Mauritius Global Business Companies
Foreword

This memorandum has been prepared for the assistance of those who are considering the formation of global business companies in Mauritius. It deals in broad terms with the requirements of Mauritius law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice on Mauritius law in respect of their specific proposals before taking steps to implement them.

Before proceeding with the incorporation of a company in Mauritius, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

Conyers Dill & Pearman

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1. INTRODUCTION

The island nation of Mauritius, in the Indian Ocean, is fast earning a reputation as a leading offshore financial centre. The island enjoys a sophisticated telecommunications system, an abundance of professional service providers, as well as economic and political stability. Its forward-looking legislators have created a modern and sensible legislative regime for companies, limited partnerships, foundations and trusts. Carefully crafted legislation and thoughtfully negotiated taxation treaties, combined with its geographic location as the gateway to the modern trade routes of southern Asia, make Mauritius a desirable location from which to do international business.

The following options are available in Mauritius:

1. Companies (including “Global Business Companies”);
2. Funds: Collective Investment Schemes and Closed-End Funds;
3. Trusts;
4. Foundations (with legal personality, undertaking charitable or non-charitable activities);
5. Protected Cell Companies (entities with “core” capital and “cellular” capital); and
6. Limited partnerships (with the possibility of electing to have legal personality).

The principal statute governing the formation and operation of Mauritius companies is the Companies Act 2001, (the “Companies Act”). Companies incorporated in Mauritius for the purpose of doing business primarily outside of Mauritius are called Global Business Companies, or “GBC’s” and are governed by the Financial Services Act 2007 (the “Financial Services Act”). A GBC may be incorporated as a company limited by shares, a company limited by guarantee, a company limited by shares and guarantee, an unlimited liability company or a limited life company. Such entities are either licensed as Category 1 (“GBC1”) or Category 2 (“GBC2”) companies.

In summary, a GBC1 is allowed to undertake any business activity which is not illegal or against public policy including those involving capital raising from the public. A GBC1 may be structured as a protected cell company under the Protected Cell Companies Act 1999, as an investment company, a fund (a collective investment scheme or a closed-end fund) under the Securities Act 2005, and a limited partnership under the Limited Partnerships Act 2011. A GBC1 has access to Mauritius’ network of double taxation avoidance treaties.
A GBC2 in contrast is suited for trading (non-financial), holding and managing private assets and cannot engage in certain activities such as financial services. A GBC2 bears many of the same characteristics as other offshore exempted or international companies. A GBC2 is not resident for tax purposes and therefore is debarred from benefiting from double taxation relief under the Mauritius double taxation avoidance treaties. The distinguishing features of GBC1 and GBC2 companies are further detailed in Schedule I.

A GBC1 may be a private company or a public company, and if a company’s constitution does not state that it is a private company, it will be considered a public company. It is to be noted that only a private company may apply for a Category 2 Global Business Licence.

Please note that business companies proposing to carry on certain types of business, such as insurance or mutual funds (i.e. financial services as defined by the Financial Services Act) must apply for a Category 1 Global Business Licence and are regulated by additional statutes. Further information on those types of companies is available from this Firm upon request.

2. PRE-INCORPORATION MATTERS

2.1 Pre-Incorporation

No governmental approval is required for the incorporation of a company. However, certain business activities of a company may require special licensing.

2.2 Company Name

The name of the proposed company may be reserved with the Registrar of Companies (the “Registrar”) before the company is incorporated. The name reservation can usually be confirmed within 24 hours. The reservation of the name will be available for 2 months from the date of notice of reservation but may be renewed for further periods of 2 months. The Companies Act contains certain restrictions on names but a GBC need not necessarily end with the word “Limited” or “Limitée” or the abbreviation “Ltd” or “Ltée”. It is noteworthy that the names of GBCs may end with “Corp.”, “B.V”, “N.V”, “S.A” etc.

