



Financial Services Commission Mauritius

CIRCULAR LETTER (CL201207)

21 December 2007

**To: Directors
Management Companies**

Dear Sir/Madam

NEW CONCEPTUAL APPROACH TO GLOBAL BUSINESS

As you are aware, the Financial Services Act 2007 ('the FSA') introduces a new conceptual approach to Global Business. Following the adoption of this approach, there are now two distinct legal, regulatory and fiscal regimes for Mauritian companies conducting business in Mauritius and those conducting business outside Mauritius.

This Circular Letter sets out how the FSC proposes to apply the new legal provisions in general, with special focus on the issue of Global Business Licences so that investors and service providers have clear prior knowledge and understanding of the requirements for applying for and holding a Global Business Licence.

2. THE NEW CONCEPT OF GLOBAL BUSINESS

Under the repealed Financial Services Development Act 2001, "global business" was defined as:

- (i) any one of the activities that was specified in a list of qualifying activities; and
- (ii) that which was being carried on from within Mauritius with persons all of whom are resident outside Mauritius and which is conducted in a currency other than the Mauritius currency; or
- (iii) which is carried on by a private company incorporated or registered under the Companies Act 2001, which does not conduct business with persons resident in Mauritius nor conduct any dealings in Mauritius currency; and which holds a Category 2 Global Business Licence.

The new conceptual approach adopted by the FSA rests on a streamlined and more flexible definition which is reflective of business conducted across borders.

2.1 *What does "Conduct of Business outside Mauritius" mean?*

Section 71(1) of the FSA provides that a resident corporation will qualify for a Global Business Licence ('GBL') where it is conducting business outside Mauritius.

In determining whether the applicant qualifies for a licence the FSC proposes to consider all the relevant circumstances of each application and in particular the ultimate purpose test.

The test is basically whether the ultimate purpose of the company is an investment or a service to be made or provided outside Mauritius. This new approach does not limit the scope of work being conducted in Mauritius in relation to the ultimate purpose of the company.

Example a resident corporation investing in another jurisdiction and employing staff in Mauritius to do its Net Asset Value (NAV) calculations, manage investor relationships, carry out research and analysis here and carry all other activities required in connection with the ultimate investment objective will be considered as conducting business outside Mauritius and qualify for a GBL.

Similarly, in line with the ultimate purpose test, a fund manager who proposes to provide its services to a fund holding a Category 1 Global Business Licence ('GBL') will qualify for a GBL.

Applying the above test will also mean that where the ultimate purpose of the company is to provide a service in Mauritius the company will not necessarily qualify for a GBL simply because its ultimate clients are based outside Mauritius.

Example A resident corporation set up with the purpose of providing call-centre services in Mauritius to overseas clients will not be considered as conducting business outside Mauritius.

2.2 *The application of "Conduct of Business outside Mauritius"*

In applying the provisions of the new law, the FSC proposes to adopt the following practice:

- In processing an application for a GBLI, the FSC does not propose to take into consideration the citizenship or residence of the promoters or beneficial owners of the company **except** in so far as there is an understanding between two treaty partners that the treaty will not be used for purposes of round-tripping. In such cases, the FSC may impose licensing conditions relating to the re-investment of funds derived from the territory of a treaty partner into that territory.
- The FSC will no longer have to determine if the proposed activity of a Category 1 Global Business Company ("GBC1") is one of the prescribed activities. The application for a GBLI will be considered for any lawful activity save in exceptional circumstances (please refer to section 2.4 below).

2.3 *Who may conduct Global Business?*

Section 71(1) of the FSA provides that any “resident corporation” which proposes to conduct business outside Mauritius may apply to the Commission for a GBL1 or a Category 2 Global Business Licence (“GBL2”).

2.3.1 *What is a “resident corporation”?*

A “resident corporation” is defined under section 71(6) of the FSA.

