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# MAURITIUS

# OECD Investment Policy Reviews: Mauritius 2014

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# Foreword

The Investment Policy Review of Mauritius is one of five reviews carried out in member states of the Southern African Development Community (SADC) on the basis of the OECD Policy Framework for Investment (PFI). Undertaken by the NEPAD-OECD Africa Investment Initiative in the context of the "Unlocking Investment Potential in Southern Africa" programme with the support of Finland, it reflects the growing co-operation between the OECD and its African partners.

The Review is the result of a self-assessment undertaken by a national task force composed of government agencies, the private sector and civil society established by the government of Mauritius. The exercise has been actively facilitated by the Mauritius Board of Investment (BoI) and headed by the Ministry of Finance and Economic Development (MOFED). The review process was launched in February 2012, with the establishment of an in-country stakeholder group and the collective determination of the scope of the Review. Upon special request by BOI and MOFED for inputs to the 2013 budget process, a preliminary draft report was shared with Government in August 2012. This has heightened the policy impact of the Review exercise. Twenty-eight different government and private sector agencies were involved in responding to the PFI questionnaire and participated in all-stakeholder meetings as well as bilateral fact-finding sessions in November 2012. The next phase in the programme will involve follow up on the implementation of the Review's recommendations and regional co-operation on investment policy within the Southern African Development Community (SADC).

This Review has been prepared by Carole Biau and Hélène François under the supervision of Karim Dahou, Executive Manager of the NEPAD-OECD Africa Investment Initiative in the Investment Division of the OECD Directorate for Financial and Enterprise Affairs. The secretariats of several OECD bodies, including the Investment Committee, the Committee on Fiscal Affairs, the Competition Committee and the Corporate Governance Committee contributed their expertise to the Review. The views contained within do not necessarily represent those of NEPAD member governments.

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# *Preface by Mr Charles-Gaëtan-Xavier-Luc Duval, Vice Prime Minister and Minister of Finance and Economic Development, Government of Mauritius*

Mauritius, the star and key of the Indian Ocean provides countless opportunities in the African Continent. Our island has, since its independence, made consistent impressive economic and social achievement in the face of economic constraints. This is, in large part, due to our policies of investing in human development, and of tackling poverty through comprehensive social protection schemes.

Scholars such as Nobel Laureate Joseph Stiglitz have gone as far as to suggest that "many countries, not least the US, could learn from its experience". The economic history of Mauritius bears testimony to the capabilities of this shining star. Evolving from a mono-crop economy to a diversified goods and services export-oriented country, Mauritius has experienced an impressive economic growth. The services sector account for more than two-thirds of the GDP, and the country now competes with major global players in the textile and clothing, tourism, and financial services sectors.

The creation of a healthy and stable environment for conducting business is at the forefront of the government's economic strategies. Reforms undertaken were not limited to developing the country as one of the most stable and competitive economies in the region, but also to providing a transparent, rules-based and business-friendly environment. The World Bank ranks Mauritius as first in Africa, and 19th globally in its Ease of Doing Business Index, which consequently puts us ahead of more developed nations such as Switzerland, Belgium and France. Mauritius is also ranked first in Africa and 8th globally in the 2012 Heritage Foundation Index of Economic Freedom, and boasts the first place for the sixth consecutive year in the Mo Ibrahim Index of African Governance 2012.

Mechanisms geared towards attracting Foreign Direct Investment (FDI) have been focused on promoting high-value-added emerging sectors. We are now firmly engaged in the promotion of an ocean economy, education hub, medical tourism, clinical trials, precision engineering and the film industry. We have also adopted a targeted marketing approach, whereby we are actively promoting the country in new markets whilst consolidating the traditional ones.

These proactive policies moulded Mauritius to face the 2008-10 global economic downturns and the Eurozone crisis. Indeed, the country continued to shine with an accelerated growth of 3.1% in 2009, and 4.2% in 2010 during that period. In 2012, the country experienced strong performances in the financial services, information and communication technology and seafood sectors. The country now boasts an annual GDP of USD 11.3 billion and a per capita income of USD 8 240.

The Government of Mauritius is also committed to make its infrastructure at par with the developed nations in the world, and it has set aside a budget of USD 8 billion for the period of 2010-20. In the same vein, we are also investing in the modernisation of the sea port and the airport, where a new state-of-the-art terminal will be operational in a few months.