2.3 Incorporation and Licensing

There is no requirement to publicise an intention to incorporate. A company will be incorporated by the delivery of an application form for incorporation of a
company to the Registrar. Included with the application must be the consent of every director (and secretary, where applicable) of the proposed company, the consent of every shareholder of the proposed company (or an agent of that person authorised in writing) stating the class and number of shares taken and the consideration paid for by that shareholder for the issue of those shares, along with a certified copy of the constitution and a law practitioner’s certificate certifying that the application complies with the laws of Mauritius. The company is incorporated when it receives its certificate of incorporation delivered by the Registrar.

The company concurrently applies to the Financial Services Commission (the “FSC”) through a licensed management company such as Codan (Mauritius) Limited to obtain either a Category 1 or Category 2 Global Business Licence issued under the Financial Services Act 2007. The GBC will state the purpose for which it is incorporated. The FSC must be advised of any proposed change of purpose.

The incorporation process for a GBC1 can generally be completed within 5-8 business days from the time that all necessary information and documentation are provided, whilst the incorporation process for a GBC2 is normally completed within 2-4 business days.

3. REQUIREMENTS OF MAURITIUS LAW

3.1 New FSC requirements

The FSC has put in place new criteria as follows, in relation to the control and management issue of a GBC1, at least one of which will need to be complied with by 1 January 2015:

(i) the GBC1 has or shall have office premises in Mauritius; or
(ii) the GBC1 employs or shall employ on a full-time basis at administrative/technical level, at least one person who shall be resident in Mauritius; or
(iii) the GBC1’s constitution contains a clause whereby all disputes arising out of the constitution shall be resolved by way of arbitration in Mauritius; or
(iv) the GBC1 holds or is expected to hold within the next 12 months, assets (excluding cash held in bank account or shares/interests in another corporation holding a Global Business Licence) which are worth at least USD 100,000 in Mauritius;
(v) the GBC1’s shares are listed on a securities exchange licensed by the FSC; or
(vi) it has or is expected to have a yearly expenditure in Mauritius which can be reasonably expected from any similar corporation which is controlled and managed from Mauritius.

3.2 Constitution

The constitution of a GBC comprises the rules governing the GBC, the directors and shareholders in the GBC, and their relationship with each other. A GBC may choose to have a constitution, although there is no requirement at law to have one. If a GBC does not have a constitution, the shareholders may adopt a constitution at any time. In the absence of a constitution, the GBC, the board, each director and shareholder of the company all have the rights, powers, duties and obligations set out in the Companies Act. The constitution of a private GBC is not available for inspection by the public. A GBC is not required to state its objects but if it chooses to do so it is restricted to only those specific objects. Under a constitution, the GBC, the board and each director and shareholder still has the same rights, powers, duties and obligations set out in the Companies Act, except to the extent that they are restricted, limited or modified by the constitution.

As indicated in 3.1 above, a GBC1 may fulfill the new FSC requirements by choosing to adopt a constitution which provides for all disputes arising out of the constitution to be resolved by way of arbitration in Mauritius.

3.3 Registered Office

Every GBC must have a registered office in Mauritius. Any change in the address of the registered office must be notified to the Registrar. A post office box cannot be used as registered office.

3.4 Directors, Officers and Representatives

According to the Companies Act, Mauritius companies must have at least one director who should be ordinarily resident in Mauritius.

The Financial Services Act however requires a GBC1 to have a minimum of two directors resident in Mauritius. On the other hand, there is no requirement for a GBC2 to have any director resident in Mauritius. Corporate directors are permitted only for GBC2.
A GBC1 and a one person GBC2 must appoint a secretary. A one person company means a private company in which the only shareholder is also the sole director of the company. It does not include a company in which the only shareholder is a corporation. Apart from the aforementioned, there are no express requirements to appoint any particular officers.

The Companies Act provides that, subject to its constitution, a company may indemnify a director or employee of the company or a related company in respect of liability to any person, other than the company or a related company, for any act or omission in his capacity as a director or employee and for all costs incurred by that director or employee in defending or settling any claim or proceedings relating to any such liabilities. However, such indemnification provisions do not apply to criminal liability or liability in respect of a breach committed by a director in respect of a statutory duty specified in the Companies Act.

