Mauritius Comments on the Preliminary Report of the Norwegian Commission on Capital Flight from Developing Countries:

Tax Havens and Development

The following are the final comments of Mauritius on the **Preliminary Report of the Norwegian Commission on Capital Flight from Developing Countries**, which are provided ad referendum to allow forward movement.

1.0 RECOMMENDATIONS OF THE REPORT

1.1 Mauritius would like to work with Norfund and the Norwegian Government on implementing the key recommendations of the report as follows:

a. Mauritius meets the criteria laid down in the Report for jurisdictions to be used by Norfund in Africa.

b. In case any criteria are not met, Mauritius will seek to adopt appropriate measures.

c. Mauritius proposes to work with the European Development Finance Instituions (EDFI) to develop guidelines relative to point (a) above, namely to bring its legal framework in line with the criteria specified in the report.

d. It also wishes to collaborate via the Regional Multi-Disciplinary Centre of Excellence (RMCE) being set up with assistance from the EC, AfDB, World Bank, Agence Francaise de Development (and possibly with the support of other development partners at bilateral level) to build capacity in tax policy and tax administration in Eastern and Southern Africa (COMESA and SADC) and to secure increased financial support for the OECD's taxation outreach programme for non-OECD economies. This could allow OECD-IMF-ADB-WB and Norwegian efforts to promote the development of international standards to be applied in COMESA and SADC for good tax practice through multilateral, regional and bilateral collaboration. Efforts via the RMCE could focus on practical tax policy and current challenges. Relevant issues could include transfer pricing, auditing of multinational companies, exchange of information between tax authorities, and the negotiation, formulation and interpretation of tax treaties between countries. Such a joint international effort where Mauritius and Norway mobilize the concerned parties, could assist in professionalising tax administrations and improving the policy framework to rely less on discretion and more on a rules based approach.

2.0 FACTS

2.1 Whilst Mauritius would welcome an opportunity to work with Norway on the above agenda, consistent with the recommendations of the Commission, we would request that errors of facts in the preliminary report be corrected.

Secrecy

2.2 The report has described 'secrecy' in such a context that it conveys the impression of information not being available at all. However, it is to be noted that in Mauritius information on all companies is available at the Registrar of Companies. Also information available at the FSC may be exchanged with other foreign regulators. Furthermore foreign authorities can request for information through the Court.

2.3 The report has not correctly reflected the following:

(i) the various reforms undertaken by Mauritius since 2001 in response to work with the OECD, IMF/WB (FSAP and collaboration with the IMF to improve regulation of the Mauritius global business sector) and FATF;

(ii) the recent reforms and other initiatives that are being implemented to improve the regulation of the sector.

(iii) a proper assessment of the mechanisms in place in Mauritius allowing access to information on beneficial ownership and operations of entities;

2.4 The following elements are underscored:

A. MECHANISMS ALLOWING ACCESS TO INFORMATION ON BENEFICIAL OWNERSHIP AND OPERATIONS OF ENTITIES

I. ACCESS TO INFORMATION REGARDING BENEFICIAL OWNERSHIP

i. The Financial Services Commission (FSC) has access to information on beneficial ownership prior to the incorporation of Category 1 Global Business Companies (GBC1's) – additional information can also be obtained from Management Companies (MCs) at any time under powers provided by section 42 of Financial Services Act 2007[1] (FSA 2007). At the time of application, applicants for Category 1 Global Business Licences need to submit complete and satisfactory customer due diligence (CDD) documents as required in Form A and Form C (**see Annex I and Annex II**). In this respect, the ultimate beneficial owners and the source of funds are ascertained before a licence is issued. MCs monitor the activities of Global

[1] See website: http://www.gov.mu/portal/sites/ncb/fsc/download/fsact2007.pdf for a copy of the Act

Business entities and maintain records of transactions. MC-related directors are appointed on the Board of these entities and they are signatories to bank accounts.

ii. A GBC1 is also subject to tax and submits annual tax returns to the Mauritius Revenue Authority (MRA) which can ask for beneficial ownership information.

iii. As regards Category 2 Global Business Companies (GBC2's), as part of the policy reform measures announced by Government in May 2009 in the budget (paragraph 125 of the 2009 Budget Speech[2]), the Financial Services Commission (FSC) of Mauritius will enhance its processes for securing proper and adequate information on those who do business in our jurisdiction. It will require wider information relating to Category 2 Global Business Companies which will include data relating to beneficial owners, an Outline Business Plan and the filing of financial summaries(it should be noted that Norfund is an investor in GBC1's and as such is not associated with matters relating to GBC2's)

II Access to information regarding operations of entities (Accounts)

i. Under section 30 of the Financial Services Act 2007 (FSA) Category 1 Global Business Companies (GBC1's) are required to file annual audited accounts with the Financial Services Commission (FSC). As part of an audit exercise, auditors verify and report compliance with regulatory requirements, including whether accounts are prepared in accordance with the applicable accounting standards.

ii. As regards GBC2's, financial summaries as provided in the Mauritian Companies Act will have to be filed with the FSC henceforth.

