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REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)
CORPORATE GOVERNANCE COUNTRY ASSESSMENT
MAURITIUS

October 2002

This Corporate Governance Assessment has been completed as part of the joint World Bank-IMF program of Reports on the Observance of Standards and Codes (ROSC). It provides a benchmark against the relevant OECD principles of the state of corporate governance in Mauritius. This assessment was undertaken on the basis of the template and report prepared by Ernst & Young. Acknowledgements are due to the following stakeholders who participated in the diagnostic assessment: Ministry of Economic Development, Financial Services and Corporate Affairs, the Financial Services Commission, the Stock Exchange of Mauritius Limited, the Bank of Mauritius, the Joint Economic Council, the Registrar of Companies, capital market issuers, and leading experts on legal and other financial issues. Olivier Fremond and Warren Gorlick of the Corporate Governance Unit Private Sector Advisory Services of the World Bank drafted the final report. The ROSC assessment was cleared for publication by the Ministry of Economic Development, Financial Services and Corporate affairs on October 1, 2002.

List of Abbreviations

Annual General Meeting (AGM)
Bank of Mauritius (BoM)
Central Depository, Clearing and Settlement System (CDS)
Financial Services Commission (FSC)
Global Business Companies (GBC)
Institute of Directors (IOD)
International Accounting Standards (IAS)
International Standards on Auditing (ISA)
Over-the-Counter Market (OTC)
Stock Exchange of Mauritius Ltd (SEM)

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EXECUTIVE SUMMARY

This report provides an assessment of the corporate governance practices of listed companies in Mauritius within the broader context of the institutional capacity needed to ensure compliance and enforcement. Strengths and weaknesses are highlighted and policy recommendations made where appropriate. The assessment is based on the OECD Principles of Corporate Governance, which are set forth in Annex A.

Mauritius capital markets are well developed relative to other African economies. There are 40 companies listed on the Official Market of the Stock Exchange of Mauritius, with a total market capitalization of USD 1billion, equivalent to 21.6 percent of GDP for 2000.[1] While overall, the Mauritius economy has done remarkably well over the past 30 years, with a real GDP growth of 5.9 percent a year between 1973 and 1999, this assessment of corporate governance highlights issues that may have contributed to a slowing of growth in recent years. While some modifications in the legal framework are still necessary, in general the legal framework in Mauritius is quite modern. The great challenge faced by Mauritius concerns issues relating to implementation and enforcement of the legal framework, and enhancing the overall institutional capacity to better ensure compliance with legal provisions.

In addition, the Mauritius economy faces certain economic challenges to promoting good corporate governance. The ownership structure of Mauritius companies is dominated by a small group of family-owned companies. Many family-owned companies listed their stock in response to tax and other incentives provided by the Mauritius government. Despite the stock market listings, many of the listed companies are still controlled by a family holding company or a partnership acting as the holding company. These holding companies often control a range of diverse enterprises and typically own vast landholdings that have failed to produce satisfactory earnings. Unlocking shareholder value in such firms is a key issue for the economy.

The stock market was opened to foreign investors after exchange controls were lifted in 1994; foreign portfolio investors recently accounted for almost a third of total turnover.[2] Another key aspect of the Mauritius economy involves its Global Business Sector (offshore financial sector). Such companies, designated by Mauritius as Global Business Companies (GBCs), are estimated by Mauritius to account for approximately four percent of GDP. However, the fact that GBCs account for 90 percent of India's foreign direct investment suggests that the overall importance of GBCs to the Mauritius economy may be greater than is suggested by their relatively small contribution to GDP. GBCs benefit from the favorable tax and regulatory regime. However, the lack of transparency makes it difficult to assess the degree of compliance with the OECD Principles, which are generally not relevant to the type of business activity conducted by such firms; moreover, none of these firms are listed in Mauritius.

The policy recommendations can be grouped under five broad categories: (i) means to unlock shareholder value by strengthening valuations on the stock market, in part by implementing the company law reforms discussed throughout this ROSC, (ii) enhancing the capacity of regulators,

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[1] Source: World Development Indicators, August 2002. Figures as of end 2001.

[2] Foreign portfolio investment as a share of total turnover fell to nine percent in 2001. Source: Financial Services Commission / Stock Exchange of Mauritius.

(iii) voluntary/private initiatives, such as implementing an Institute of Directors and developing a corporate governance code, (iv) enhanced regulation of the auditing profession; and (v) further attention to GBCs.

II. CAPITAL MARKET OVERVIEW AND INSTITUTIONAL FRAMEWORK

Mauritius' only exchange, the Stock Exchange of Mauritius Ltd (SEM), began operations in 1989 as a private company and is managed by a board of directors representing major shareholders (i.e. brokerage firms and some issuers). The SEM is the competent authority on listing matters. It is accountable to the Financial Services Commission (FSC), which approves rule changes such as the SEM's recent promulgation of Listing Rules in February 2001.

The SEM operates two markets, i.e. the **Official Market**, on which securities of listed companies are traded, and the **Over-The-Counter (OTC) Market**, which is a more lightly regulated market. Listing requirements are in line with the standards adopted by international markets. The Official Market commenced operations in 1989 with five listed companies and a market capitalization of about Mau Rs 2.8 billion (USD 92 million). As of December 2000, 40 companies were listed on the Official Market[3] with a total market capitalization of USD 1.3 billion), equivalent to 30.1 percent of GDP for 2000.[4] There have been few new listings over the past five years, and market capitalization has declined. This has been the result of several factors, including the SEM's lack of liquidity, increased compliance/disclosure requirements imposed on listed companies, and poor share price performance, as well as the general trend among major institutional investors towards more developed economies rather than emerging markets over the past seven years. The free float is only 25 percent, while the turnover ratio[5] for calendar year 2000 is six percent. The P/E ratios varied from 2.5 (the national airline) to almost ten (hotel industry), with the sugar industry in the middle at approximately a five P/E ratio.[6]

A small group of companies control a large part of the Mauritius economy. Many of these firms were initially motivated to list themselves on the SEM by tax and other incentives, although the tax incentive is no longer in effect. These family owned companies are typically controlled by either a family holding company or a partnership acting as the holding company. In addition, the holding companies typically own a variety of different enterprises (*e.g.,* textiles, tourism and sugar plants) that have little if any cross-synergies and might therefore be more viable as separate operations. For many of these family-dominated firms, unlocking shareholder value is critical, particularly because the value of many of these companies' assets are high (due to large landholdings), while actual earnings paid are low. The SEM's lack of liquidity and low valuations have made it difficult for management to provide effective mechanisms for realizing the companies' real net worth, essentially locking in shareholders who would prefer to sell their shares.[7] The policy recommendations included in this assessment are designed to enhance

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[3] The top seven companies on the Official Market by market capitalization as of January 2001 were: State Bank of Mauritius Ltd, The Mauritius Commercial Bank Ltd, Sun Resorts Ltd, New Mauritius Hotels Ltd, Rogers & Co Ltd, Mon Trésor & Mon Desert Ltd and Air Mauritius Ltd. Market capitalization of companies operating in commerce and banks/insurance accounted for 34 percent and 28 percent respectively of the total market capitalization, while the hotel industry accounted for 20 percent.

[4] Source: World Development Indicators, August 2002.

[5] Defined as turnover divided by market capitalization.

[6] Source: SEM, Fact Book 2001.

[7] It should also be noted, however, that there may well be cases where directors, management and shareholders all have inflated views of what the company's assets are worth. In such instances, enhancing the Mauritius' exchange liquidity and transparency

transparency and provide the owners of the corporations with greater control, through their shareholdings, over management and the boards. These improvements in corporate governance, over time, should help improve the existing low valuations, increasing demands for shares, and therefore improving the prospects for companies that wish to re-structure their operations to enhance the value of their companies.