Realising the important development role that FDI plays, Mauritius has shaped itself to become a pioneer in FDI attraction in the region. Our investment climate is constantly being revamped to enhance the experience of our foreign investors. Indeed, the World Bank, in its report "Investing Across Borders", characterised Mauritius as having one of the world's most open economies to foreign ownership and one of the highest recipients of FDI per capita. To put this into perspective, from 2006 to 2011, Mauritius has attracted approximately USD 2 billion, and in 2012, reached a new peak of USD 406 million. We are now targeting to achieve a higher level of FDI in the coming years.

Nevertheless, we are aware of the fact that we cannot do this on our own. We do not merely want investment to come in, but we want investment to stay, contribute to inclusive growth and poverty eradication and to bring in foreign talent, expertise and technologies to the country. We have therefore worked together with the OECD to look at the intricacies of attracting foreign investment and to conduct an in-depth and systematic analysis on how to maximise and benefit from foreign investment. This report is the fruit of this collaboration. The OECD's Policy Framework for Investment, through its credible, timely and objective information and recommendations, will assist us in our decision-making process.

I take this opportunity to congratulate and thank the OECD Investment Committee and the relevant Mauritian stakeholders who have been involved in the preparation of this impressive report.

Charles-Gaëtan-Xavier-Luc Duval, GCSK

Vice Prime Minister,
Minister of Finance and Economic Development

# *Preface by Mr Rintaro Tamaki, Deputy Secretary-General, OECD*

Mauritius is one of the most competitive and successful economies in Africa, with levels of income and of Foreign Direct Investment (FDI) per capita which are among the highest in the continent. The Mauritian economy is also one of the most open to foreign ownership worldwide, and relies on political stability, strong rule of law and regulatory efficiency. It has successfully rebounded following shocks exerted by the global financial crisis as well as the economic slowdown of the Eurozone, the main destination market for Mauritian exports. In 2012, performance has been particularly promising in the financial services, ICT and seafood sectors, which are expected to attract further investment (both domestic and foreign) in coming years.

This *Investment Policy Review* illustrates the important progress made by the government of Mauritius in improving its investment climate over recent years. It highlights major initiatives and specific policy measures undertaken, as well as areas that need further reforms to attract more and better investment, both domestic and foreign. While numerous policy advances have been achieved, including enhanced focus on infrastructure development, heightening transparency and enforcement of the regulatory framework for investment, and the rationalisation of tax incentives for investment since 2006, the *Review* identifies remaining challenges and associated policy options. Among others, these include the need to codify or unify investment regulations within a single instrument, possibilities for updating the country's Model Bilateral Investment Treaty, recommendations for streamlining the administration of Intellectual Property Rights, and options for enhancing the scope for private participation (both domestic and foreign) in national infrastructure development. Better reflecting the needs of business within the skills base of the economy, via a more targeted human resource development strategy, is also a pressing challenge which Mauritius has actively begun taking on board.

Thanks to this close alignment with policymaking processes, the policy impact of the *Mauritius Investment Policy Review* has probably been among the most immediate and visible of the *Reviews* undertaken to date. The 2013 budget already featured several recommendations, which should come to the implementation stage over 2014. Throughout the *Review* process the

Mauritius Board of Investment has also frequently used the OECD as a resource in its international benchmarking exercises, and for accessing relevant reports or data on investment promotion and facilitation.

In addition, as the 15 member states of the Southern African Development Community (SADC) have requested the NEPAD-OECD Africa Investment Initiative to assist the SADC in developing a Regional Investment Policy Framework, the results of the *Investment Policy Review of Mauritius* should feed into this regional process. The government of Mauritius has already voiced its strong interest in playing a key role in sharing specific experiences on investment policy design and implementation, and thereby helping work towards co-ordinated improvement of investment policy across SADC member countries.

While the OECD is responsible for the content of the *Review*, it therefore reflects contributions from many levels of the government of Mauritius, from conception to completion. It also further illustrates the commitment to reform of Mauritius, which the OECD and its partners will continue to support. This has overall been a highly successful project and a model for *Investment Policy Reviews* in other countries. The OECD is keen to continue this collaboration in the next phase of the programme, by following up on the implementation of the Review's recommendations and through regional co-operation on investment policy.