### 3.5 Shareholders

Generally, a GBC must have at least one shareholder. Nominee shareholders are permitted for GBC’s provided the beneficial owners are disclosed. A GBC must maintain a share register which may be divided into two or more registers and kept at different locations, if expressly permitted by its constitution. However, the principal register must be kept in Mauritius.

### 3.6 Auditors

A GBC1 must appoint an auditor to audit its financial statements in Mauritius which are filed with the FSC. A GBC2 need not file any audited financial statements with the Registrar, the FSC or any other authority in Mauritius.

### 3.7 Books of Account

A GBC1 must keep accounting records that correctly record and explain the transactions of the GBC1 which at any time enable the financial position of the GBC1 to be determined with reasonable accuracy and which enable the directors to prepare financial statements which are to be audited. These records, together with, inter alia, the constitution, minutes and copies of resolutions, must be kept at the registered office in Mauritius. A GBC1 shall maintain at all times its principal bank account in Mauritius.

On the other hand, the GBC2 is only required to keep such accounting records as the directors consider necessary or desirable in order to reflect the financial
position of the GBC2. Such accounting records must be kept at the registered office of the company or at such other place as the directors may determine. A GBC2 is also required to file with the FSC once in every year a financial summary in the form set out in the Companies Act.

4. OPERATION OF A GLOBAL BUSINESS COMPANY

4.1 Directors' Meetings

Meetings of the directors of a GBC2 may be held in or outside Mauritius but in the case of GBC1 all board meetings must include at least 2 directors from Mauritius. The Companies Act provides that the business and affairs of a company must be managed by, or under the direction or supervision of, the board of directors who may regulate its own procedures, except as otherwise provided in the Companies Act. Notice of a meeting of the directors must be sent to every director who is in Mauritius, and the notice must include the date, time, and place of the meeting and the matters to be discussed. The quorum for a meeting of directors will be such number of directors as is fixed by the constitution or by the board and if not so fixed will be a majority of the directors. Any action that may be taken by the directors at a meeting may also be taken by them by a resolution in writing signed and assented to by all directors.

4.2 Shareholders’ Meetings

Save as provided below, Mauritius companies are required to hold an annual meeting of shareholders once in every calendar year, no later than six months after the GBC’s balance sheet date, and no later than 15 months after the previous annual meeting. Nevertheless, a GBC does not have to hold that meeting within the first calendar year of its incorporation but must hold that meeting within 18 months of its incorporation. A meeting of shareholders may be validly convened with shareholders able to exercise a majority of the votes to be cast on the business to be transacted by the meeting. The Companies Act provides that written notice of a meeting of shareholders must be given not less than 14 days before the meeting. The constitution may further extend this notice period. It is not necessary for a private GBC (taking into consideration that a GBC1 may be a public company) to hold an annual meeting of the shareholders where everything required to be done at that meeting is done by written resolution in lieu. Written resolutions may be signed without any prior notice being given to the shareholders. Upon the written request of shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue,
the directors are required to call a special meeting of shareholders. Shareholders’ meetings need not be held in Mauritius.

Shareholders may vote at meetings of shareholders in person (which includes by means of audio or audio and visual, communication) or by proxy. The holder of a proxy may, but need not, be a shareholder. Shareholders may also cast postal votes. Corporate shareholders of a GBC may appoint any person to be its representative at meetings of shareholders. The Companies Act does not preclude a shareholder from appointing more than one proxy.

The Companies Act requires that certain decisions of the shareholders must be approved by a “special resolution”. A resolution will be a special resolution when approved by a majority of 75% (or such higher majority as required by the constitution) of the votes of those shareholders entitled to vote and voting on the question. A special resolution will also be made when a resolution in writing is signed by not less than 75%, or such other percentage as the constitution requires for passing a special resolution, of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% (or such other percentage required by the constitution) of the votes entitled to be cast on that resolution. Except as aforesaid, resolutions require to be approved by an ordinary resolution which is a resolution that is approved by a simple majority of the votes of shareholders entitled to vote. Where no regulations are made as to voting, each share carries one vote.