The Central Depository, Clearing and Settlement System (CDS), set up under the Securities (Central Depository, Clearing and Settlement) Act 1996, is responsible for central depository, clearing and settlement of exchange operations. Settlement is on a T+3 basis.

In 2001, the Financial Services Development Act created the FSC as the new regulatory body for non-banking services, including the stock exchange and international global businesses. The Stock Exchange Commission has been merged into the FSC. The FSC replaces a fragmented regulatory system with a unified regulator concept. As a practical matter, the small size of the FSC staff, which comprises about 60 people, limits the FSC's ability to supervise regulated entities. The FSC has direct authority over the CDS, but only indirect authority over issuers, which are regulated by the SEM. The FSC also does not supervise auditors.

Another change in 2001 was the enactment of the Companies Act 2001 (based on New Zealand companies law), which replaced the Companies Act 1984 (modeled after the UK's Companies Act 1948). The new act applies to domestic and global business companies (i.e., offshore companies) and includes new features not in the Companies Act 1984, such as the concept of sole proprietorships, detailed provisions on directors' duties, simplified procedures for calling meetings, and mandatory use of International Accounting Standards (IAS) for all public companies and private companies which are not small (as described in the Companies Act 2001).

The Companies Act 2001 was part of a larger revision of the financial regulatory framework that is still underway. A new Securities Act, which will regulate the offering of securities to the public, and an Insolvency Act, regulating the insolvency of companies, are expected shortly. Until then, relevant provisions of the Companies Act 1984 concerning the offering of securities to the public and insolvencies are still in force. In addition, the new Trusts Act 2001 incorporated comprehensive provisions relating to Global Business and domestic trusts. Another bill focusing on the regulation of collective investment schemes, particularly Global Business companies, is also being finalized. Finally, the SEM promulgated new Listing Rules in February 2001, based on those of the London Stock Exchange and the Johannesburg Securities Exchange. They have also been harmonized with the principles of the SADC countries, so that they comply with the SADC Committee of Exchange's 13 principles regarding the minimum standards for each member country's listing rules in terms of transparency, disclosures and dissemination of price sensitive and financial information, criteria for listing, post listing obligations, and sound corporate governance practices. However, they do not comply with the rules themselves. It is too early to judge the level of compliance with these new principles.

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will promote the price discovery function of the market, and promote rational economic decision-making regarding the disposition of assets that no longer hold significant value.

III. REVIEW OF CORPORATE GOVERNANCE PRINCIPLES

The assessment that follows is based upon the OECD Principles of Corporate Governance. They are concerned primarily with corporations traded on a stock exchange, though many of the issues addressed by the OECD Principles are also of relevance to large non-traded corporations and state-owned companies. Each statement is given a benchmark, based upon the country's level of observance of the principle. **Observed** means that all essential criteria are generally met without any significant deficiencies. **Largely observed** means that only minor shortcomings are observed, which do not raise any questions about the authorities' ability and intent to achieve full observance within a prescribed period of time. **Partially observed** means that, while the legal and regulatory framework may be fully compliant with the OECD Principle, practices and enforcement diverge. **Materially not observed** means that, despite progress, the shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means that no substantive progress toward observance has been achieved. Policy recommendations may be offered when the principle is not fully observed.

Section 1: The Rights of Shareholders

Principle IA: ***Partially observed***

Description of practice: The CDS provides centralized depository and clearing and settlement services for shares of listed and OTC companies. Documents evidencing title to securities, whether or not listed on the Stock Exchange, are deposited with the CDS and registered in the name of the CDS in the company's register. At the end of 2001, 46 percent of shares listed on the official market were on the CDS, and 25 percent of shares on the OTC market.[8] For the remainder, shareholders still hold physical certificates identifying their ownership. If the shares are deposited with the CDS, that entity is responsible for share transfer. The CDS does not obtain information on ultimate owners. Under Mauritius law, a company may also block the transfer of shares by providing notice of its refusal within 28 days, although this practice is uncommon.[9]

Listed firms publish semi-annual and annual statements in at least two daily newspapers within three months of the fiscal year's end or a given semi-annual period.[10] Annual reports must be sent to all shareholders within six months after the fiscal year, and at least 14 days before the Annual General Meeting (AGM).[11] Share registers may be inspected, although the ultimate owners are not disclosed.[12] While the Companies Act includes a quorum requirement, in most instances the company Constitution can override it.[13] Mauritius law provides that an accidental failure to notify a shareholder of a meeting does not invalidate the meeting's proceedings.[14] All

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[8] Source: Financial Services Commission / Stock Exchange of Mauritius.
[9] Companies Act, §89.
[10] Listing Rules, §12.20 and 12.24.
[11] Companies Act, §219(1).
[12] Companies Act, §225 and 227.
[13] The provisions of the Fifth Schedule of the Companies Act, §4(a)-(b), provides for a quorum of a simple majority. However, section 4(d) of the fifth schedule provides that the Company Constitution can override the quorum requirement except in instances involving court-ordered meetings. Moreover, in any event, the quorum requirement of a simple majority is only applicable to the first meeting, and, if the meeting is adjourned due to a lack of a quorum, the requirement of a simple majority will be waived 30 minutes after the second meeting commences (§4(c)(iii).
[14] Companies Act, §222.

shareholders may elect board members, though cumulative voting is not required. The board authorizes dividends, subject to the solvency test. Distribution of dividends is a board decision.[15]

Policy recommendations: As discussed in IVA, consideration should be given to ensuring that the provisions of the Companies Act that appear to require disclosure of ultimate ownership information are strictly enforced.[16] Extension of the AGM notice period to 30 days is also recommended; this would provide more meaningful participation by foreign investors, who might not be able to react within the current 14-day window. Regarding quorums, it is recommended that there be at least two shareholders representing 51 percent of outstanding shares, and that the company Constitution not be allowed to override this requirement. While this is a fairly high quorum, it reflects Mauritius' prevailing concentrated shareholding ownership structure. An introduction of cumulative voting, or permitting shareholders with a specified minimum shareholding to nominate a director, would also help minority shareholders obtain adequate representation on company boards that are dominated by one controlling interest. Finally, due to the problem of unlocking shareholder value, it is recommended that shareholders acquire the right to approve dividend distributions, even though such a policy goes further than in some OECD countries, where the board typically has total discretion regarding dividends.

Principle IB: *Partially observed*

Description of practice: Amendments to the governing documents require a special resolution of 75 percent of the shares represented at the shareholders' meeting.[17] Authorization of additional shares is subject only to board approval, unless the company Constitution requires a shareholder vote.[18] However, before issuing new shares, the board must determine that the company and existing shareholders have been given fair and reasonable consideration for such new shares, and the issuance price is not less than par value.[19] With respect to transactions resulting in the sale of the company, if more than half of the value is to be sold, a simple majority vote is required; if more than 75 percent of the company is to be sold, a 75 percent majority vote is needed.[20]

Policy recommendations: Since Mauritius follows the Commonwealth practice of a 75 percent supermajority for amendments, consideration should be given to increasing the free float requirement (i.e. shares not held by a controlling or strategic investor) above the existing 25 percent level. Alternatively, consideration should be given to imposing a requirement that a majority of the minority shareholders vote in favor of the resolution, in addition to the 75 percent supermajority of all shareholders. If a company is issuing new, previously unauthorized shares, then a supermajority should be required. However, if the shares to be issued have already been authorized by the shareholders, then the current practice of only requiring director consent is appropriate. With respect to transactions that result effectively in the sale of a company, all transactions resulting in a sale of half the company or more should require a supermajority.