Mr Rintaro Tamaki
Deputy Secretary-General, OECD

# Abbreviations and acronyms

| | |
|---|---|
| **ACP** | Asian, Caribbean and Pacific |
| **AERC** | African Economic Research Council |
| **AMB** | Agricultural Marketing Board |
| **ASEAN** | Association of South East Asian Nations |
| **BOI** | Board of Investment |
| **BIT** | Bilateral investment treaty |
| **CCM** | Competition Council of Mauritius |
| **CEB** | Central Electricity Board |
| **COAP** | Centre d'Orientation Professionnelle |
| **COMESA** | Common Market for Eastern and Southern Africa |
| **CSO** | Central Statistical Office |
| **CWA** | Central Water Authority |
| **DBM** | Development Bank of Mauritius |
| **DTT** | Avoidance of double taxation treaty |
| **EBA** | Everything But Arms |
| **ECIS** | Export Credit Insurance Scheme |
| **EHRSP** | Education and Human Resources Strategy Plan |
| **EEMO** | Energy Efficiency Management Office |
| **EM** | Enterprise Mauritius |
| **EOE** | Export-oriented enterprise |
| **EPA** | Economic Partnership Agreement |
| **EPZ** | Export processing zones |
| **ESTP** | Economic and Social Transformation Plan |
| **EU** | European Union |
| **FDI** | Foreign direct investment |
| **FSC** | Financial Services Commission |
| **GBC** | Global Business Company |
| **GCR** | Global Competitiveness Report |
| **GDP** | Gross domestic product |
| **GFCF** | Gross Fixed Capital Formation |
| **GNP** | Gross National Product |
| **IOC** | Indian Ocean Commission |
| **IOR-ARC** | Indian Ocean Rim Association for Regional Co-operation |
| **IPR** | Independent Review Panel |

| | |
|---|---|
| **ISO** | International Standards Organization |
| **ICT** | Information and communications technology |
| **ILO** | International Labour Organisation |
| **IPP** | Independent power provider |
| **ITD** | International Trade Division |
| **LEMS** | Leasing for Equipment Modernisation Schemes |
| **MBEC** | Ministry of Business, Enterprise, and Cooperatives |
| **MBGS** | Mauritius Business Growth Scheme |
| **MCCI** | Mauritius Chamber of Commerce and Industry |
| **MDG** | Millennium Development Goal |
| **MEDIA** | Mauritius Export Development Investment Authority *(no longer operational)* |
| **MEHR** | *Ministry of Education and Human Resources* |
| **MEPU** | *Ministry of Energy and Public Utilities* |
| **MEXA** | Mauritius Export Association |
| **MFA** | Multi-Fibre Agreement |
| **MID** | Maurice Île Durable Fund |
| **MITD** | Mauritius Institute of Training and Development |
| **MHL** | *Ministry of Housing and Lands* |
| **MICT** | *Ministry of Information and Communication Technology* |
| **MOBAA** | Mauritius Offshore Business Activities Authority *(no longer operational)* |
| **MoFARIIT** | *Ministry of Foreign Affairs, Regional Integration and International Trade* |
| **MOFED** | *Ministry of Finance and Economic Development* |
| **MOU** | Memorandum of Understanding |
| **MUR** | Mauritian Rupee |
| **MQA** | Mauritius Qualifications Authority |
| **NHRDP** | National Human Resource Development Plan |
| **NPCC** | National Productivity and Competitiveness Council |
| **NICTSP** | National ICT Strategic Plan |
| **NQF** | National Qualifications Framework |
| **PPA** | Power purchase agreement |
| **PPO** | Procurement Policy Office |
| **PPP** | Public-private partnership |
| **PV** | Photo-voltaic |
| **ROSC** | Report on Observation of Standards and Codes |
| **RWG** | Restructuring Working Group |
| **SADC** | Southern African Development Community |
| **SBM** | State Bank of Mauritius |
| **SIDS** | Small Island Developing States |
| **SME** | Small and medium-size enterprise |

| | |
|---|---|
| **SMEDA** | Small and Medium Enterprises Development Authority |
| **SOE** | State-owned enterprise |
| **STC** | State Trading Corporation |
| **TPU** | Trade Policy Unit |
| **TRS** | Time Release Study |
| **TVET** | Technical education and vocational training IWC Independent World Commission |
| **UNCTAD** | United Nations Conference on Trade and Development |
| **URA** | Utility Regulatory Agency |
| **VAT** | Value-added tax |
| **WCO** | World Customs Organisation |
| **WMA** | Wastewater Management Authority |
| **WRU** | Water Resources Unit |
| **WTO** | World Trade Organisation |
| **ZEP** | Zone d'Éducation Prioritaire |

# Executive summary

**Government policy in Mauritius is firmly centred onpromoting foreign and domestic investment.** Once a mono-crop economy reliant on sugar, Mauritius is today an upper-middle income country with a diversified production base. In recent years, the government has been especially intent on attracting FDI from emerging economies. Mauritius has built a sound network of Investment Promotion and Protection Agreements, notably with other African countries. Its network of Double Taxation Treaties, political stability, robust banking system, pro-business environment, and good infrastructure, further add to the comparative advantage of Mauritius as an investment hub for FDI into Africa.