For the purposes of the FSA, a resident corporation applying for a GBL1 is–

- a body corporate formed or registered under the Companies Act 2001
- a trust, société, or partnership or any body of persons governed by the laws of Mauritius

However, a “resident corporation” applying for a GBL2 is under section 71(3) of the FSA a “private company” and must pursuant to the definition of “resident corporation” be formed or registered under the Companies Act 2001. Furthermore, the FSC proposes to continue the present practice of not issuing a Category 2 GBL of which the shareholder^[1] or beneficial owner is a person resident in Mauritius

Notwithstanding the above, FSC will, under the FSC (Consolidated Licensing and Fees) Rules 2007 (‘the FSC Rules’) made pursuant to Section 79(2) of the FSA, allow partnerships governed by laws other than Mauritian law to apply, in specified circumstances, for a GBL1.

2.4 *Business that may be conducted by a Global Business Company*

A GBC1 may under the FSA conduct any business activity but the FSC may, in accordance with section 72(4) of the FSA, decline to consider an application for a GBL where in its opinion, the activity–

- (a) is unlawful or contrary to public interest or
- (b) may cause serious prejudice to the good repute of Mauritius as a centre for financial services.

2.4.1 *Activities that may be conducted by a GBC1*

Where a GBC1 proposes to conduct any business for which a licence, authorisation, approval, registration or other formality is required under any law, section 71(2) of the FSA provides that it should also comply with the relevant

^[1] For the purposes of facilitating and expediting the incorporation process the Management Company may continue to use its nominee companies approved under section 78 of the FSA as shareholders.

requirement before commencing business. By way of example, where an applicant for a GBL1 proposes to conduct a financial service which requires a licence under section 14 of FSA, it must also apply for a licence under section 14 of the Act. Similarly a GBC1 which proposes to run a Collective Investment Scheme will have to be authorised under Section 97 of the Securities Act 2005.

2.4.2 Activities that may be conducted by a GBC2

The FSA provides certain restrictions on the business activities that may be conducted by a Category 2 Global Business Company ('GBC2'). Section 71(3) of the FSA provides that the following activities will not be approved for a GBL2: -

- Banking
- Financial services^[2]
- Carrying out the business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary
- Providing of registered office facilities, nominee services, directorship services, secretarial services or other services for corporations
- Providing trusteeship services by way of business.

2.5 Conduct of Business by a GBC1

2.5.1 The FSA requires a GBC1 to be administered at all times by a Management Company licensed by the FSC and in determining whether a GBL1 should be granted, the Commission takes into account whether the company will be managed and controlled in Mauritius. In doing so, the FSC may consider, inter-alia, whether the GBC1:

- will have or has at least 2 directors of sufficient calibre to exercise independence of mind and judgement, resident in Mauritius;
- will maintain or maintains at all times its principal bank account in Mauritius;
- will keep and maintain or keeps and maintains, at all times, its accounting records at its registered office in Mauritius;
- will prepare or proposes to prepare its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius;
- provides for meetings of directors to include at least 2 directors from Mauritius.

^[2] For the purposes of leasing activities, the Commission makes a distinction between financial lease and operating lease. The prohibition is in respect of financial lease. A GBL2 may, for instance, be licensed to conduct aircraft leasing - which comes under the definition of operating lease.

2.5.2 Section 71(4)(b) of the FSA provides an indicative list of the criteria that the Commission may consider in assessing control and management. In processing an application for a GBLI the FSC will consider each application on its merits and will have regard to all the circumstances of the application to determine the control and management of the applicant company. Where necessary, the FSC may impose special licensing conditions to ensure that the GBLI will meet the control and management test on an on-going basis.

2.5.3 A resident corporation will still satisfy the ultimate purpose test where it:

- opens and maintains with a bank an account in Mauritius currency for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;
- leases, holds, acquires or disposes of an immovable property or any interest in immovable property situated in Mauritius (subject to the Non-Citizens (Property Restrictions) Act);
- invests in any securities listed on a securities exchange licensed under the Securities Act 2005;
- opens and maintains with a bank an account in foreign currency;
- holds any share, debenture, security or any interest in or otherwise deals or transacts with a corporation holding a GBL;
- enters into a business relationship with the holder of a Management Licence or a law practitioner or qualified auditor in Mauritius;
- employs staff resident in Mauritius.