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[15] Companies Act, §63 *et seq*.
[16] As is also discussed in IVA, §91(2) of the Companies Act 2001 (which references §146 of the Companies Act 1984), and §11.9 of the Listing Rules (which also references §146 of the Companies Act 1984), both incorporate by reference the earlier 1984 Code provision requiring a register of five percent shareholders "directly or indirectly." However, the consistency with which ultimate ownership information is actually available at the five percent level is reportedly uneven.
[17] Companies Act, §105.
[18] Companies Act, §52(1).
[19] Companies Act, §56.
[20] Companies Act §130.

Finally, following up on the analysis in IA, both simple majority and supermajority requirements have little meaning unless changes are made to the quorum requirement mandating that a given percentage of a company's overall voting stock is required to constitute a quorum that can vote on specific company matters, which cannot be overridden by the company Constitution.

Principle IC: *Partially observed*

Description of practice: As noted in IA, listed firms publish semi-annual and annual statements in at least two daily newspapers within three months of the fiscal year's end. Annual reports must be sent to every shareholder within six months of the year-end, and within 14 days of the AGM. Every shareholder entitled to be notified of the meeting shall be sent written notice of time/place of meeting at least 14 days before the meeting. However, failure to give notice of the shareholder meeting by accidental omission does not invalidate the proceeding. Shareholder meetings may be held in a physical location or through audiovisual forms of communication, provided that all participants can hear each other throughout the meeting.[21] Share registers are available for inspection, although ultimate owners are not disclosed. There is no quorum requirement for shareholder votes. Shareholders are permitted a reasonable opportunity to discuss and comment on the company's management, and to place items on the agenda (although this rarely occurs in practice). Voting by proxy or by mail is permitted.

Policy recommendations: As discussed above, 14 days notice for the AGM may be insufficient for foreign shareholders. In addition, the rule permitting a shareholder meeting to proceed even in light of an accidental failure to give notice should be reconsidered. The lack of a quorum requirement is a significant impediment to the fulfillment of complete shareholder rights.

Principle ID: *Partially observed*

Description of practice: The Companies Act requires that full disclosure of the rights attached to each class of shares be disclosed to investors, and should also be included in the company Constitution.[22] However, private shareholder agreements are not always made public. The situation in Mauritius is further complicated by the fact that pyramid structures are common. For example, Rogers & Co., the fifth largest Mauritius company in terms of market capitalization, is controlled (51 percent), by Rogers Consolidated Shareholdings Ltd, which is ultimately owned by two groups of individuals. Similarly, Ireland Blyth Ltd., the eighth largest Mauritius firm in terms of market capitalization, is 70 percent owned by three family investment companies, with the balance owned by the public. There are few widely held companies in Mauritius.

Policy recommendations: In order to enhance transparency, private shareholder agreements should be made public. One possible measure to enhance compliance would be to provide that shareholder agreements that are not disclosed cannot be enforced at a later date.

Principle IE: *Partially observed*

Description of practice: The Listing Rules and the Companies Act both include descriptions of the requirements relating to mergers and sales of substantial portions of corporate transactions. These are referred to as "substantial transactions" in the Listing Rules and "major transactions"

[21] Companies Act, Fifth Schedule, §3(a)(ii).
[22] Companies Act, §52(2)-(3).

in the Companies Act. As discussed in IB, major transactions require a shareholder resolution to be accomplished. There are some limited requirements in the Companies Act dealing with the market for corporate control. However, there is no comprehensive takeover regulation in place at present. Similarly, there are no specific requirements for anti-takeover devices, such as poison pills. Rather, there is only the general requirement to act in the best interests of the company. In addition, Section 147 of the Companies Act essentially limits the special requirements on an "interested party" to a director, whereas the Listing Rules include a broader ambit of persons.[23]

Policy recommendations: The Companies Act 2001's definition of "interested party" should be made consistent with the Listing Rules. Consideration should be given to the possibility of providing specific guidance on the use of anti-takeover devices, possibly by inclusion in the forthcoming Securities Act legislation. However, the low level of liquidity prevailing on the local stock exchange precludes an active market for corporate control.

Principle IF: *Not observed*

Description of practice: Institutional investors are not required to consider the costs and benefits of exercising their voting rights. Disclosure of voting policies is not common practice. However, corporate investor attendance is usually high compared to that of retail investors.

Policy recommendations: Consideration should be given to requiring pension plan fiduciaries to weigh the costs and benefits of voting and disclosing their voting policies. Raising awareness of international shareholder activism may promote a shareholder activist culture in Mauritius.

Section II: The Equitable Treatment of Shareholders

Principle IIA: *Partially observed*

Description of practice: Unless otherwise provided for, the general rule for Mauritius companies is one share, one vote.[24] However, Section 52 of the Companies Act permits classes of stock to be issued that do not conform to the one vote rule (*e.g.,* preferred non-voting shares and multiple voting common shares), if prior approval by a simple majority of shareholders has been obtained unless the company Constitution provides otherwise. In addition, with respect to classes of shares that have already been issued, Section 114 of the Companies Act requires that a company refrain from any action with respect to the rights attached to a class of shares unless the variation is approved by a special resolution or by consent in writing of 75 percent of the holders of that type of share. There is no requirement in Mauritius that a custodian or nominee vote in a manner agreed upon by the shares' ultimate owners. However, the Listing Rules require that each person entitled to vote be sent a proxy form with the shareholder meeting notice, along with disclosure information that the shareholder is entitled to appoint a proxy of his own choice. If the proxy form is returned without indicating how the proxy shall vote on a matter, the proxy will exercise his discretion as to whether, and if so, how he votes.[25] Voting by mail is permitted.[26]

[23] A "related party" is defined in Section 1.1 of the Listing Rules as a "director, chief executive or controlling shareholder of the company or any of its subsidiaries or associates of any of them."
[24] Companies Act, §46(2).
[25] Listing Rules, §11.18.
[26] Companies Act, Fifth Schedule, §7.

Policy recommendations: The score is based on the fact that there is no requirement that a custodian or nominee vote in a manner agreed upon with the ultimate owner of the shares. It is recommended that such a requirement be put in place. All other aspects of this Principle appear to comply with relevant practices in OECD and other countries.

Principle IIB: *Partially observed*

Description of practice: Part VII of the 1988 Stock Exchange Act prohibits insider trading and stock market manipulation, banning any person from dealing in securities if he has information that is not generally available but would likely affect share price if it were. The Act also prohibits various types of stock market manipulation. However, there have been no cases prosecuted in five years. There appear to be no provisions expressly prohibiting abusive self-dealing; instead, as discussed in IIC, certain types of related party transactions require shareholder approval.

Policy recommendations: Enforcement of existing laws and regulations is critical. The FSC's ability to enforce regulatory provisions on insider trading is limited by a lack of resources, including a staff too small to properly supervise all regulated entities, and a pay scale too low to compete with the private sector. Also, until the new Securities Act is enacted, enforcement of the Companies Act is under the remit of the Registrar of Companies. The FSC lacks direct authority over issuers, who are regulated by the SEM. Given a history of abusive self-dealing arrangements, consideration should be be given to prohibiting certain types of abusive self-dealing.

Principle IIC: *Partially observed*

Description of practice: Related party transactions are of particular relevance in Mauritius; only a small number of shareholders control the largest companies, making related party transactions common. The Listing Rules define a related party transaction as (1) a transaction (other than a transaction of a revenue nature in the "normal course of business") between a company, or any of its subsidiaries and a related party; or (2) any arrangements pursuant to which a company or any of its subsidiaries, and a related party each invests in, or provide finance to another undertaking or asset.[27] With respect to such related party transactions, the issuer must consult with the Listing Committee at an "early stage," and, if the Listing Committee so decides, it may require the issuer to make a press announcement and obtain shareholder approval of the transaction.[28] Mauritius business leaders report that the Listing Rules have put pressure on the business community to limit self-dealing transactions. However, the Listing Rules merely define the parameters for self-dealing but do not prevent them. By contrast, the self-dealing prohibitions in the Companies Act appear more limited, focusing almost entirely on disclosure by directors. Under Section 156 of the Companies Act, a director must disclose to the Board the number and class of shares in which he holds relevant interests and the nature of the interest.