III Access to bank information

i. New banking laws were introduced in 2004, namely the Bank of Mauritius Act 2004 and the Banking Act 2004[3]. The Banking laws provide the necessary mechanisms for the Central Bank to access and share banking information with public sector agencies, law enforcement agencies and foreign regulatory agencies, under certain circumstances.

ii. The Banking Act 2004 allows the Director-General of the Independent Commission Against Corruption, the Chief Executive of the FSC, the Commissioner of Police,

[2] A copy of the 2009 Budget Speech is available for download at the News section of the Ministry of Finance's website at http://www.gov.mu/portal/site/MOFSite

[3] See the websites http://bom.intnet.mu/?id=90600 and http://bom.intnet.mu/?id=90601 respectively for a copy of the Acts.

the Director-General of the MRA, or any other competent authority in Mauritius or outside Mauritius who requires any information from a financial institution relating to the transactions and accounts of any person, to apply to a Judge in Chambers for an order of disclosure of such transactions and accounts or such part thereof as may be necessary (s.64(9)).

iii. Furthermore, the Banking Act allows banks to share information with other institutions, without a Judge's order (s.64(3)), where:

-the bank has been summoned by the Commissioner, under section 45(4) of the Dangerous Drugs Act, to give evidence or produce any record, book, document or other article or to make any disclosure relating to the possession of a convicted person or his family as specified in that section

-a financial institution, other than a cash dealer, is required to provide information and particulars, and to do any other act, under the Income Tax Act

-the bank is required to make a report or provide additional information on a suspicious transaction to the Financial Intelligence Unit under Financial Intelligence and Anti Money Laundering Act 2002[4]

B. MEASURES ADOPTED BY MAURITIUS IN THE COMBAT AGAINST MONEY LAUNDERING AND THE FINANCING OF TERRORISM (AML/CFT)

1. Meeting International Standards

i. Mauritius has put in place an AML/CFT framework that meets international standards contained in the FATF 40 + 9 Recommendations. In particular, under the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA), an FIU has been set up to receive, request, analyse and disseminate financial disclosures relating to money laundering and terrorist financing. Other relevant legislations include the Prevention of Terrorism Act 2002, Prevention of Corruption Act 2002, the Convention for the Suppression of the Financing of Terrorism Act 2003[5].

[4] See website: http://www.investmauritius.com/download/Fin%20Inteland%Anti-money%Laundering%20Act.pdf for a copy of the Act

[5] See the websites: http://www.investmauritius.com/download/The%20Prevention%20of%20Terrorism%20Act%202002.pdf and

http://wwwinvestmauritius.com/download/The%Prevention%20of%20Corruption%20Act%202002.pdf for a copy of the Acts

ii. The Mauritius FIU became a member of the Egmont Group in July 2003, and has since then been exchanging information with other members of the Group.

iii. Furthermore, the Mutual Assistance in Criminal and Related Matters Act was passed in 2003 to enable the widest possible measure of international co-operation to be given and received by Mauritius promptly in investigations, prosecutions or proceedings concerning serious offences and related civil matters.

iv. Mauritius also set up in 2002 an Independent Commission Against Corruption (ICAC) which is responsible for investigating corruption cases as well as money laundering matters.

v. The Financial Services Commission and the Bank of Mauritius are mandated under the FIAMLA to issue guidelines to their licensees on the measures that are required to prevent money laundering and terrorist financing and have indeed done so (These are available on the respective websites and are attached for information – see **Annex III and Annex IV**).

C. INTERNATIONAL CO-OPERATION

i. Mauritius has also been actively involved in the OECD work to ensure global level playing field in the context of exchange on information. Mauritius has participated in the drafting of the OECD Model Agreement for exchange of information on tax matters and in the Ad-Hoc Group on Accounts, thereby showing our firm commitment to share information with treaty partners. Mauritius has also written to a number of its treaty partners to engage in a revision of the relevant articles on exchange of information so that these are aligned along the revised OECD standards.

ii. Presently, Mauritius is a member of the OECD subgroup working on the level playing field project with regards to transparency and exchange of information.

iii. Mauritius has further ensured that its compliance extends to other international initiatives. It has adopted the necessary applicable and appropriate norms, standards and best practices set by International Bodies, as far as it has, inter alia:

-subscribed to and included banking supervision and core principles associated therewith (under the Basel Committee on Banking Supervision)

-subscribed to and included insurance supervision and core principles associated therewith (under the International Association of Insurance Supervisors)

-subscribed to and included securities supervision and core principles associated therewith (under the International Organisation of Securities Commissions)

iv. The Bank of Mauritius, the Financial Services Commission and the Financial Intelligence Unit have signed Memorandum of Understandings with their counterparts in several jurisdictions on exchange of information within the purview of their respective laws. The local institutions have also signed MOUs among themselves to allow for sharing of information.