**The government strongly supports private sector development** and has introduced supportive legislation and policies. Notable reforms include: strengthening legal provisions for investor protection; opening most economic sectors to foreign ownership; establishing the Mauritius Board of Investment (BOI); providing predictability and certainty to foreign investors; and embarking on bold economic reforms aimed at global competitiveness – notably, opening up the economy, improving the investment climate, attracting foreign talent and introducing structural reforms to support sustainable growth.

**However, structural challenges have come to the fore in recent years.** Systemic constraints to investment include small market size, geographical isolation, and high labour costs, which have contributed to some deterioration in export competitiveness. More fundamentally, the skill base is not tailored to the requirements of sectors promoted by government. There is also reluctance among domestic businesses to venture beyond the "established" sectors of sugar, tourism, financial services and real estate. Private sector investment in infrastructure could notably be further encouraged. For instance, no independent pricing and regulation mechanisms exist for water and energy – thus limiting market access and predictability for private investors. The labour market mismatch and weak growth of domestic private investment pose long-term development risks, but the government is taking encouraging steps towards addressing these shortcomings.

**To date, investment policy has not been fully leveraged to tackle the above challenges.** Remaining incentive schemes risk biasing investment towards real estate and property development, while detracting it away from other sectors – such as agriculture, financial services or tourism – where avenues for employment creation, value-addition, and trade linkages might be greater. More generally, while the investment regime is sound, it is spread over numerous laws and regulations and is not backed by a national investment strategy aligned with long-term infrastructure and human resource development plans. Likewise, there is no self-standing trade strategy to address supply-side impediments to export competitiveness and product upgrading. Aligning investment and trade objectives, and formalising co-operation among implementing bodies, would help coherently address investment and trade bottlenecks.

# Key policy recommendations

## Clarify the legal framework for investment

- Consider putting together an Investor's Guide or a Compendium of rules, grouping all relevant legal instruments for investment in Mauritius. This should also group and streamline all sector restrictions on FDI within a regularly updated negative list.
- Consider creating a single regulatory authority with enforcement powers, in charge of all Intellectual Property Rights issues. This will necessitate realigning institutional arrangements to meet the operational functions required for this sensitive sector, as well as further capacity-building efforts.
- Uphold efforts to promote arbitration infrastructure within the Mauritian jurisdiction, in order to better position Mauritius as a regional arbitration centre. Review the existing model Bilateral Investment Treaty so as to better reflect innovative practices and consider setting up an Investor-State dispute avoidance mechanism which would provide alerts for detection of investment disputes at an early stage.
- Elaborate a consolidated investment strategy, which would: define strategic and time-bound investment objectives; ensure better coherence with other national strategies (on fiscal policy, trade, human resources, infrastructure, etc.); and facilitate alignment of the overall policy framework with these investment objectives.
- Establish a mechanism for regularly assessing the effectiveness of investment incentives and free enterprise zones. Systematic evaluation of incentives should be consolidated within the Tax Authority and Ministry of Finance and Economic Development, and should cover not only fiscal sustainability and investment volume, but also factors such as employment creation, business linkages, value-addition and technology transfer.
- Consider targeted supply-side policies and activities for increasing SME capacity to latch onto public procurement opportunities as well as new growth poles – such as vocational training that could be directed at specific sectors of competitiveness.

## Improve supply-side enablers for investment: Human resource development (HRD) and trade

- Review trade strategies in view of making sectors more competitive and attractive for private investors. Foreign trade must be put in perspective with investment and broader supply-side strategies, so as to address structural bottlenecks. An integrated strategy should consider the potential of Mauritius Freeport and of Export-Oriented Enterprises in positioning Mauritius as a trade and investment destination.
- Review the role of the Agricultural Marketing Board and State Trading Corporation in fixing prices and regulating trade, to ensure that these activities fulfil the intended socio-economic objectives and that market distortions and fiscal costs are minimised. Export and import controls should likewise be frequently reviewed – especially if these increase input prices and uncertainty for investors.
- Build on sectoral "skills gap" surveys in order to better align career guidance with labour demand. Such surveys should be regularly conducted and should inform the forthcoming National Training Strategy in view of a more sectoral approach to human resource development, geared towards available business linkage opportunities.