Policy recommendations: The Listing Rules are a major improvement, though some Mauritius business leaders question the practicality of requiring shareholder approval in cases where a majority of shareholders are likely to be "related parties," and therefore prohibited from voting. One way to enhance the utility of the shareholder approval requirement would be to impose a separate rule requiring a majority of the minority shareholders to vote in favor of the proposed

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[27] Listing Rules, §1.1.
[28] Listing Rules, §13.23. In addition, Rule 13.23(d) provides that related parties may not vote.

transaction. It may be necessary to tighten the Listing Rules requirements with respect to related party transactions. In particular, a bright line test would enhance transparency and understanding of the requirements. It is also recommended that discretion over related party transactions be given to an audit committee of the board composed of a majority of independent directors.

Section III: The Role of Stakeholders in Corporate Governance

Principle IIIA: ***Partially observed***

Description of practice: The Companies Act provides that a director's duties are owed to the company, rather than to shareholders.[29] Mauritian companies must also comply with two comprehensive schemes regulating employment: the Industrial Relations Act 1973, which has provisions on the right to strike; and the Labor Act 1975, which governs working hours, holidays, health and safety rules. Minimum wage rates are fixed periodically for specific industries according to National Remuneration Orders. The Mauritian Constitution guarantees freedom from discrimination based on race, origin, politics, color, creed and gender. In January 2001, the Joint Economic Council published a code of conduct for Mauritian companies, stating that they must comply with occupational health and safety laws, achieve equal opportunity and treatment for all employees and safeguard employees' dignity, individuality, and record confidentiality.[30]

Policy recommendations: A higher score in this area may be warranted once there is demonstrated progress in ensuring the enforcement of existing labor rights.

Principle IIIB: ***Partially observed***

Description of practice: As discussed above, there continue to be concerns about the ability of employees to obtain redress of their rights. The situation with respect to creditor rights is in flux, owing to the fact that the new Companies Act 2001 does not touch on insolvencies, which will be covered under future legislation. Pending the introduction of the new legislation, the Companies Act 1984 still governs in the area of creditor rights. However, overall, business leaders did not report that creditor rights were a particularly problematic issue in Mauritius.

It should also be noted that as part of the British Commonwealth, final appeal of a court decision in Mauritius could be made to the Privy Council in London.

Policy recommendations: Prompt passage of a new insolvency act would provide more certainty in the resolution of creditor disputes. Consideration should be given to undertaking a ROSC assessment in the area of creditor rights and insolvency.

Principle IIIC: ***Materially not observed***

Description of practice: The use of employee incentive stock option schemes is not widespread. In part, this reflects the lack of liquidity of the local stock exchange, coupled with the high effective tax rates imposed on stock options.

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[29] Companies Act, §143(5).
[30] Joint Economic Council, *Model Code of Conduct for Directors and Employees of Private Sector Companies,* at §§16 *et seq.*

Policy recommendation: Consideration should be given to promoting stock options as a means of better aligning management and shareholder interests, while taking into account the international debate to ensure that some of the abuses occurring elsewhere with respect to stock options do not occur in Mauritius. Share participation plans by employees, where the company - with possible governmental tax incentives - discounts share purchases, should also be considered (a).

Principle IIID: *Largely observed*

Description of practice: Ultimate ownership information is not necessarily available to all stakeholders (including shareholders). In addition, non-shareholder stakeholders do not have access to certain information, including the minutes of meetings and resolutions of shareholders, copies of written communications to shareholders, and the interests register of the company, which details certain interests in the company by the directors.[31] However, all stakeholders have access to certain other corporate information, including the certificate of incorporation, the company constitution, the share register, and directors' full names and home addresses.[32]

Policy recommendations: It would be helpful to regularly publicize the interests register, particularly information concerning purchases and sales of stock by directors and key executives.

Section IV: Disclosure and Transparency

Principle IVA: *Partially observed*

Description of practice: The level of disclosure in Mauritius has increased under the Companies Act 2001, which requires adherence to IAS.[33] Every company's directors must ensure that financial statements be completed within six months of the fiscal year's end.[34] Generally, the financial statements must present fairly the financial position, performance and, for companies above a certain size, the company's cash flow statement.[35] The financial statements must include a balance sheet and a profit and loss statement, along with notes or documents giving information relating to the balance sheet and a statement of accounting policies.[36] Except for smaller companies, financial statements must also include a statement of changes in equity between the last two balance sheet dates.[37] In addition, when a company has one or more subsidiaries, it must present its financial statements on a consolidated basis.[38] The financial statements must be submitted to the Registrar for registration within 28 days of being certified by the company's directors.[39] Concerning major share ownership, the Companies Act requires each company to maintain a register of "substantial shareholders" (those with five percent or more of

[31] Companies Act, §226.
[32] Companies Act, §225.
[33] Companies Act, §211(2)(a). However, it should be noted that the IAS requirement in the Companies Act appears to conflict with 12.17 of the Listing Rules, which still specifies that Mauritius Accounting and Auditing Standards may be used, rather than IAS. This reflects a more general problem with the Listing Rules, which need to be updated in order that they conform with the new Companies Act 2001 rather than the older Companies Act 1984, and take account of recent international developments in the field of corporate governance.
[34] Companies Act, §210.
[35] Companies Act, §211(1).
[36] Companies Act, §217(1).
[37] Companies Act, §217)(2).
[38] Companies Act, §212.
[39] Companies Act, §215.

the voting rights in aggregate).[40] The Listing Rules also require this information to be provided to the SEM.[41] As discussed previously, it is unclear whether there is strict enforcement of actual disclosure of ultimate ownership information at the five percent level. However, there is no requirement under either provision that information on ultimate ownership be maintained below this level. The law requires that aggregate remuneration of executive directors and non-executive directors be disclosed in the annual report.[42]

Mauritius requirements are less precise with respect to non-financial disclosure. For example, company objectives need not be disclosed on an ongoing basis (Section 9.31 of the Listing Rules does require this at the time of initial listing), although the Companies Act requires annual reports to disclose all material information to give shareholders an "appreciation" of the company's affairs. There is also no disclosure requirement for material foreseeable risk factors, material issues regarding employees and stakeholders, or governance structures and policies.

Policy recommendations: Disclosure requirements under the Companies Act 2001 and the Listing Rules should be more aligned by amending the Listing Rules to require the use of IAS by publicly traded companies. Both the Companies Act and the Listing Rules should also make clear that, at least once the five percent ultimate ownership threshold is reached, such information should include the ultimate owner (the wording of the current provisions is unclear and confusing, since it references the Companies Act 1984. More disclosures are needed for directors and executives, in line with recent international developments. Consideration should be given to requiring disclosure on an individual basis of director and executive remuneration and other benefits (such as loans), following trends in other countries. Details of contract termination compensation arrangements should be disclosed. Moreover, current disclosure requirements focus on financial information, while non-financial disclosure is left to the company's discretion. Greater attention should be paid to non-financial disclosure, including company objectives, material foreseeable risk factors, and governance structures and policies. As a Code of Best Practice for corporate governance is developed, this is an area where companies could enhance their own practices, even if no statutory requirements are made in the near future.