2.5.4 In line with the FSA and the policy of Government, the FSC will expect and encourage substance in Mauritius from GBLI's. Consequently the FSC proposes to apply the ultimate purpose test in such manner that GBLIs are not only administered, managed and controlled in Mauritius but also carry out as many of their activities supporting their ultimate purpose in Mauritius.

2.5.5 For the avoidance of doubt, incidental local transactions associated with employment of staff and renting of office premises, telephone line, utility bills and others will be considered as day to day routine transactions (petty cash expenses) and would not require approval of the FSC under section 73(3) of the FSA.

2.5.6 In addition to the above, the FSC may approve other incidental activities which may be conducted in Mauritius by a company which still qualifies for a GBL.

2.6 *Conduct of Business by a GBC2*

A company holding a GBL2 will be considered to be conducting business outside Mauritius notwithstanding the fact that it -

- opens and maintains with a bank an account in foreign currency;
- holds any share, debenture, security or any interest in or otherwise dealing or transacting with a corporation holding a Global Business Licence;
- enters into a business relationship with the holder of a Management Licence or a law practitioner or qualified auditor in Mauritius.

NB: A company holding a Category 2 Global Business Licence may not hold immovable property in Mauritius.

2.7 *Transitional Provisions for existing Global Business Companies*

Holders of a GBL issued prior to 28 September 2007 will have up to 30 June 2012 to take such measures as may be necessary to comply with the provisions of Section 71(1) of the FSA, failing which the company will no longer qualify for a GBL.

3. THE LICENSING FRAMEWORK

Part X of the FSA provides for a distinct legal regime for Global Business Companies.

3.1 *The Application Process for Global Business Companies*

Section 72(1)(a) of the FSA requires applications for a GBL to be made through a Management Company (please refer to Section 7 below).

The application form specified in the FSC (Consolidated Licensing and Fees) Rules 2007 ('the FSC Rules') must be used. The FSA requires that every application is certified by a law practitioner as complying with the laws of Mauritius. An application must be accompanied by the applicable non-refundable processing fee specified in the FSC Rules.

3.1.1 *The Application Process for GBCIs*

The Application process in respect of a GBLI is described fully in the Commission's Circular Letter CL260107 – "New Application Procedures for Category 1 Global Business Licence" issued by the Commission on 29 January 2007. A copy of the Circular Letter may be downloaded from the website of the Commission.

3.1.2 *The Application Process for GBC2s*

The Application Process in respect of a GBL2 is described fully in the Commission's "*Guide to Completing the Application Form for a Category 2 Global Business Licence*".

4. FEES

Fees payable in respect of a GBL to the Commission will be set out in the FSC Rules.

5. VALIDITY OF GLOBAL BUSINESS LICENCES

A GBL issued by the Commission under section 72(6) of the FSA remains valid unless it lapses under the provisions of section 74(2) of the FSA, or is suspended or is revoked.

Pursuant to the provisions of section 74(2) of the FSA, a GBL lapses where the annual fee in respect of the licence is not paid within the time specified in the FSC Rules and additional charges accrue as will be specified in the FSC Rules. The FSC Rules will also set out the additional charges that will be payable after the due date, the conditions under which a licence will lapse for non-payment of the licence fees.

The FSC Rules will also provide that where a GBL has lapsed, the holder of the GBL may, within a period of 12 months from the date the licence lapses, apply for the reinstatement of the licence subject to such terms and conditions and to the payment of such fee and additional charges as will be specified. The Commission will then assess the application and may, subject to such terms and conditions as may be determined, issue the Global Business Licence as from the date the licence had lapsed.

After the period during which re-instatement can be applied for, the holder of the lapsed GBL will have to submit a fresh application for a new licence. In assessing the application, the Commission will have regard to the previous regulatory records of the applicant and reserves the right to issue the new licence.