3. SOME SPECIFIC CORRECTIONS REQUIRED

3.1 The following is not comprehensive but just an indication of some of the misinterpretation of facts contained in the report:

(i) ***P 78****: "This capital was primarily channelled through companies prohibited by Mauritian law from having local employees. This means that the capital in reality is administered by people who do not live in Mauritius*."

This statement is wrong. There is no prohibition on GBC1's from having local employees (section 73(1)(g) of FSA 2007). GBC1's are required to have substance and are encouraged to set up offices in Mauritius, staffed by local and foreign professionals. Indeed many have done so. The FSC may also approve the conduct of any business or dealings with residents of Mauritius.

Management companies are licensed by the FSC to set up, administer and manage the affairs of GBC's. All applications for a GB Licence need to be submitted through a MC as per section 72(1)(a) of the FSA 2007. MCs are required to act as Company Secretary and Registered Agent. MCs are also staffed by local and foreign professionals.

Moreover, at the macro-economic level, we are refining with the assistance of the IMF the estimate of the contribution of the sector to the Balance of Payments and the economy. Preliminary estimates suggest between 2 to 3 percent of GDP, consistent with the numbers in the report in section 6 (inter alia page 107 Table 6.2 which clearly shows that Mauritius has a similar contribution to GDP from the financial sector as the US and share of employment slightly higher than Norway and value creation per employee that is not particularly high and well below that in the US and Norway - the only two countries not labeled tax havens by the Commission and for which data is presented).

(ii) ***P 114****: "In cases involving legal entities that are merely registered in a jurisdiction and that cannot engage in meaningful activity there (confer GBC1 and GBC2 in Mauritius, see below), no justification exists for such tax treaties on legal, economic and fairness grounds. No justification accordingly exists for giving Mauritius the right to tax GBC1s, as the tax treaties do."*

This is not correct. GBC1 companies are incorporated in Mauritius and are liable to tax at a rate of 15 percent. They are considered resident for Treaty purposes in accordance with Articles 2 and 4. Treaties very rarely restrict taxing rights only to country of source. In line with the approach in many jurisdictions concerning domestic taxation to facilitate tax administration, GBC1 companies can either claim a presumptive foreign tax credit or claim according to amount of foreign tax actually paid.

(iii) ***P 115:*** *"However, the use of a secrecy jurisdiction as an intermediary means, for instance, that some types of capital income are not taxed anywhere. This helps to rob the source country of tax revenues, and the investors rather than the developing country obtain the benefit of the tax saved."*

If the above statement is meant to be of a general nature, it might or might not be true. However, the way it is stated here seems to suggest that this is the case for Mauritius. This is clearly not the case, because GBC1's companies are taxed in Mauritius on all their income, whether derived from Mauritius or abroad.

(iv) ***P116:*** *"Mauritius has special regulations for companies which are going to operate solely in other states – known as "foreign companies" (non-local or non-resident). Both local and foreign companies are covered by the Companies Act – Act No 15 of 2001 – but differences exist in crucial areas of the regulation of these two company types. Foreign companies are given a number of exemptions from obligations which otherwise apply to companies with limited liability."*

This is a misleading representation on several grounds:

- First, the concept of foreign companies is wrongly used here. The Companies Act[6] allows companies which are incorporated in another jurisdiction to have a place of business and conduct business in Mauritius (normally in the form of a branch), in which case the company is registered as a foreign company and has a Permanent Establishment in Mauritius. The local operations of such companies are liable to Mauritian tax. Foreign companies are different from Global Business Companies (GBC's). GBC1's are incorporated in Mauritius and they conduct business in other countries from Mauritius. GBC1's are considered to be resident in Mauritius for taxation purposes.
- Second, GBC1's companies do not enjoy exemption from tax and have the same tax obligation as any other company registered in Mauritius.
- Third, there may be differences in treatment of some Mauritian companies which conduct business outside Mauritius in terms of designation, capital obligations

[6] See the website: http://www.gov.mu/portal/site/compdivsite for a copy of the Act

and rules under which directors operate due to the nature of their global activity. However, there is no exemption in terms of tax obligations nor from the perspective of exchange of information, which are the principal concerns of the report.