Principle IVB: *Largely observed*

Description of practice: As noted in IVA, financial statements must adhere to IAS for accounting periods starting after December 2001.[43]

Principle IVC: *Partially observed*

Description of practice: Companies must appoint external auditors to audit their financial statements.[44] Audits must be conducted in accordance with the International Standards on Auditing (ISA).[45] Persons appointed as auditors must be a Member of the Institute of Chartered Accountants in England, Wales, Scotland, Ireland or the Association of Chartered Certified

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[40] Companies Act, §91(2), which, in turn, references Section 146 of the Companies Act 1984.
[41] Listing Rules, §11.9.
[42] Companies Act, §221(1)(e).
[43] Companies Act, §211(2)(a).
[44] Companies Act, §195 *et seq.*
[45] Companies Act, §205(3).

Accountants and the Chartered Accountants of India.[46] Only the Minister may certify persons who have qualifications "equivalent" to such auditors. There is no statutory definition of independence, although company directors, employees, related persons, and non-residents of Mauritius are excluded from performing as auditors.[47] While statutory provisions appear to conform to international standards, in practice, the performance of the auditing profession in Mauritius has been uneven. Government and business leaders generally consider that the auditing profession requires an oversight body to ensure proper monitoring and disciplining.

Policy recommendations: Oversight and monitoring of auditors is a critical issue. The profession is unregulated, and unethical behavior or negligence by auditors is rarely punished. It is recommended that further work in this area be coordinated with the ongoing accounting and auditing ROSC to establish the state of these professions and assist in the development of an action plan to monitor and regulate the professions. The ROSC should also review the issue of statutory auditor rotation, which is one tool that could be used to enhance the independence of the auditing profession from their clients. Finally, while non-audit fees must be disclosed, disclosure requirements may need to be revisited for enhanced transparency.

Principle IVD: *Largely observed*

Description of practice: Mauritius companies must send their annual report to shareholders at least 14 days before the AGM.[48] Financial statements must also be filed with the Registrar for registration within 28 days after company directors sign the financial statements; such information is publicly accessible.[49] In addition, the Listing Rules require that issuers keep the SEM, shareholders and other securities holders informed "as soon [as] reasonably practicable" of material information.[50] An Investor Relations Manager has to be appointed in all listed companies. A Shareholders' Charter is under preparation is expected to address these issues.

Policy recommendations: The date of the AGM and date by which the annual report is sent should be aligned. A more precise definition for timeliness as regards disclosure of material information – other than "as soon as reasonably practicable" – should be considered.

Section V: The Responsibilities of The Board

Principle VA: *Partially observed*

Description of practice: As discussed in IIIA, directors owe their duties to the company.[51] These duties include exercising their powers in good faith and in the company's best interests, as well as with the degree of care, diligence and skill of a reasonably prudent person under similar circumstances. When a director holds executive office, the director is held to the higher standard of care that a competent executive in such a position would normally exercise. Directors must exercise their powers according to all other Companies Act provisions, as well as the company

[46] The Association of Chartered Certified Accountants is an international body; there is no Mauritius entity that provides oversight over auditors.
[47] Companies Act, §198(2).
[48] Companies Act, §219.
[49] Companies Act, §215 and §14.
[50] Listing Rules, §11.3.
[51] Companies Act, §143(5)(a). All other duties set forth in this paragraph are defined under various provisions of the Companies Act, Section 143.

Constitution. Directors must obtain required shareholder authorization, not enter into obligations on behalf of the company unless the company can reasonably meet its obligation, not disclose confidential information, not compete with the company, and not illegally use company assets.

Notwithstanding these comprehensive requirements, which the Companies Act 2001 enhanced to place a higher duty of care on directors, in practice, the performance of company directors is uneven. Many corporate directors appear knowledgeable in their duties and in their company's business ventures, sincere in their dedication to fulfilling their obligations, and willing to take an active role in company oversight where necessary. However, some board members are appointed based on their friendship with the majority shareholder, rather than their qualifications. As a result, they have been unwilling or unable to ensure effective company oversight. Moreover, there are many cases involving the largest companies where directors have failed to play a key role in helping ensure the unlocking of shareholder value to benefit non-controlling shareholders.

Policy recommendations: The establishment of a Mauritius Institute of Directors (IOD), perhaps as part of a regional consortium, could play a key role in training directors. In addition, consideration should be given to capping the number of directorships that a single individual may hold. This would reduce potential conflicts of interest while ensuring that directors spend due care and time on company affairs. Finally, the anticipated voluntary code of corporate governance may provide additional guidance to directors regarding their duties and obligations. Consideration should be given to extending these responsibilities to parastatal organizations.

Principle VB: *Partially observed*

Description of practice: It is difficult to gauge whether directors always act in all shareholders' best interests when majority shareholders control the board. Different shareholders' interests often conflict, and it may be hard for directors to reconcile them. The Listing Rules provide that for companies with a controlling shareholder, the SEM may require appointment of a "sufficient" number of independent directors to ensure that the company acts in all shareholders' interests.[52]

Policy recommendations: Identifying potential directors who are independent of management and major shareholders may be difficult; boards may need to include non-residents. Regulators should ensure compliance with Listing Rule requirements for independent directors in cases where there is a controlling shareholder.

Principle VC: *Partially observed*

Description of practice: The Companies Act contains an oppression remedy whereby shareholders or former shareholders can petition a court to require the company or other persons to acquire the shareholder's shares or to pay compensation to a person, and regulate the future conduct of the company.[53] In addition, a current or former shareholder may bring an action against a director for breach of a duty to him/her as a shareholder.[54] However, the duties owed by a director to a shareholder are narrow, and do not include the duties in Section VA, which are owed to the company. Rather, duties owed by directors to shareholders are limited to issues like

[52] Listing Rules §§6.15 and 11.28
[53] Companies Act, §179.
[54] Companies Act, §174(1).

the duty to supervise the share register, disclosure of an interest in a transaction or in company shares.[55] Finally, the Companies Act permits shareholders to bring a derivative action against a director (on behalf of the company); in such cases, damages are paid to the corporation.[56]

Policy recommendations: Mauritian legal provisions are in line with other Commonwealth jurisdictions, and the oppression remedy is a strong tool with which shareholders can fight abuse of their rights. In some cases, the oppression remedy and other provisions of the Companies Act were not brought to bear to sanction directors engaging in misconduct. Consideration should therefore be given to how such remedies could be better utilized in cases of abuse.

Principle VD: *Partially observed*

Description of practice: As discussed in VA, the roles and duties of the directors are defined in generic terms in the Companies Act 2001. Section 143 of the Act requires that directors exercise their powers in accordance with the Act and within limits imposed by the company Constitution. They must exercise their powers in good faith in the company's best interests, while exercising a reasonable degree of care, diligence and skill. In addition, a listed company executive must apply "a degree of care…which a reasonably prudent and competent executive would exercise." It is unclear how much directors focus on their responsibilities regarding the review and guidance of corporate strategy and major plans of action, the selection and supervision of key executives and oversight of remuneration, monitoring of potential conflicts of interests and ensuring the integrity of a corporation's accounting and financial reporting systems. They do not appear to focus on monitoring the effectiveness of governance practices or disclosure and communications processes, which are not covered by statutory obligation under the law.

Policy recommendations: In addition to the general duties of directors specified in Section 143 of the Companies Act 2001 and elsewhere, it may be helpful to define directors' specific duties in various areas, including corporate strategy, oversight of key executives, executive and board remuneration, governance practices and the process of disclosure and communication. It would also be useful to ensure that each board include audit, nomination and remuneration committees. This framework could be developed with the private sector, possibly through the pending voluntary code of corporate governance. Since qualification of board members is an issue, there should be some minimum and relevant qualifications required. The proposed implementation of an Institute of Directors should address the need for sustained training of board members.

