

# Newsbrief

no. 111 august 2018

## Interim Update – New Finance Bill: Changes brought to the Global Business sector by the Finance (Miscellaneous Provisions) Act 2018

The following information are not to be taken as final as there may be amendments through FSC regulations as the government is still in the process of discussing certain proposals in the bill with respect to the new corporate regime. Hopefully, there will be clarity in the transition and implementation processes. We will endeavour and will be pleased to update you as these get finalised, however in the meantime, the following are the relevant and salient features of the amendments.

Following the budget speech delivered on Thursday 14 June 2018 to the National Assembly, parliament has debated on the measures announced and we hereby provide an update on the main legislative amendments touching the global business sector which have been introduced by the Finance (Miscellaneous Provisions) Act 2018 (the "Finance Act") passed by the National Assembly on 31 July 2018.

The measures for the financial services sector this year include regulatory changes and tax reforms in the Global business sector to comply with the proposals made by the Organisation for Economic Co-operation and Development (OECD), in the wake of the Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan). GBC<sub>1</sub> is renamed GBL, while GBC<sub>2</sub> will phase out and replaced by the "Authorised Company", and the fiscal regime for both domestic and global business companies is being harmonised.

### Changes brought to the Category 1 Global Business Licence

The major change to the Financial Services Act 2007 (the "FSA") is that the Category 1 Global Business Licence ("GBC<sub>1</sub>") will henceforth be known as the "Global Business Licence" ("GBL").

In addition, any corporation (other than an Authorised Company (as described below)), which proposes to conduct or conducts business principally outside Mauritius (or with such category of persons as may be specified in FSC Rules) and of which the majority of shares or voting rights or the legal or beneficial interest (other than a bank licensed by the Bank of Mauritius and such other corporation as may be specified in FSC Rules) are held or controlled, as the case may be, by a person who is not a citizen of Mauritius, will need to apply for a GBL from the Financial Services Commission (the "FSC").

### Requirements of substance for a GBL

With the amendments to the FSA, a corporation which holds a GBL must at all times carry out its core income generating activities in, or from, Mauritius by employing, either directly or indirectly, a reasonable number of suitably



qualified persons to carry out the core activities and having a minimum level of expenditure, which is proportionate to its level of activities. It is to be noted that the previous requirements for a corporation to hold a GBC<sub>1</sub>, namely that it is (i) managed and controlled from Mauritius (together with the list of conditions) and (ii) administered by a management company licensed by the FSC will continue to apply to the newly styled GBL entity.

### **Grandfathering**

In order to ensure a smooth transition to the new regulatory and fiscal environment for the global business sector, the Finance Act provides for the following grandfathering provisions:

- A corporation that was licensed as a GBC<sub>1</sub> on or before 16 October 2017 will be grandfathered till 30 June 2021. As from that date, the corporation will be deemed to hold a GBL.
- A corporation that was licensed as a GBC<sub>1</sub> after 16 October 2017 will be grandfathered only until 31 December 2018 after which it will be deemed to hold a GBL.

### **Changes to taxation regimes**

#### **Abolition of DFTC and introduction of an exemption regime**

The taxation of companies operating in the global business sector has been reviewed. The Deemed Foreign Tax Credit ("DFTC") regime available to entities holding a Category 1 Global Business Licence is being abolished as from 1 January 2019. Instead, a "partial exemption" regime will be introduced. The intended changes shall take effect upon regulations being made by the Minister.

An 80% exemption in respect of the following income, provided that the substance requirement criteria are met, is now applicable:

- Foreign source dividend provided that such dividend is not allowed as a tax deductible item in the source country.
- Foreign source interest income.
- Profit attributable to a permanent establishment which a resident company has in a foreign country.
- Income derived by a Collective Investment Scheme, Closed end fund, CIS manager, CIS administrator, investment adviser or assets manager licensed or approved by the FSC.
- Income derived by companies engaged in ship and aircraft leasing.

#### **Foreign source income**

The Income Tax Act (the "ITA") is amended to provide that "foreign source income" shall no longer include (i) income derived by a GBC<sub>1</sub> from its transactions with non-residents or corporations holding a global business licence and (ii) income derived by banks from non-residents or corporations holding a global business licence.

It is to be noted however that income derived by a corporation that has been issued with a GBC<sub>1</sub> on or before 16 October 2017, from its transactions with non-residents or corporations holding a Global Business Licence under the FSA, will continue to be considered as foreign source income until 30 June 2021.

#### **Changes brought to the Category 2 Global Business Licence**

The other major change to the Financial Services Act 2007 (the "FSA") is that the Category 2 Global Business Licence ("GBC<sub>2</sub>") is being abolished and replaced by the "Authorised Company".

The FSC will cease to issue the GBC<sub>2</sub> as from January 2019, subject to the grandfathering provisions fully set out below.

#### **Authorised Company**

A corporation which proposes to conduct or conducts business principally outside Mauritius (or with such category of persons as may be specified in the FSC Rules) and which has its place of effective management outside Mauritius and of which the majority of shares/voting rights/legal/beneficial interest (other than bank, licensed by the Bank of

Mauritius, and incorporated under the Companies Act 2001) are held or controlled by a non-citizen of Mauritius, must apply to the FSC, through a management company, for an authorisation.

### **Responsibilities of registered agent**

The registered agent of the Authorised Company will be responsible to provide such services which the company will require in Mauritius; e.g., (i) filing returns and other documents under the tax legislation, (ii) receiving and sending communications from and to the FSC, the Mauritius Revenue Authority ("MRA") and Registrar of Companies ("ROC"), (iii) keeping records of the company and (iv) taking measures to combat money laundering and financing of terrorism and related offences. The FSC may impose other obligations under the FSC Rules.