The Companies Act also provides that a special resolution of the shareholders is required to approve: (i) transactions which involve the acquisition or disposition of assets, the value of which is more than 75% of the value of the Company’s assets before such acquisition or disposition; or (ii) transactions which have the effect of the Company acquiring rights or interests or incurring obligations or liabilities the value of which is more than 75% of the Company’s assets before the transaction. However, the shareholders of a private company may by unanimous resolution at the time of incorporation or at a subsequent meeting waive the above requirements.

5. STATED CAPITAL

5.1 Stated Capital

There is no minimum stated capital and in practice, most GBCs are incorporated with US$1.00 as stated capital. Shares of a GBC may be of par value or of no par value. Bearer shares are not permitted, but fractional shares, if allowed by the
constitution, may be issued. Shares of a GBC1 may be issued fully, partly or nil paid but shares of a GBC2 must be fully paid.

5.2 Issue of Shares

Subject to the Companies Act, the Securities Act 2005 and the constitution of a GBC, the board may issue shares at any time, to any person, and in any number it thinks fit. The GBC must give notice to the Registrar within 14 days of the issue of any such shares.

5.3 Transfer of Shares

Subject to any limitation or restriction in the constitution, shares of a GBC shall be transferred by entry in the share register in accordance with the Companies Act.

5.4 Redemption and Repurchase of Shares

Subject to approval of its board and to its constitution, a GBC may purchase or otherwise acquire its own shares. A GBC1 may issue redeemable shares where its constitution does not forbid the company from issuing redeemable shares. A GBC2 may also issue redeemable shares where the constitution of the company makes provision for the company to issue redeemable shares. No acquisition or redemption may take place if there are reasonable grounds for believing that the company is, or would after the payment, be unable to satisfy the solvency test. According to the Companies Act, a company shall satisfy the solvency test where: (a) the company is able to pay its debts as they become due in the normal course of business; and (b) the value of the company’s assets is greater than the sum of (i) the value of its liabilities; and (ii) the company’s stated capital.

Shares acquired or redeemed are deemed to be cancelled unless the constitution permits the said shares to be held as treasury shares, in which case they are available for reissue (if so provided in the constitution).

5.5 Reduction of Stated Capital

A GBC may reduce its stated capital by special resolution, provided that the solvency test is satisfied. A company is solvent if the company is able to pay its debts as they become due in the normal course of business and the value of the company’s assets is greater than the sum of the value of its liabilities and the company’s stated capital. Notice of the reduction must be given to the Registrar within 14 days.
6 Dividends

The Board of a GBC may authorise a dividend or distribution which, subject to the constitution, must be approved by ordinary resolution of the shareholders. The company must, upon the distribution being made, satisfy the solvency test.

7. REGISTER OF PLEDGES, MORTGAGES AND CHARGES

All global business companies have to keep a register of share pledges in which the transfer of shares or debentures given in pledge may be inscribed. A GBC2 is also required to keep a register of mortgages and charges.

Every GBC must file with the Registrar a statement of the particulars of any charge, or of making any issue of debentures charged on or affecting any property of the GBC.

7. PUBLIC RECORDS OF A GLOBAL BUSINESS COMPANY

The public may only request information on the address of the registered office of a private GBC and the name and address of its management company (in the case of GBC1), or registered agent (in the case of GBC2).

8. PROSPECTUSES AND PUBLIC OFFERS

All public offers of securities in or from within Mauritius requires a prospectus to be filed with the FSC, unless specifically exempted. Exemptions exist where an offer or issue of securities is (i) a private placement, (ii) made only to sophisticated investors, (iii) made to related corporations of the issuer of the securities or (iv) made under an employee share plan or similar plan. The contents provision requires, inter alia, full, true and plain disclosure of all material facts concerning the issuer and the securities to be offered.