(v) ***P.117:*** *"Broad opportunities are provided to move a company fairly simply into and out of Mauritius."*

Here the Commission is correct but fails to notice that this is part of general compliance by Mauritius with the standards advocated by the World Bank Doing Business Report. The Doing Business framework places a premium on lowering costs of entry and exit. The policy here is part of a wider move that has also been integrated into the recently proclaimed Insolvency Legislation that received extensive review from the World Bank during formulation.

(vi) ***P.117:*** *"A GBC1 has some obligation to prepare accounts. These must be compiled in accordance with the International Accounting Standards (IAS) as defined in section 2. The Commission has little information about how these accounting requirements are enforced in practice, and what real enforcement opportunities exist. It is also questionable how appropriate they are for enforcement without other provisions. Nor do the accounts have any significant local interest, since GBC1s and GBC2s are by definition unable to pursue local operations (see above) and corporation tax is insignificant. The accounts are only submitted to the Financial Services Commission, and are not accessible to the public (users of the accounts)."*

This is wrong. GBC1's are required by law to prepare and submit audited financial statements, in accordance with IFRS, as per section 30 of the FSA 2007. There is also provision made for audited financial statements to be prepared in accordance with such internationally recognised accounting standards. The accounts are audited by professionals, mostly from the Big 4 firms (PWC, E&Y, Deloitte and KPMG).
.
The Commission should appreciate that Mauritius follows the anglo-saxon system and practices. Under such a system, it is up to the external auditors (who are regulated not only in Mauritius but internationally as members of international accountancy bodies such as CA, ACCA, ICA etc) to enforce compliance with the law and international accounting standards during preparation of accounts. Any important deviations have to be flagged in a management letter and, if not dealt with, in the final auditor's report.

Concerning public access, this should be an absolute requirement when companies are listed. The law in England and Commonwealth countries distinguishes between private and public companies and as a general rule, information relating to private companies and its availability to the public is limited in scope. It is to be noted that the vast majority of GBC's are incorporated as private companies and consequently, information available to the public with respect to these GBC's is not significantly different from that available to other private companies which are not GBC's.

Again, Mauritius would work within any international standards developed in this respect but these standards need to balance the legitimate needs to protect commercial confidentiality against unjustified secrecy for hiding wrong doings. We look forward to working with Norway and the international community to consider how best to address this tradeoff. In any case, information relating to official requests will not be hampered by the absence of automatic public disclosure of audited accounts since the competent authority always has access. Moreover, the recent reforms that empower the MRA to automatically access such information when required will facilitate the exchange of information.

(vii) ***P117:*** *"Few provisions in the Companies Act are accompanied by any sanctions, particularly for GBC1s and GBC2s. In those cases where a sanction exists, the maximum penalty is low and limited to fines (see sections 329, 330). The exception is cases which fall under section 332 (false statements), where the penalty is five years imprisonment. In the event of breaches of the accounting legislation, the Commission takes the view that the secrecy rules will also pose a considerable problem. A company's contractual partners, creditors and so forth basically have no opportunity for insight into the company's operations. As a result, they will not be in a position to report violations or to demand explanations for uncertainties affecting the accounts."*

It is wrong to state that "Few provisions in the Companies Act are accompanied by any sanctions, particularly for GBC1's and GBC2's." It is to be noted that sanctions in the Companies Act apply equally to all companies, irrespective of whether they are Global Business Companies or not (as enumerated under Part XXVIII of the Companies Act 2001). The penalty for offences under the Companies Act is in line with other common law jurisdictions and our country has not departed in any manner from other Commonwealth legislations on company law. In most cases, a fine and by no means a low one (the maximum under the Act is Rs.1Million) is imposed for non compliance. There is more severe punishment obviously for more serious offences like fraud etc involving 5years imprisonment (see S.334 of Companies Act).

Also, legitimate requests via competent authorities are dealt with under exchange of information provisions that are either in place or being negotiated, as indicated above, (including forthcoming joint discussions with all the Scandinavian countries). There are no secrecy rules in place that would appear to be problematic, especially in view of the recently announced reforms.

(viii) ***P117:*** *"Mauritius has a dual tax regime – one for nationals and the other for foreigners. The tax regime for foreigners is substantially more favourable than the one for citizens, with lower tax rates and reduced reporting requirements. Foreigners pay no tax on capital gains, wealth, inheritance or royalties. Nor does Mauritius charge a withholding tax when foreigners transfer income from there to their country of domicile. The regulations described above mean that the type of fund in which Norfund invests in Mauritius has a fairly narrow tax base in that country."*

This is not correct for the reasons explained above. As in most jurisdictions, for tax purposes, Mauritius distinguishes between residents and non-residents and not between foreigners and nationals. More importantly for the purposes of the Commission's work, Mauritius has one unified tax regime that covers both the GBC1's and domestic companies. It is, therefore, incorrect to argue that foreigners face a more favourable tax regime.