## Create a level playing field in infrastructure markets

- Further promote the work of the Office of Public Sector Governance in ensuring that state-owned enterprises become more cost-effective and outcome-orientated, and comply with corporate governance standards. Alongside, continue strengthening the role of the Procurement Policy Office and Independent Review Panel in overseeing public procurement.
- Accelerate steps towards establishing an independent regulatory agency for the electricity and water sectors, as provided for in the Utility Regulatory Authority Act 2005.
- Enhance the advisory powers of the Competition Commission of Mauritius and facilitate its collaboration with infrastructure sector regulators.
- Revise the coherence of the legal framework for Public-private Partnerships (PPPs), notably by: clarifying responsibilities among relevant bodies; strengthening the pipeline of PPP projects in strategic sectors; and updating the 2006 PPP Manual.

*Chapter 1*

# Overview of investment policy context and challenges in Mauritius

*Mauritius has experienced strong growth and development over many years, but more recently exports have lost in competitiveness, terms of trade have declined, and productivity and private investment (especially domestic) have barely increased for over a decade. Such problems have structural causes, and dedicated efforts aimed at enhancing the position of Mauritian industries in international supply chains are required. In this regard, this chapter investigates the existent framework for investment promotion and for protection of investor rights, and explores investment and growth trends over the last two decades. Despite a positive picture overall, Mauritius must contend with a slight decline in private investment, stagnation of gross fixed capital formation, and insufficient prioritisation of investment inflows into strategic economic sectors. Key policy challenges faced by Mauritius in attracting investment across all economic sectors are identified, followed by associated policy options in the areas of investment policy, investment promotion, infrastructure development and competition policy, trade policy, and human resource development.*

## 1.1. Growth and competitiveness context

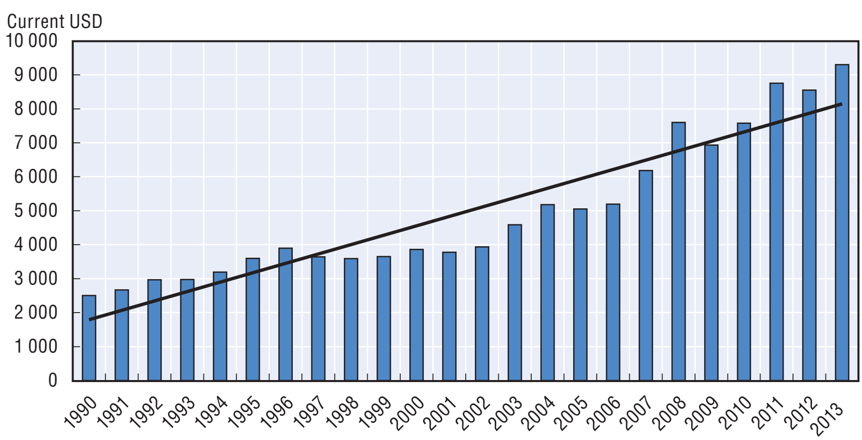
### *Post-independence economic development and diversification strategies*

At independence in 1968, the **sugar industry** was responsible for one third of Mauritian GDP, employed more than 30% of the workforce, and generated 90% of export earnings. Trade preferences – under the Lomé Convention and then under the Cotonou Agreement, as well as the Africa Growth and Opportunity Act (AGOA) – have allowed government to continue nurturing the cane industry despite the emergence of other key export sectors since. Indeed, the Sugar Protocol of the Lomé Convention had granted Mauritius an export quota of about 500 000 tonnes per year since 1975 (the largest share of all nineteen Convention signatories); moreover Mauritius secured a guaranteed price for these exports, which in 1991 was for instance nearly twice the world market price. Sugarcane has been used for production not only of sugar but also of bagasse, a sugarcane by-product which provided 30% of the island's energy in 1996 and roughly 22% today. The commodity boom in the early 1970s also provided Mauritius with high revenues on its sugar exports, and supplied the start-up capital needed for growth of the manufacturing sector. In 2005, sugarcane was still harvested on 68 351 hectares, representing about 70% of the arable land in Mauritius. By 2013, this had dropped to 53 871 hectares harvested (yielding 3 815 782 tonnes of cane and 404 713 tonnes of sugar produced for the year), distantly followed by food crops (covering 8 189 hectares in 2013, including backyard production) and tea (672 hectares under plantation).