9. CONTINUATIONS AND DISCONTINUATIONS

Mauritius law provides that companies incorporated outside Mauritius may migrate to Mauritius. Companies may also be removed from the Register of Companies and transfer out of Mauritius.

10. TAXATION AND GOVERNMENT FEES

A GBC1 pays a fixed annual licence fee and a one-off licence application fee to the FSC. A modest annual fee is payable to the Registrar annually. A GBC1 is
resident in Mauritius for tax purposes and is liable to taxes at a rate of 15%. However, such a company benefits from a deemed foreign tax credit which results in an effective tax rate of 3% only. Underlying tax credits may also be available.

Additional fees are payable in respect of regulated activities such as collective investment schemes, closed-end funds or investment advisers and further information in this respect is available from this Firm upon request.

A GBC1 must have at least two directors resident in Mauritius, maintain its principal bank account in Mauritius, keep and maintain its accounting records at its registered office in Mauritius, and prepare its financial statements and have same audited in Mauritius. Moreover, meetings of the directors of a GBC1 should include at least two directors from Mauritius. By fulfilling these requirements, a GBC1 is eligible for a Tax Residence Certificate.

Mauritius has an extensive network of Double Taxation Agreements including treaties with: Australia, Bangladesh, Barbados, Belgium, Botswana, China, Croatia, Cyprus, France, Germany, India, Italy, Kuwait, Lesotho, Luxembourg, Madagascar, Malaysia, Monaco, Mozambique, Namibia, Nepal, Oman, Pakistan, Qatar, Rwanda, Senegal, Seychelles, Singapore, South Africa, Sri Lanka, Swaziland, Sweden, Thailand, Tunisia, Uganda, United Arab Emirates, United Kingdom, Zambia and Zimbabwe. The network provides for excellent tax planning opportunities thereby enhancing the image of the jurisdiction as a tax planning centre.

The attractive concessions provided by those treaties include:

- Elimination of double taxation through tax credit equivalent to Mauritian tax.
- Reduction in withholding taxes on dividends, interest and royalties in the source country.
- Exemption from capital gains.
- Possible exemption on interest payments on loans.

For a GBC2, an annual licence fee as well as a one-off processing fee are payable to the FSC. The above mentioned fees exclude the annual fee payable to the Registrar of Companies. A GBC2 does not pay any tax on its worldwide profits to the Mauritius authorities.
There is no capital gains taxation in Mauritius (other than on real estate transactions) and no withholding taxes on the payment of dividends, interests or royalties by a GBC. There is no inheritance tax and Mauritius has no thin capitalisation rules.

Also, registration and stamp duties are applicable to GBCs in specified cases.

There are no exchange controls in Mauritius.
### SCHEDULE I

**GBC1 v. GBC2**

<table>
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<tr>
<th>FEATURES</th>
<th>GBC1</th>
<th>GBC2</th>
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<tr>
<td>Constitution (equivalent to Memorandum &amp; Articles of Association)</td>
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<tr>
<td>Minimum paid up capital (standard)</td>
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<td>Minimum no. of shareholders</td>
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<tr>
<td>Keeping accounting records at registered office in Mauritius</td>
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<td>Financial statements (financial summary for GBC2) filed with FSC</td>
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<td>Confidentiality of records guaranteed for legitimate businesses</td>
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<td>Shareholders’ meetings held anywhere</td>
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<td>Board meetings held anywhere</td>
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<td>Company may be limited by shares, limited by shares and by guarantee, limited by guarantee</td>
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<td>Access to Double Taxation Agreements (“DTA”)</td>
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<td>Corporate tax</td>
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<tr>
<td>Transacting with residents of Mauritius</td>
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</table>

¹ Accounting records must however be kept to reflect the financial position of the GBC2.
² Financial statements must be audited by local auditor.
³ Board meetings must include at least 2 directors from Mauritius.
⁴ Subject to FSC’s approval in some situations.
This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

About Conyers Dill & Pearman

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 140 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and trust and private client matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

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