

Chapter 4

3. Control and Management of Conduct of Business for a GBC1

3.1 The following sections provide guidelines on matters which the Commission considers relevant when determining "management and control".

3.2 In determining whether the conduct of business will be or is being managed and controlled from Mauritius, the Commission shall take into consideration whether a corporation:

- (i) shall have or has at least 2 directors, resident in Mauritius, who are appropriately qualified and are of sufficient calibre to exercise independence of mind and judgement.
- (ii) shall maintain or is maintaining at all times its principal bank account in Mauritius;
- (iii) shall keep and maintain or is keeping and maintaining, at all times, its accounting records at its registered office in Mauritius;
- (iv) shall prepare, or proposes to prepare or prepares its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius;
- (v) shall provide or provides for meetings¹ of directors to include at least 2 directors from Mauritius; and
- (vi) which is authorised/licensed as a collective investment scheme, closed end fund or external pension scheme, is administered from Mauritius.

3.2.1 Each resident director mentioned in paragraph 3.2(i) shall also comply with all requirements provided in the Circular Letter (CL280313) issued by the Commission on 28 March 2013- Annexure 5.

3.3 In addition to the requirements mentioned in section 3.2, when determining whether a corporation is managed and controlled from Mauritius, the Commission shall also consider whether a corporation meets at least one of the following criteria:

- (i) the corporation has or shall have office premises in Mauritius; or
- (ii) the corporation employs or shall employ on a full time, basis at administrative/technical level, at least one person who shall be resident² in Mauritius ; or
- (iii) the corporation'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 corporation 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; or

¹ Corporations are encouraged to hold physical meetings in Mauritius

² For the purposes of this criteria the word "resident" has the same meaning as assigned to it under the Income Tax Act

- (v) the corporation's shares are listed on a securities exchange licensed by the Commission;
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.

3.4 A corporation shall be deemed to have satisfied section 3.3 where a related corporation³ holding a Category 1 Global Business licence satisfies one of the criteria mentioned in section 3.3.

3.5 With regards to 3.3 (vi) the onus is on the corporation to satisfy the Commission that its level of expenditure in Mauritius is reasonable. Reasonableness of expenditure would be judged in the light of circumstances of each case. Factors to be considered to decide whether the level of expenditure of a corporation is reasonable include the type of activity of the corporation, its average turnover, the country(ies) in which it is conducting business, the value of its net assets and the industry average.

³ For the purposes of section 3.3, related corporation refers to a subsidiary, fellow subsidiary, a parent corporation or any other corporation within the same group structure.