Principle VE: *Materially not observed*

Description of practice: majority shareholders usually appoint non-executive board members, so there are few truly independent directors. The Companies Act 2001 requires that directors attend meetings regularly, but attendance need not be disclosed.[57] Key board members – typically key managers, major shareholders or both - participate in decision-making.

Policy recommendations: As noted in VB, the Listing Rules provide discretion to the SEM to require a sufficient number of directors who are independent of the controlling shareholder.

[55] Companies Act, §174(3).
[56] Companies Act, §170.
[57] Companies Act, §143(1)(l).

However, this rule could be better enforced. Directors (including non-executive) should have unrestricted access to all information pertaining to the company and its subsidiaries to enable them to fulfill their obligations. Finally, shareholders should be able to gauge the involvement of the directors; it would be advisable for board member attendance to be reported at the AGM.

Principle VF: *Partially observed*

Description of practice: Quality and timeliness of board information varies among companies. Board meetings are often perfunctory with some directors dominating.

Policy recommendations: Training is vital so that directors understand their duty to obtain reliable and accurate information upon which they can make informed decisions.

IV. SUMMARY OF POLICY RECOMMENDATIONS

The enactment of the Companies Act 2001, the Listing Rules and the consolidation of financial regulation within the FSC have enhanced shareholder protections and contributed to corporate governance improvements. However, further work in a number of areas is still necessary.

Unlocking shareholder value: A critical issue is the fact that many listed companies in Mauritius own land and other valuable assets, but shareholders are unable to realize these assets (either through sale of stock or through dividend payments) due to relatively low company price/earnings ratios and a low return on assets. There is no simple answer to this problem, but the recommendations summarized in Annex E, once implemented, could increase confidence in the Mauritius stock market and thus, enhance shareholder value. Enactment of these reforms should provide shareholders, as company owners, with better control over management, and should help protect against abuse, particularly in cases where there is one dominant family that owns a controlling interest in the company's stock. Moreover, where there are inefficient pyramid structures and holding companies, higher valuations may lead to the ability to sell off parts of a company structure that would perform better as separate firms. *Priority:* ***high***

Institutional strengthening: The fact that the statutory framework has undergone modernization only increases the pressure on regulators to ensure that there is adequate compliance with the framework. While the FSC has been able to attract talent at the highest levels, it is not clear that lower level officials are in place who can adequately support top management; the number of such professionals also needs to be increased. In addition to ensuring that compensation is sufficient to compete with the private sector, it is recommended that training programs and international secondments to other national regulators be pursued. In addition, right now, Mauritius has a hybrid between a unified regulator approach and a functional regulation approach. The government should rapidly take a decision on this issue as this prevents other strategic issues from being addressed. *Priority:* ***medium***

Voluntary/private initiatives: The limited qualifications and lack of independence of board members impacts negatively on the management of most companies. Most board members are either executive directors or controlling shareholder representatives. One of the main thrusts of the Companies Act 2001 is the increased responsibility placed on directors. Dissemination of the implications of the Companies Act 2001 for directors has been left to some private initiatives. An IOD would play a crucial role in informing and continually training its new members on their responsibilities. The training responsibility could be broadened to include industry specific training and exchange of information. In order to promote the most efficient use of resources, consideration should be given to the possible creation of an IOD for the southern Africa region.

A voluntary corporate governance code should also be a priority. The code would provide details on board member roles, responsibilities, structure and remuneration. In view of peculiarities of the local economy (i.e. extremely restricted share ownership) with significant potential for related party transactions, the code should include guidelines on board composition. These guidelines could include a minimum number of independent directors, mandatory cumulative voting, and a mandatory audit and nomination committee comprised entirely of independent directors. It is hoped that the Mauritius Government would also abide by these rules when nominating directors to companies in which they have an ownership interest. The code should be voluntary, but listed companies should have to disclose their level of compliance. *Priority:* ***high***

The auditing profession: The auditing profession is largely unregulated in Mauritius. Auditors are expected to abide by the rules and ethical guidelines imposed on them by virtue of their membership in professional bodies. When these rules are breached, either the violations are not reported to the relevant professional organization or the organization is unwilling to sanction an overseas member in the absence of a formal reporting channel. In light of these issues, it would be helpful to coordinate work in this area with the auditing and accounting ROSC, which the Government of Mauritius has already requested and is currently being conducted. This should provide an assessment of the auditing/accountancy profession, as well as assist in the development of a framework to regulate, monitor and sanction this sector. *Priority**: high***

Global Business Corporations: GBCs are critical to the Mauritius economy. The limited regulation of GBCs could lead to abuse. To prevent this, consideration should be given to emulating the regulatory system of the Crown Dependencies (Jersey, Guernsey and the Isle of Man), including obtaining ultimate ownership information. *Priority:* ***medium***

ANNEX A: OECD PRINCIPLES OF CORPORATE GOVERNANCE

Section I: The Rights of Shareholders

Principle IA. The corporate governance framework should protect shareholders' rights.

Basic shareholder rights include the right to: (a) secure methods of ownership registration; (b) convey or transfer shares; (c) obtain relevant information on the corporation on a timely and regular basis; (d) participate and vote in general shareholder meetings; (e) elect members of the board; and (f) share in the profits of the corporation.

Principle IB. Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as: (a) amendments to the governing documents of the company; (b) the authorization of additional shares; and (c) extraordinary transactions that in effect result in the sale of the company.

Principle IC. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general them. (a) Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. (b) Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations. (c) Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

Principle ID. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Principle IE. Markets for corporate control should be allowed to function in an efficient and transparent manner.

Principle IF. Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights.

Section II: The Equitable Treatment of Shareholders

Principle IIA. The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. All shareholders of the same class should be treated equally: (a) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. (b)Votes should be cast by custodians or nominees in a manner agreed upon with the ultimate owner of the shares.

Principle IIB. Insider trading and abusive self-dealing should be prohibited.

Principle IIC. Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation.

Section III: The Role of Stakeholders in Corporate Governance

Principle IIIA. The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.

Principle IIIB. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Principle IIIC. The corporate governance framework should permit performance-enhancement mechanisms for stakeholder participation.

Principle IIID. Where stakeholders participate in the corporate governance process, they should have access to relevant information.

Section IV: Disclosure and Transparency

Principle IVA. The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and the governance of the company. Disclosure should include, but not be limited to, material information on: (a) The financial and operating results of the company. (b) Company objectives. (c) Major share ownership and voting rights. (d) Members of the board and key executives, and their remuneration. (e) Material foreseeable risk factors. (f) Material issues regarding employees and other stakeholders. (g) Governance structures and policies.

Principle IVB. Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit.

Principle IVC. An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.

Principle IVD. Channels for disseminating information should provide for fair, timely and cost-effective access to relevant information by users.

Section V: The Responsibilities of the Board

Principle VA. The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Principle VB. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Principle VC. The board should ensure compliance with applicable law and take into account the interests of stakeholders.

Principle VD. The board should fulfil certain key functions, including: (a) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance and overseeing major capital expenditures, acquisitions and divestitures. (b) Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. (c) Reviewing key executive and board remunerations, and ensuring a formal and transparent board nomination process. (d) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (e) Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. (f) Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. (g) Overseeing the process of disclosure and communications.

Principle VE. The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management: (a) Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination and executive and board remuneration. (b) Board members should devote sufficient time to their responsibilities.

