



INTERCONTINENTAL TRUST NEWSLETTER

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INTERCONTINENTAL TRUST

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Mauritian nationals may be allowed to hold shares in/be a beneficial owner of a GBC2

On 25 July 2014, the Financial Services Commission (“FSC”) issued a communiqué and a Frequently Asked Questions (“FAQs”) which clarify the circumstances under which Mauritian nationals (resident and not resident in Mauritius) may be allowed to hold shares in/be a beneficial owner of a Category 2 Global Business Company (“GBC2”).

Mauritian nationals (resident and not resident in Mauritius) holding shares in a GBC2

The Guide to Global Business (Chapter 3) distinguishes the salient features of GBC2s, indicating inter alia that “*Mauritian residents may not hold beneficial interest*” in a GBC2.

By its very nature, GBC2s have their central management and control located outside Mauritius, are not liable to tax and therefore shall not be beneficially owned by Mauritian residents.

For the purpose of increasing substance, to the extent that GBC2s demonstrate that management, control and ownership are maintained outside Mauritius, Mauritian participation will be considered in a GBC2.

- *A Mauritian national (not resident in Mauritius) can hold shares in/be the beneficial owner of a GBC 2. Should the shareholder/beneficial owner change his/her residence status to Mauritius, he/she should inform the FSC of the change. The FSC will then re-assess the company’s eligibility to hold a GBC2 Licence.*
- *Where a Mauritian resident proposes to hold shares in a GBC2, he/she shall be required to demonstrate to the FSC that he/she does not hold any ‘management and control’ in that GBC2.*





The FSC has provided guidance on determining the 'management and control' in Mauritius of a GBC2 by taking into consideration if decision-making takes place in Mauritius and the resident shareholder(s) of the GBC2 is/are a 'controller' in relation to the corporation.

As per Section 2 of the Financial Services Act 2007, a "controller", in relation to a corporation, means a person

- (a) who is a member of the governing body of the corporation;
- (b) who has the power to appoint or remove a member of the governing body of the corporation;
- (c) whose consent is needed for the appointment of a person to be a member of the governing body of the corporation;
- (d) who, either by himself or through one or more other persons:

- i) is able to control, or exert significant influence over, the business or financial operations of the corporation, whether directly or indirectly;
- ii) holds or controls not less than 20 per cent of the shares of the corporation;
- iii) has the power to control not less than 20 per cent of the voting power in the corporation;
- iii) holds rights in relation to the corporation that, if exercised, would result in the conditions in subparagraphs (ii) and (iii) being satisfied;

(e) who is a parent undertaking of that corporation or a controller of such parent undertaking;

(f) who is a beneficial owner or ultimate beneficial owner of a person specified in paragraphs (a) to (e) and who appears to the Commission to be a controller of that corporation.

In addition, the FSC may also have regards as to whether the overall group structure has strong economic impact in Mauritius. For instance, the FSC will consider, whether the proposal will generate revenue in Mauritius; whether the proposal is likely to create employment in Mauritius; or the impact of the proposal on the development of the country.

We have reproduced in Appendix 1 the FAQ, issued by the FSC in respect of the above.

For any additional information please contact us.

Mauritius Office

Email: mauritius@intercontinentaltrust.com

Web Site: www.intercontinentaltrust.com

Seychelles Office

Email: seychelles@intercontinentaltrust.sc

Website: www.intercontinentaltrust.sc

South Africa Office

Email: sa@intercontinentaltrust.com

Kenya Office

Email: ke@intercontinentaltrust.com

Singapore Office

Email: singapore@intercontinentaltrust.com.sg

Website: www.intercontinentaltrust.com.sg

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FREQUENTLY ASKED QUESTIONS ('FAQs')

Management and Control of Category 2 Global Business Company

1. Can a Mauritian resident hold shares directly/indirectly in a Category 2 Global Business Company ('GBC2')?

No. However, where a Mauritian resident proposes to hold shares in a GBC2, the latter shall be required to demonstrate to the Financial Services Commission, Mauritius ('FSC Mauritius') that the Mauritian resident does not hold any 'management and control' in that GBC2.

In addition, the FSC Mauritius may also have regards to whether the group structure of the GBC2 is creating 'economic substance' in Mauritius.

2. Can a GBC2 be held by a Category 1 Global Business Company ('GBC1')?

Yes, a GBC2 can be held by a GBC1 provided that, at any point in time, the shareholders of the GBC1 do not include a Mauritian resident which has 'management and control' in the GBC1.

3. What will the FSC Mauritius consider as 'management and control' in Mauritius by a GBC2?

A GBC2 will be considered as being **managed and controlled** in Mauritius, if decision-making takes place in Mauritius and the resident shareholder(s) of the GBC2 is/are a 'controller' in relation to the corporation.

In this respect, 'controller' has the same meaning as in Section 2 of the Financial Services Act 2007 (FSA).

4. What will the FSC Mauritius consider as ‘economic substance’ in Mauritius in respect of question 1 above?

For the purpose of increasing substance, a Mauritian resident may be allowed to hold shares in a GBC2 if it can demonstrate that the overall group structure has strong economic impact in Mauritius. For instance, the FSC Mauritius will consider, whether the proposal will generate revenue in Mauritius; whether the proposal is likely to create employment in Mauritius; or the impact of the proposal on the development of the country.

5. Can a Mauritian national (not resident in Mauritius) hold shares in/ be the beneficial owner of a GBC2?

Yes. However, should the shareholder/ beneficial owner change his/her residence status to Mauritius, the latter should inform the FSC Mauritius of the change. The FSC Mauritius will then re-assess the company’s eligibility to hold a Category 2 Global Business Licence.

***Financial Services Commission
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FSC House, 54 Cybercity, Ebene, Republic of Mauritius
Tel: (230) 403 7000 Fax: (230) 467 7172
E-mail: fscmauritus@intnet.mu, Website: www.fscmauritus.org