million, 37.7% of total foreign inflows to India during April 2000 to July 2013 were from Mauritius. In the light of regulatory changes in Mauritius and India, the outcome of the tax treaty negotiations between the two countries will be keenly watched, say experts.

# NEW REQUIREMENTS

> Investment entities from Mauritius opt for a GBC-1 licence as this is covered by tax treaties, including the India-Mauritius tax treaty

> The Mauritius Financial Services Commission has set additional norms that have to be met by Jan 1, 2015 to prove local substance

> With most inflows into India routed via Mauritius (nearly 38% of over \$75bn from Apr 2000 to July 2013), the new norms will affect a lot of entities

> Along with GAAR in India, the regulatory changes will also impact the ongoing tax treaty talks between the two countries



GBC-1s (Global Business Company-1, including investment funds/companies) are required to have a presence, which can be reasonably expected from a corporation managed and controlled in Mauritius. In addition to various requirements, other conditions which will be considered by the FSC – when determining whether a GBC-1 is controlled and managed in Mauritius – include: having office premises, holding

assets, employing staff and using the

services of local providers. The

new requirements are in line with

the Mauritius government's policy

of enhancing

substance in Mauritius by

GBCs



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