As pre-independence attempts to diversify the economy through strengthening the domestic market met with limited success (import-substitution industrialisation was particularly constrained by the limited market size and resulted in slow growth as well as unemployment rates of 15-20% throughout the 1960s), government turned to **promoting export industries** since independence. This strategic juncture is marked by the **Export Processing Zone (EPZ) Act** of 1970. The EPZ scheme, discontinued since 2006, enabled textile and clothing to become the second pillar of the economy. Trade preferences that continued since further supported robust growth of the sector. Throughout the 1980s and 1990s, this advantageous situation was reinforced by the Multi-Fibre Agreement (MFA), which limited the ability of other actors in the textile industry – especially India and China – to compete with Mauritian production in its main export markets. These favourable trade conditions also attracted foreign investments, particularly from Hong Kong which sought to tap into Mauritius's privileged access to the EU market. The overall business environment – including the powers of investment and business-related institutions, the state of existing infrastructure, and human resource development – was improved to support increased investment in manufacturing.

During this period, unemployment was brought down from 20% to less than 4% while the economy showed impressive growth in both absolute and per capita terms: the Mauritian economy grew by 4.5% per annum on average over the four decades since its independence, and per capita income was multiplied over fifteen-fold (Figure 1.1), reaching USD 9 302 at market prices by the first quarter of 2013). Nonetheless, government remained aware of the risk of excessive reliance on trade preferences for sugar and textiles, its two major exports, and of the need to invest in new growth areas. The **Mauritius Freeport** was in line with the government's aim to broaden the island's economic horizon.

Figure 1.1. **GDP per capita (at current prices), 1990-2013 (2013 estimated)**




*Source:* World DataBank, 2012 (figures from 2012 and 2013 obtained from *Statistics Mauritius*, 2013 figure estimated as of Q1-2013).

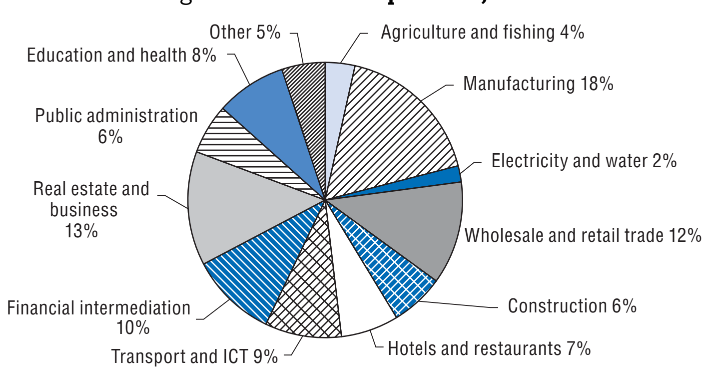
Established in 1992, Mauritius Freeport is a commercial free zone which offers world-class facilities and logistics services for dry warehousing, cold rooms, processing activities, office space, and the like. Ranked by among the "Top 50 Best Free Zones" in the Global Free Zones of the future 2012/13 *Report of FDI Magazine*, and recognised as the oldest free-port of the region, the Mauritius Freeport has played a pivotal role in positioning the country as a leading regional trading, logistics and distribution hub. To further strengthen its competitive position as a regional platform, the Mauritius Freeport is now open for companies to carry out manufacturing activities with the main objective to export to Africa.

As a member state of the COMESA and SADC regional blocs, Mauritius moreover offers preferential access duty and quota free access for goods originating from regional markets. This represents a combined GDP of USD 842 billion with over 655 million consumers, an import potential of USD 243 billion and an export potential of USD 278 billion.