Principle VF. In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

ANNEX B: OECD PRINCIPLES -ASSESSMENT MATRIX

Section I: The Rights of Shareholders

Principle IA. Basic shareholders rights:

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle IB. The right to participate in decisions on fundamental corporate changes:

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle IC. The right to be adequately informed about, participate and vote in general shareholder meetings (AGM):

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle ID. Disclosure of capital structures and arrangements enabling control disproportionate to equity ownership:

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle IE. Efficient and transparent functioning of market for corporate control:

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle IF. Requirement to weigh costs/benefits of exercising voting rights

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	☐
(d) Materially not observed	☐	(e) Not observed	■		

Section II: The Equitable Treatment of Shareholders

Principle IIA. Equal treatment of shareholders within same class

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle IIB. Prohibition of insider-trading and self-dealing

(a) Observed	☐	(b) Largely observed	☐	(c) Partially observed	■
(d) Materially not observed	☐	(e) Not observed	☐		

Principle IIC. Disclosure by directors and managers of material interests in transactions or matters affecting the company.

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Section III: The Role of Stakeholders in Corporate Governance

Principle IIIA. Respect of legal stakeholder rights as established by law

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle IIIB. Redress for violation of rights

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle IIIC. Performance-enhancing mechanisms for stakeholder participation

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☐
(d) Materially not observed ☒ (e) Not observed ☐

Principle IIID. Access to relevant information

(a) Observed ☐ (b) Largely observed ☒ (c) Partially observed ☐
(d) Materially not observed ☐ (e) Not observed ☐

Section IV: Disclosure and Transparency

Principle IVA. Timely and accurate disclosure of material information

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principe IVB. Preparation of information, audit, and disclosure in accordance with high standards of accounting, disclosure and audit.

(a) Observed ☐ (b) Largely observed ☒ (c) Partially observed ☐
(d) Materially not observed ☐ (e) Not observed ☐

Principle IVC. Annual audit by independent auditor

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle IVD. Channels for disseminating information allow for fair, timely, and cost-efficient access to information by users

(a) Observed ☐ (b) Largely observed ☒ (c) Partially observed ☐
(d) Materially not observed ☐ (e) Not observed ☐

Section V: The Responsibilities of the Board

Principle VA. Act on an informed basis, in good faith, with due diligence and care, in the best interest of the company and shareholders

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle VB. Fair treatment of each class of shareholders

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle VC. Compliance with law and taking into account stakeholders' interests

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle VD. Fulfillment of key functions, including corporate strategy, selection and monitoring of management, remuneration, board nomination, monitoring of conflict of interest including misuse of corporate assets and abuse in related party transactions, integrity of accounting ,audit, governance practices and overseeing disclosure and communication.

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

Principle VE. Objective judgement on corporate affairs independent from management; devotion of independent time.

(a) Observed ☐ (b) Largely observed ☐ (c) Partially observed ☐
(d) Materially not observed ☒ (e) Not observed ☐

Principle VF. Access to accurate, relevant, and timely information

(a) Observed ☐ (b) Largely observed ☐ (e) Partially observed ☒
(d) Materially not observed ☐ (e) Not observed ☐

This table attempts to summarize the comments in this report,, benchmarked against the main items set out in the ***OECD Principles of Corporate Governance****.*

Observed *means that all essential criteria are generally met without any significant deficiencies* ***Largely observed*** *means that only minor shortcomings are observed, which do not raise any questions about the authorities' ability and intent to achieve full observance within a prescribed period of time.* ***Materially not observed*** *means that, despite* *progress, the shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance.* ***Not observed*** *means that no substantive progress toward observance has been achieved.*

Any comments are welcome.

ANNEX C: Global Business Companies (GBCs)

Global business companies, commonly referred to as "offshore" companies, are a key feature of the Mauritius economy. A GBC is a company that holds a global business license (either 1 or 2) and carries out any business or activity specified in the Second Schedule of the Financial Services and Development Act 2001 (FSDA). The FSDA builds on the Mauritius Offshore Business Activities Act of 1992, which first permitted the growth of the Global Business Sector. The Mauritius authorities believe that the Global Business Sector comprises approximately 4 percent of GDP, though independent assessments of the size of this sector are not available. GBCs account for 90 percent of India's FDI.

Under the FSDA a broad range of activities are permitted, including financial services, leasing, consultancy services, employment services, and international headquarters operations. The FSDA conforms to the overall approach of placing the regulation of the entire Mauritius financial regulatory structure under the jurisdiction of the FSC, and, with respect to the Mauritius Global Business Sector, is particularly noteworthy in that it provides for FSC regulation of financial entities such as fund managers, financial intermediaries and pension plans, that were previously subject to less comprehensive regulation. As a general matter, the Mauritius regulatory scheme appears to be somewhat more rigorous than in some of the offshore jurisdictions in the Caribbean, but less strict than in the UK dependencies of Jersey, Guernsey and the Isle of Man, where requirements such as disclosure of ultimate ownership information are strictly enforced.

The FSDA also created the Financial Services Promotion Agency in order to promote the development of the offshore industry in Mauritius as an international financial center. In developing its offshore industry, Mauritius appears to be modeling its operations on that of Singapore in the hope of becoming an international financing and business headquarters location. Mauritius authorities believe that its location between the African continent and Asia provides it with a desirable location for investments both in Asia as well as southern Africa. In addition, officials believe that its time zone is an additional comparative advantage since it overlaps business hours in Europe, Africa and Asia.

As a further step to promote the Global Business Sector, Mauritius has established tax treaties with nearly 30 countries in Europe, Asia and Africa, including major G7 jurisdictions such as France and Germany, as well as China, India and South Africa. The treaties are designed to prevent the double taxation of earnings, and Mauritius residents are permitted to take a tax credit based on the amount of tax levied in a treaty country.

To further promote its offshore industry, Mauritius adopted the Trusts Act 2001, which is especially significant since it introduces this Anglo-Saxon concept into Mauritius' legal system.

Mauritius authorities appear very sensitive to the potential for abuse, including money laundering and tax evasion, that could be conducted through its offshore industry. In 1998, the OECD considered Mauritius for inclusion on its list of countries that the industrial countries viewed as engaging in harmful tax competition. Mauritius was not included on the list following the agreement by the Mauritius government to an effective program for the exchange of information on tax matters, transparency, and the elimination of any aspects of its regulatory structure designed to attract business with no substantial domestic activities. The timetable for completion of this program is 2005, and includes the implementation of higher tax rates as discussed below.

It is noteworthy, however, that Mauritius is not one of the 19 countries designated by the Financial Action Task Force as a "non-cooperative country or territory" with respect to money laundering activities. In 2000, Mauritius passed legislation in order to enhance its regime against money laundering, and recently passed special legislation designed to prevent offshore firms from being used as a source of terrorist financing (Prevention of Terrorism Act).