Mauritius has introduced a major tax reform in 2006 that has been welcome by the IMF and is in line with the principles advocated in a recent article on the issue that took exception to the UK approach in favour of a system similar to that in Mauritius. The tax reform has virtually eliminated all discretionary powers of the Minister of Finance in favour of clear and transparent rules. In addition, it has simplified the tax system to facilitate administration by the Mauritius Revenue Authority. Most importantly, the new tax system ensures that everyone pays his fair share of tax albeit at a reasonable rate of 15 percent. The rate has been set to avoid distorting economic activity whilst raising sufficient taxes to support fiscal consolidation and to limit incentives for avoidance and evasion. The new system has lowered effective rates on the bottom half of tax payers, raised them on the wealthiest and resulted in a significant increase in revenue through better compliance.

In the Mauritius regime, neither nationals nor foreigners pay capital gains tax, inheritance taxes or wealth taxes. However, both nationals and foreigners (including GBC1's shareholders) are subject to an annual quasi-wealth tax at the same rate (since the legislation does not discriminate) in the form of a National Residential Property Tax (levied on real estate ownership). Similarly, royalties in the hands of GBC1's and others are subject to tax at the same rate. Likewise, both GBC1's and other companies registered in Mauritius would be required to withhold tax in relevant cases. Such relevant cases include payment of royalties, rental income and income from interest on bank deposits. It is true that in practice some withholding applies only to domestic agents but this is because of the nature of the activity and not the tax rules. For example, contractors and others in the building trades are subject to withholding but GBC1's are not involved in such activity.

In view of the mistaken analysis, it is clear that the following conclusion of the Commission cannot hold, namely that *"The regulations described above mean that the type of fund in which Norfund invests in Mauritius has a fairly narrow tax base in that country."*

(ix) ***P118:*** *"GBC1-type companies have a nominal corporation tax rate of 15 percent, but can credit tax paid abroad against their liability in Mauritius. Even if they cannot produce documentary evidence of tax paid abroad, they receive an automatic discount for such payments which corresponds to 80 percent of the nominal tax rate. This means that the real rate of corporation tax for such companies is three percent."*

As explained earlier, GBC1's are subject to the normal 15 percent corporate tax rate. However, they have a choice either to document the foreign tax actually paid and claim it as a tax credit or to claim a presumptive foreign tax credit. The rate of that presumptive tax credit has been based on international effective tax rates for such companies which yields an 80 percent reduction. Whilst the result may be the same as noted by the Commission, the logic and the approach are significantly different.

(x) ***P118:*** *"Various facilitators in Mauritius advertise on the internet that exemption from Mauritian tax can be granted on application to the government. GBCs on Mauritius accordingly appear to have a zero-tax regime."*

The Commission may be correct that unscrupulous agents could advertise such claims. It should be pointed out that indeed the internet has become a source for various misleading adverts, for example, promoting immigration to the US and Canada. However, the facts would show, and as the IMF and the World Bank can confirm, that Mauritius has reformed its system to move away from discretion by the Minister to a rules based approach. Under this new regime it is not possible for any applicant to obtain discretionary exemption.

(xi) ***P118:*** *"Corporation tax for GBC2-type companies is zero, and no other types of taxes are levied either. Such companies cannot take advantage of the Mauritian tax treaties. They have no obligation to produce accounts and do not need to meet requirements for local representation through front persons of any kind. GBC2 companies can be established in the space of 48 hours. The sum total of all the liberal provisions applied to this type of company makes it very difficult, even after a request for access, to obtain any information. Since their investors cannot take advantage of tax treaties, but are covered by secrecy and a zero-tax regime, GBC2-type companies are very suitable hiding places for money and other types of tax evasion."*

All applications for GBC2's (similarly to GBC1's) licence must be channeled through the MCs. MCs are required to carry out the complete and satisfactory CDD on all their clients. GBC2's must at all times have a registered agent in Mauritius as per section 76 of FSA 2007. Registered agents must be Management Companies, licensed and regulated by the FSC.

The GBC2 regime is being modified as announced in the Mauritius Budget Speech on 22 May last, to ensure that information can be exchanged on these companies. Existing provisions under section 75 of FSA enables the FSC to obtain from a corporation holding a global business licence (GBC1's or GBC2's) any information required and the FSC may also require them to produce such documents with a view to ensure and monitor compliance. Therefore it is wrong to say that GBC2's are covered under the secrecy regime.