### **Grandfathering**

In order to ensure a smooth transition to the new regulatory environment for the global business sector, the Finance Act provides for the following grandfathering provisions:

- A corporation that was licensed as a GBC2 on or before 16 October 2017 will be grandfathered till 30 June 2021. As from that date, the GBC2 licence will lapse.
- A corporation that was licensed as a GBC2 after 16 October 2017 will be grandfathered only until 31 December 2018 after which the licence will be deemed to have lapsed.

### **Changes to taxation regimes**

#### **Income not derived from Mauritius**

Further to changes brought to the ITA, entities incorporated in Mauritius shall be treated as non-residents for tax purposes (and therefore exempt from income tax) if its place of effective management is outside of Mauritius. Such an entity shall be required to submit a return of income to the MRA within 6 months from its year end.

In addition, the existing exemption from income tax which GBC2 companies enjoy will continue to apply until 30 June 2021 to any such companies issued with a GBC2 under the FSA on or before 16 October 2017. However, such continued benefit will not apply if:

- The company has acquired intellectual property assets acquired from a related party after 16 October 2017.
- The company has acquired intellectual property assets acquired from an unrelated party, or any newly created intellectual property assets, after 30 June 2018.
- Income is derived from such specific assets acquired or projects started after 31 December 2018.

#### **CKLB Comments:**

As mentioned above, it is important in the first instance that we are fully informed by the government of final amendments in the bill and by way of regulation through the Financial Services Commission, and understand the implementation processes. Once we are satisfied that these clarifications are complete following the discussions between Government and the Industry, it would be advisable to consider the options. In particular the options with respect to the phasing out of the GBC2 in 2021 and also to those incorporated post October 2017. In circumstances where it is not a viable option to convert the GBC2 into an Authorised company as being suggested by the Bill, we will look at various options opened to us, for instance, one of which is to re-domicile to another relevant jurisdiction.

# our services

CKLB is independently owned and being of medium size, we pride ourselves in our ability to remaining committed to provide a personal and tailor-made service to clients. We understand well the particular requirements and needs of clients and the key to our successful development has been our commitment to satisfy these needs at high standard. We provide a one-stop quality service with emphasis on local presence and substance. Our varied client base includes HNWI / Ultra HNWI Individuals, private companies as well as companies listed on major stock exchanges. Our range of services includes:

- our core service, advice to HNWI's and family offices in developing efficient estate planning solutions
- management and family office support structures
- focus on a complete set of fund structuring and administration services
- corporate structuring and advice
- company formation and corporate management
- administration and accounting
- establishment of trusts and provision of trustee services
- back office administration and accounting services
- outsourcing and payroll services
- business administration services, including international trading, licensing and financing
- expatriates occupation and residence permits
- group investment holding and management services

## Connecting our clients to international networks to facilitate cross-border business

CKLB interacts with several professional firms and services group, and is member of the International Grouping of Accountants and Lawyers (IGAL), a well-established association boasting 107 member firms located in 41 countries throughout the world, with 170 offices worldwide. IGAL has developed into a leading business network of legal and accounting firms whose members offer superior services related to legal, financial, tax and insolvency matters to companies and individuals with international activities; as well as expert and personal assistance to reduce the obstacles of doing business in a foreign environment and at a distance. IGAL provides CKLBs valued clients with a wide network for assistance in their cross-border businesses through privileged access to experienced professionals and technical expertise in relevant countries. CKLB will be pleased to co-ordinate any assistance you may require in these countries as an extension of our one-stop shop service.

## Disclaimer

This document is designed to provide information of a general nature and is not intended as a substitute for professional consultation and advice in a particular matter. The opinions and interpretations expressed within are those of the author only and may not reflect those of other identified parties. CKLB does not warrant the accuracy and completeness of this news brief, nor endorse or make any representations about its content. In no event will CKLB be liable for any damages whatsoever arising out of the use of or reliance on the contents of this document.

# offices

## MAURITIUS

CKLB International Management Ltd  
PO Box 80, Felix House  
24 Dr Joseph Rivière Street  
Port Louis, Mauritius  
T + 230 405 8800  
F + 230 405 8818  
E [christianli@cklb.com](mailto:christianli@cklb.com)  
[kathleenlai@cklb.com](mailto:kathleenlai@cklb.com)  
[adrienli@cklb.com](mailto:adrienli@cklb.com)

## LONDON REPRESENTATIVE

20 Green Lane, Oxhey  
Hertfordshire WD 19 4NJ, England  
T + 44 2088 197 315  
F + 44 1923 219 476  
E [henrylan@cklb.com](mailto:henrylan@cklb.com)

## SEYCHELLES

CKLB Fiduciary (Seychelles) Limited  
P.O. Box 355, Suite 6, House of Ansuya  
Revolution Avenue, Victoria  
Mahé, Seychelles  
T + 248 443 0050  
F + 248 443 0060  
E [kimyuekye@cklb.com](mailto:kimyuekye@cklb.com)

## HONG KONG

CKLB Corporate Services (Hong Kong) Ltd  
16/F, 1607 Beverly House  
No. 93 – 107 Lockhart Road  
Wanchai, Hong Kong  
T + 852 2805 6636  
F + 852 2391 8679  
M + 852 9800 6394  
E [patrickli@cklb.com](mailto:patrickli@cklb.com)



IGAL A Member of the Intercontinental Grouping of Accountants and Lawyers