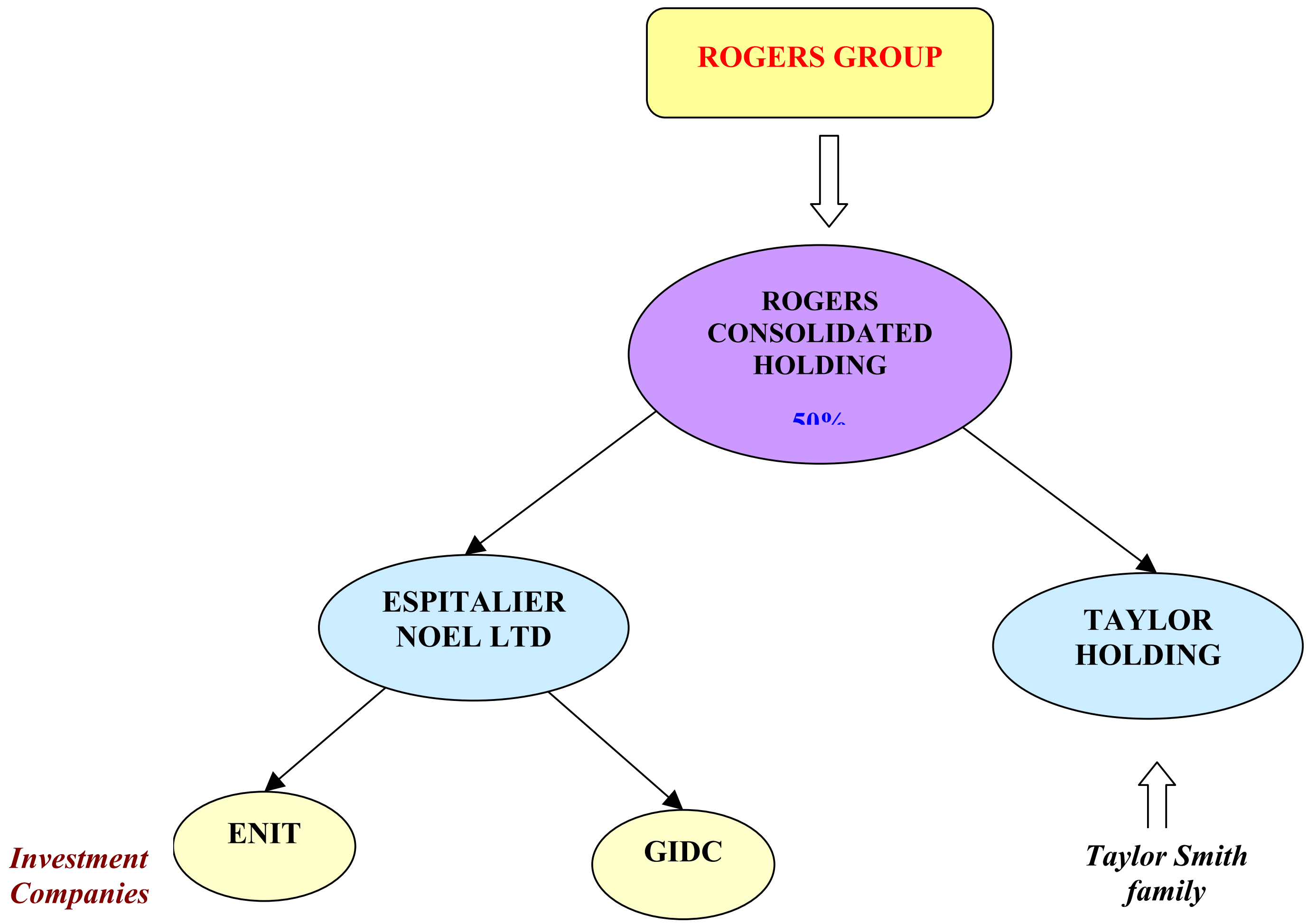
Mauritius is a member of the Offshore Group of Banking Supervisors and has also adopted relevant international principles, including the IOSCO Principles for Securities Regulation, the Basel Principles for Bank Supervision, and the IAIS Principles for insurance regulation. Mauritius is committed via special legal instruments (Letters of Requests and Rogatory Commissions) to assist foreign bodies who may require assistance with criminal cases.

Mauritius divides its offshore firms into two regulatory categories – Global Business License (GBL) 1 and GBL 2. There are approximately 6,000 GBL1 registered in Mauritius. Such firms are subject to a greater degree of regulation, including the requirement to file audited accounts, but are permitted to engage in a greater range of businesses, including financial services. GBL1 companies may qualify as tax residents and thus benefit from established Mauritius tax treaties; they are therefore often used as investment vehicles into countries such as India. Such companies have no minimum capital requirements, except for specific activities such as insurance, banking and investment management. Activities must be conducted in a currency other than the Mauritius rupee. Because of the tax treaty network, such corporations, which would normally be taxed at the Mauritius rate of 15 percent, are granted a foreign tax credit equal to the amount of foreign tax paid, up to the amount due in Mauritius. In the absence of proof, the effective tax rate will be reduced to a maximum of 1.5 percent, though this 90 percent will be reduced to an 80 percent reduction (for an effective tax rate of 3 percent), pursuant to its agreement with the OECD as of July 1, 2003. A GBL1 must have at least two directors and at least two shareholders.

There are approximately 12,000 GBL2 registered in Mauritius. A GBL2 may not conduct financial services activities such as banking, insurance, and fund management, and cannot raise capital by means of a public offer of its securities. Its activities must be restricted to non-residents. There is no minimum capital requirement, and no reporting requirements, except with respect to any reporting requirements that could be imposed pursuant to the 2000 agreement with the OECD. A GBL2 may have a single shareholder and a single director who may be natural persons or body corporate and need not be resident in Mauritius. GBL2 firms are not subject to any tax, but cannot use the tax treaties and must pay a processing fee of Mau Rs 1,963 (USD 65) to the Registrar of companies and a license fee of Mau Rs 4,077 (USD 135) to the FSC.

Due to the confidentiality inherent in the Mauritius Global Business Sector's operation, it is difficult to verify the degree of compliance with corporate governance principles, particularly with respect to GBL2 corporations, where regulation is particularly light. However, customary due diligence procedures do apply. For example, professionals and financial institutions have to report suspicious transactions and suspected money laundering cases to the regulator. In view of the resources available to the FSC, it is clear that the FSC needs to strengthen its enforcement capabilities to verify the information provided to them. The FSC is currently implementing a project with the World Bank for this purpose. The FSC approves all directors appointed to the board of financial institutions such as funds, insurance companies and fund managers while the BoM approves the appointment of all the CEO of offshore banks.

ANNEX D: Shareholding Structure of the Rogers Group



ANNEX E: Summary of Key Company Law and Securities Law Recommendations

Establish basic shareholder rights

1. Impose quorum requirement (two shareholders, representing 51 percent of outstanding shares).
2. Introduce cumulative voting.
3. Permit shareholders to approve dividend distributions.
4. Require a 76 percent supermajority, rather than current 75 percent.
5. Require supermajority authorization for shares not yet authorized, or for a sale involving 50 percent or more of the company.
6. Remove provision permitting AGM to proceed if accidental failure to notify.
7. Conform Companies Act 2001 and the Listing Rules (including related party transactions, use of IAS, and items requiring shareholder approval).
8. Consider express prohibition on certain types of abusive self-dealing.
9. Clarify Listing Rules concerning shareholder approval of related party transactions.
10. Require that custodian vote in a manner agreed upon by ultimate owner.
11. Enhance resources of regulator.

Stakeholder Issues

12. Improve compliance with labor laws.
13. Consider ways to increase use of stock options and employee stock purchase plans.
14. Pass the new draft Insolvency and Securities Acts.
15. Raise awareness of other countries' experience with shareholder activism.

Improve information disclosure

16. Clarification of rules mandating public disclosure of ultimate ownership at 5 percent level, along with strict enforcement of the provision.
17. Make private shareholder agreements public.
18. Require pension plan fiduciaries to disclose their voting policies and consider the costs and benefits of voting.
19. Disclosure of relationships with stakeholders in annual reports.
20. Finalize completion of a voluntary Code.
21. Better non-financial disclosure.

22. Require remuneration disclosure on an individual basis, not aggregate.

23. Prepare accounting/auditing and creditor rights/insolvency ROSCs.

24. Report board attendance at AGM.

25. Better oversight of the auditing profession.

26. Publish interests register.

<u>Better define the role and powers of the supervisory and management board</u>

27. More guidance on anti-takeover devices through new Securities Act legislation.

28. Create an IOD/devise qualification criteria for directors

29. Better director training.

30. Create specific duties on directors, e.g., oversight of key executives.

31. Mandatory board committees on audit, nomination and compensation.

32. Ensure compliance with Listing Rule requirement for independent directors.

33. Directors should have unrestricted access to all information.

34. Cap number of directorships for single individuals.