However, as the Commission points out above, GBC2's do not benefit from tax treaties and are not relevant for Norfund. Clearly, Mauritius wants to be part of the strengthened regulation of the international financial system and we have already launched a reflection by the FSC on how to strike the right balance. Mauritius looks forward to work with Norway as well as the OECD, IMF and the World Bank in developing an appropriate international framework in this area.

(xii) ***P119:*** *"Favourable arrangements of this type mean that the tax burden in practice is probably zero for PCCs. Such companies can take advantage of Mauritian tax treaties. No open registry of PCCs exists, and they are thereby also covered by the secrecy regime."*

We would like to clarify the issue of how PCCs are treated under the tax regime given the erroneous assumptions in the report. PCCs are taxed as one entity after consolidation irrespective of the number of cells they may have. Also, they have the same tax treatment as other tax residents of Mauritius and can take advantage of treaties as residents of Mauritius. It is also incorrect to argue that they are covered by the secrecy regime. They are, in fact, under the same obligation to disclose information as other companies.

PCCs conducting licensable activities under the Securities Act 2005, Insurance Act 2005 and the FSA 2007 are listed on the public register maintained by the FSC and may be accessed by the public at any time.

(xiii) ***P119:*** *"Companies which take advantage of the tax regime for foreigners cannot operate locally, use the local currency or employ locals on any scale other than through nominees. The latter can be appointed as senior executives or directors for hundreds of companies. The Commission has explained in chapter 3 that the number of companies represented by each nominee is so large that, if they actually managed the companies in which they are employed – or participated, for that matter, in any substantial activity at company or board level – the operation of these enterprises would not have been rational in business management terms."*

There is no such regime in Mauritius. There is no distinct tax treatment for foreigners. A foreigner who is a resident is treated like any other resident. There is no rule on foreigners not being allowed to operate locally or using the local currency or employing locals. This is totally inaccurate. In the wake of the recent economic reforms, there has been much reflection on how best to more fully integrate the Global Business Sector with the rest of the economy (in the same way that the Export Processing Zone companies have been integrated). As a result, banking licenses and activities have now been consolidated for some time. In the other areas, action should be forthcoming soon. In any case, on the most critical issue raised by the Commission on employment and nominees, there appears to be a misunderstanding. Whilst it is correct that many investors use established Management Companies, there is no restriction on GBC's setting up offices here and hiring locals directly. In any case, as part of the granting of a license by FSC, there must be a commitment to create substance in Mauritius.

Management Companies are licensed by the FSC and prior to obtaining a licence, applicants are required to demonstrate that they have adequate resources to ensure sound and smooth running of operations.

However, Mauritius is open to implementing any international norms that may emerge from a closer look at the issues of Global Business by the international community and any bilateral effort with Norway (in line with our proposals for collaboration between Mauritius and Norway).

(xiv) ***P119:*** *"The lack of real activity in these companies makes the use of the domiciliary principle as the basis for the tax treaties extremely dubious. In reality, these are shell companies and funds to which Mauritius offers a location for a nominal fee to the government and for very low taxes protected through tax treaties."*

The conclusions drawn by the Commission are not valid at least as far as Mauritius is concerned. GBC1s are the companies that are concerned by tax treaties, and it is not correct to say that that these are shell companies. The FSC only grants a Global Business License on the condition that the applicant will generate substance. The FSC, furthermore, ensures that the conduct of business of GBC's are being managed and controlled from Mauritius. In this respect, GBC's should meet certain criteria as laid down under section 71(4) of the FSA 2007. The FSC ensures that the GBC's:

- have at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement;
- maintain at all times their principal bank account in Mauritius;
- keep and maintain, at all times, their accounting records at their registered office in Mauritius;
- prepare or propose to prepare their statutory financial statements and cause or propose to have such financial statements to be audited in Mauritius;
- provide for meetings of directors to include as least 2 directors from Mauritius.

Moreover, taxes have to be paid as there are no exemptions in the legislation. Our earlier comments on working with the IMF to get a better handle on the contribution of the Global Business Sector (estimated at 2 to 3 percent of GDP) are also relevant here.

(xv) ***P119 & 120:*** *"It is also uncertain whether any documents of significance for the company are held locally. Taken together, this contributes to giving foreign companies a limited local connection."*

This statement is wrong. Section 190 of the Companies Act 2001 stipulates that all company records and documents of significant importance, including minutes of all meetings, should be kept at their registered office in Mauritius for at least a period of 7 years.

GBC1's are obligated to submit their returns and keep records and MCs are required to maintain and keep records of the identity of their customers and to keep full and true written record of every transaction in relation to their business activities. As an example, a service provider is required to submit to the FSC copies of the main agreements into which it enters (investment management agreement, investment advisory agreement, custodian agreements, prime brokerage agreements and administration agreements amongst others).