Where a Global Business Licence has lapsed or is suspended, section 74(3) of the FSA provides that the holder of the Global Business Licence cannot, except with the approval of the Commission, transact any business.

6. DISCLOSURE REQUIREMENTS FOR GBCIs

Under section 30 of FSA, GBCIs are required to file audited financial statements. In applying the provisions of the law, the FSC proposes to adopt the following practice:

- (a). Submission of audited financial statements is mandatory for all GBCIs irrespective of whether they are active or inactive;
- (b). In case where a GBC2 has been converted to a GBCI, the latter will be required to submit its audited financial statements for the period starting from date of issue of the GBLI up to the date of its financial year end;
- (c). In case where a company is incorporated in Mauritius as a GBCI by way of continuation, it will be required to submit its audited financial statements for the period starting from the date of incorporation of the GBCI up to the date of its financial year end;
- (d). In cases where a foreign company^[3] is licensed as a GBCI, the foreign company holding a GBLI shall submit to the FSC financial statements which shall comply with IFRS, fairly showing the assets employed in, and liabilities arising out of and its profit and loss arising out of, its operations conducted in or from Mauritius. Please note that the FSC may also request the submission of audited financial statements of the head office;
- (e). Secretary's Certificate should be attached to the audited financial statements and should be dated for the sake of certification of matters contained therein;
- (f). Whenever an amended copy of audited financial statements is filed, it should be certified by the auditor.

Further, the FSC expects the financial statements filed with the Commission to be accompanied by the GBCI's corporate data – for completeness of our records. The corporate data would include – but not limited to – details of the GBCI's directors, registered office/business address and banker.

7. MANAGEMENT COMPANIES

Pursuant to section 71(5) of the FSA, a corporation holding a GBLI must at all times be administered by a Management Company.

The FSC will distinguish between "Administration" and "management and control". Administration services will be deemed to include the following:

- (a). advise an applicant for a GBL in connection with the incorporation of a company and the application for the GBL;
- (b). conduct Customer Due Diligence on all applicants for a GBL;

^[3] Foreign Company has the same meaning as under the Companies Act 2001

- (c). submit an application for a GBL to the FSC and deal with any queries from the FSC in respect of such an application;
- (d). provide or arrange for the appointment of resident directors of companies holding a GBL;
- (e). act as Company Secretary to the GBC1;
- (f). provide a registered office or business address for the holder of a GBL;
- (g). provide an accommodation, correspondence or administrative address for a company, a partnership or for any other person;
- (h). act as registered agent (see 9 below).

Further, Management Companies must at all times comply with the requirements of the Financial Intelligence and Anti-Money Laundering Act 2002 ('FIAMLA') with respect to their business relationships. They are also required to comply with the "*Code on the Prevention of Money Laundering and Terrorist Financing intended for Management Companies*" issued by the FSC.

8. SERVICES OFFERED BY A MANAGEMENT COMPANY

Management Companies may, with the approval of the Commission under the FSA or under the relevant Acts, provide the following services:

- (a) administration of collective investment companies set up in Mauritius or in jurisdictions other than Mauritius;
- (b) back-office accounting and fiduciary services in respect of structures set up in jurisdictions other than Mauritius under an appropriate delegation agreement.

9. REGISTERED AGENTS

A GBC2 is required by section 76(1) of the FSA to have at all times a Registered Agent in Mauritius.

The functions of a Registered Agent include processing licence applications with the FSC, receiving and forwarding all communication from and to the Commission, filing of statutory documents with the Registrar of Companies.

Your attention is drawn to the new provision of the law according to which only Management Companies are allowed to act as Registered Agents.

10. MC'S ACTING AS NOMINEE

The Commission expects Management Companies to provide nominee services through nominee companies approved by the Commission under section 78 of the FSA.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'J. N. Meetarbhan', written in a cursive style.

J. N. Meetarbhan
Chief Executive