Furthermore MCs are required under the FSC Code to maintain records of all transactions undertaken during the course of a client relationship either in the form of original documents or copies of original documents. All transactional records should be retained for a period of at least 7 years after the completion of the transaction to which they relate.

Indeed, this will be the data base to be used to ensure compliance by Mauritius with Special Data Dissemination Standards of the IMF. As explained earlier, the IMF is providing Technical Assistance in this area with the aim of carrying out surveys and instituting a regular reporting system by the middle of 2010.

(xvi) ***P120:*** *"Trusts pay no form of tax in Mauritius, and no obligation exists to register them in any open registry."*

The tax regime should be properly understood. Trusts are liable to income tax on the same basis as companies (under the principle of making everyone pay their fair share at a reasonable rate and equal treatment of tax residents regardless of nationality).

Entities structured as trusts and engaged in global business activities must seek a licence from the FSC. It is a requirement of the Mauritian laws to have a Management Company as Qualified Trustee and the FSC has a supervisory role over the qualified trustees managing the trusts.
As such, information exchange is possible.

4. OMISSIONS

4.1 The report also makes a number of omissions. For credibility of its assessment, the report would need to either agree with or explain deficiencies in the latest assessment, by the OECD, IMF/WB and FATF, of the Mauritius jurisdiction relative to others.

(i) OECD Assessment

In this regard, inter alia, the 2008 OECD Assessment (Tax Co-operation: Towards a Level Playing Field), has none of the negative assessments reported by the Commission concerning:

a. Exchange of information;
b. Access to Bank information including Bank Secrecy;
c. Access to Ownership, Identity and Accounting Information; and
d. Availability of Ownership, Identity and Accounting Information

(ii) IMF/WB Assessment

Mauritius has accepted and subscribed to the ongoing assessment program by the IMF/World Bank and has satisfactorily completed two assessments under the Financial Sector Assessment Programme (FSAP). Mauritius underwent a first FSAP in 2002/2003. In their Report the IMF/WB FSAP team commended the rigorous standards of financial sector regulation practised by Mauritius, in keeping with international best practices. An update of the 2002/2003 FSAP was carried out in 2007. The IMF/WB FSAP team this time noted that several measures had been taken by Mauritius since the 2002/2003 FSAP in policy making and legislation and these have supported the further development of the financial sector. The mission team also took note that significant steps had been taken by the Mauritian authorities in the recent years to enhance the AML/CFT framework.

5. METHODOLOGY

(i) Inconsistency between analysis and use of Tax Haven terminology

The Report correctly notes that that there is no agreed-upon definition of tax haven. It goes on at Page18 to explain that the Commission has not proposed a precise definition of the term “tax haven”. Yet, despite this, the Commission goes on to label Mauritius as a tax haven despite flimsy evidence.

The use of the OECD list of 2001 is not a basis for any classification of tax havens today. Its purpose was to identify countries where changes were required and Mauritius, like most other jurisdictions, has in fact introduced many significant reforms that are now acknowledged by the OECD (as referred to by the Commision, albeit only too briefly and largely ignoring the implications of the reference). In the latest progress report published by the OECD on 25 June 2009 on the jurisdictions that have substantially implemented internationally agreed standards, Mauritius is on the ‘white list’ of cooperative countries.

Similarly, the IMF request for collaboration was part of an effort to better regulate the international financial system and being on the list of the IMF only indicates that there are important financial flows. The key issue is the extent of compliance with good international practice as defined by the IMF/WB in FSAPs and other consultations. Again, Mauritius scores highly on the relevant dimension.

The Tax Justice Network classification is largely irrelevant. Even the Commission hints at the backward looking character of the list compiled. This list is enhanced by a rather dubious device of relying on advertising by agents that has not been checked for veracity or accuracy. This cannot be the basis of a classification that could reasonably be accepted for labeling.

The only valid classification in the Report is that of the US Senate. In this respect it should be noted that Mauritius receives significant financial flows from the US and could, therefore, potentially have made the list. Its absence from the US Senate list as well as the high marks it obtains from the IMF/WB and from the OECD for its regulatory efforts suggest that Mauritius is not a tax haven, even if a proper definition of the term would allow an intelligent reader to understand what features are being alluded to. In the absence of any clear definition, the association of Tax haven with Mauritius is even more unjustified.

The most telling deficiency is that the report does not explicitly make any proposal as to what more needs to be done for a jurisdiction to cease to be labelled as a tax haven, taking into consideration the various policy compromises that most countries have already adopted, including Norway itself as pointed out in the report.

In this respect, it is revealing and regrettable that the work of the OECD, IMF/WB and FATF has not been either highlighted or used as a basis to define Tax Havens and/or cooperating jurisdictions that are improving their regulatory framework.

(ii) Lack of clear null hypothesis

The absence of a clearly formulated null hypothesis makes it difficult to evaluate the Report's analysis and findings, including any firm causal linkages between corruption, the financial crisis and tax havens. It therefore also fails to establish valid relationships that can then guide policy making.

In the absence of this, the Commission's analysis does not sufficiently demarcate between statements and perceived common sense and facts. We have highlighted this for statements and issues relating to Mauritius, but the same can be done for various other aspects of the report.

(iii) Tradeoffs

Economics and much policy making is about tradeoffs. The report does not focus on these and, therefore, may have limited policy making implications. Tradeoffs need to be explicitly identified and analysed. For example, most of the Funds flowing through Mauritius to India come from high income OECD countries. Flows through Mauritius in general have very little to do with the corruption and poor governance in other countries that worries the Commission.

Dealing with the tradeoffs involved would be a central part of understanding the policy dilemmas facing policy makers in the different jurisdictions.

(iv) Insufficient hard evidence

The Commission report is not sufficiently based on hard evidence. The reasoning behind the decision to single out Mauritius is not given and it can only be assumed that this does not arise from hard evidence but from hearsay and what presumably appears to be conventional wisdom.

The report makes a feeble justification on P 108: “Mauritius is a tax haven with considerable activity, and is one of the jurisdictions of this kind that Norfund uses most frequently for its investment funds.”

However, this is not compelling since no proper study of the costs and benefits of Norfund’s current policies has been carried out. Moreover, there is really no sound argument to support such an approach since a feasible, low cost strategy to understand the operations of Norfund would have consisted in preparing a short questionnaire and inviting answers from the various jurisdictions in which Norfund has activity. This is similar to what the Commonwealth Secretariat, IMF/WB and OECD did in this field.

More fundamentally, rather than rushing to judgment and making many factual mistakes, the Commission could have sought comments from the Mauritius authorities on the draft (at least for those parts concerning Mauritius) before finalizing and making it public. Asking for comments beforehand would not have bound the Commission to accept the feedback given, but would have enabled us to establish the facts and present our views for discussion.

We cannot agree with the methodology. This is a matter of regret given the existence of low cost alternatives that would have been more insightful.

(v) Backward looking and static approach to the analysis

Concerning Mauritius, the analysis is deeply flawed because it is static and backward looking instead of understanding the policy making challenges and context. Had a more dynamic perspective been taken, the Commission would have identified the scope for close collaboration with Mauritius along the lines proposed at the beginning of this piece.

(vi) Evidence or assertions?

On Page 149 a series of conclusions are drawn. However, a closer look raises the question whether these are more in the nature of assertions rather than based on facts and evidence. Most relevant is that the report itself notes that it has not taken into account the most relevant data sources but has been selective in choosing 4 indicators to label tax havens. It ignores, inter alia, the guidelines of the EDFI, the latest OECD work, the results of IMF/WB FSAPs.

Second, the report does not develop consistent and clear criteria for Tax Havens even though it makes a lot of value judgments based on implicit definitions. There is no reason why objective standards to be sought could not be spelt out and applied to all countries to let the Tax Havens (as defined) stand out.

Third, the analysis is out of date as explained in several parts of these comments. This is true both for the more global review and the parts dealing with Mauritius.

Fourth, a dynamic view would include a review of international best practice being advocated as well as implemented. This would allow countries to understand how far they are from the best (as in the Doing Business Index or the WEF Competitiveness Index or the World Bank Kray-Kaufmann Governance Index).

Fifth, the decision to single out a particular case is unfair unless it can be demonstrated that there are compelling reasons to do so. It is even more important to do so when much larger and more important countries could have been analysed in the same depth and are not. This is especially damaging if the country selected is far from being a negative outlier but probably closer to the frontier of good practice than many other jurisdictions not analysed.

Sixth, the extensive number of factual errors that are documented here concerning Mauritius raise doubts about the quality and seriousness of the analysis. The failure to do basic checking does not provide a good signal. This is even more damaging given that the report has highlighted the extent of positive cooperation from Mauritius.

Seventh, in addition to consulting Mauritius and other relevant jurisdictions, the authors should also have consulted the IMF, OECD, FATF, EDFI and used their assessments and comments to get a better handle on the issues and tradeoffs, as well as minimizing factual errors.

Eighth, in undertaking such analysis, even if there was a need to be selective in jurisdictions considered in detail, should the focus be on the most problematic or the one most heavily used (perhaps for good reason: even the report notes that Mauritius was used by Norfund for Costa Rica in the absence of a Treaty. This is an important piece of evidence that is left unexplained but suggests that Mauritius may offer value added beyond the reasons advanced by the report).

July 2009