Under its diversification strategy, Mauritius has also developed **tourism and the financial sector as principal pillars of the economy**. Government policies have targeted the high-end of the tourism industry and service of Air Mauritius was upgraded in the aim of improving the island's connectivity. The contribution of tourism to GDP has grown substantially, and the sector has become a major foreign exchange earner and an important source of employment. Tourism has also had large multiplier effects on the construction and real-estate sectors. Meanwhile, in 1992, Mauritius also entered the international financial market as a **regional Global Business financial centre**, with the establishment of the **Mauritian Offshore Business Activities Authority** (MOBAA, replaced since 2001 by the **Financial Services Commission** under the Financial Services Development Act). The Global Business financial sector grew at an average of over 8% per annum throughout the 1990s, contributing about 10% to GDP by 2000. Concluding a number of strategic Double Taxation Avoidance Agreements (DTAAs) and corporate tax system simplification have contributed to increasing the attractiveness of Mauritius as a low-tax gateway for channelling investments to third destinations, including India and South Africa (see outward FDI data in Section 1.3).

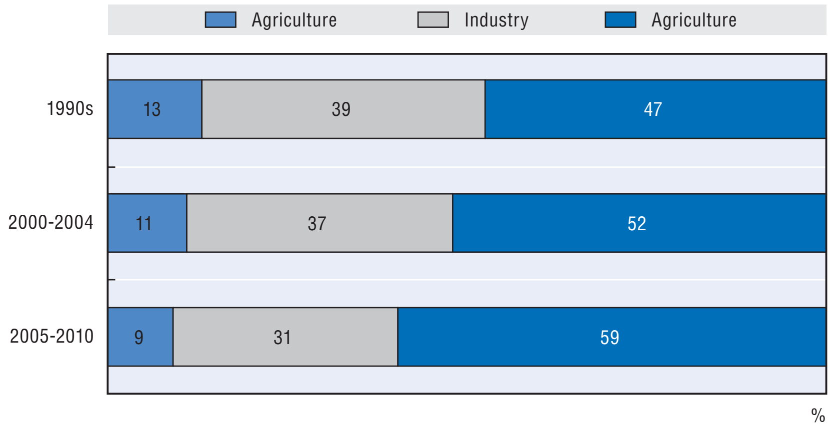
Figures 1.2 and 1.3 illustrate the resulting **modification in the structural composition of the Mauritian economy**, in terms both of employment by sector (where services have considerably increased *vis-à-vis* both agriculture and industry since the 1990s), and of industry growth rates. Mauritius is now far from a mono-crop economy reliant on sugar: while the share of sugar in total

Figure 1.2. **GDP composition, 2012**




*Source: Statistics Mauritius*, 2012.

Figure 1.3. **Employment by sector (% of total employment)**




*Source:* *Statistics Mauritius*, "Labour force, Employment and Unemployment", 2012.

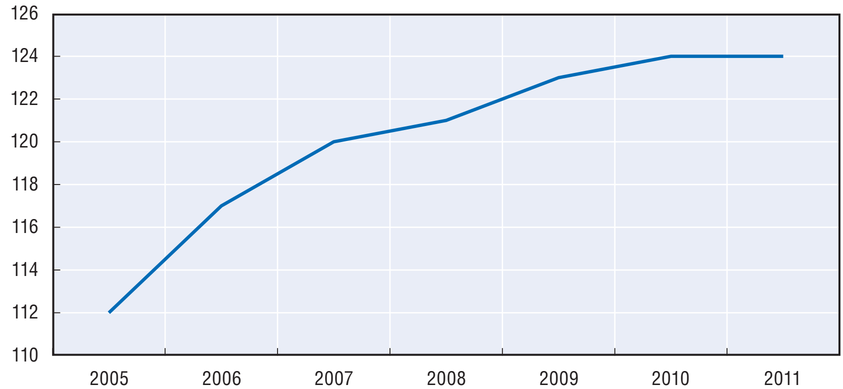
production stood at about 25% of GDP in the 1970s, it had already fallen to 3.5% by 2003, and the sector experienced negative growth of 7% in 2012. Mauritius is today an upper-middle income country with an economy based on textile manufacturing, financial services, fisheries, tourism and ICT (Figure 1.2).

### *Erosion of competitiveness in traditional export sectors*

Despite foresighted efforts to diversify its exports, **Mauritius' economy has however suffered since the turn of the millennium**. Its labour cost advantages have been rapidly eroded – especially with the entry of China, India and other competitor countries on the EU and US textile markets as the MFA and its quotas were dismantled. Due in particular to the emergence of other economies as major exporters, the rank of Mauritius in world merchandise exports deteriorated by 12 positions (from 112th to 124th of 181 economies) over 2005-11, according to the WTO (Figure 1.4). A one-point recovery (to 125th position) was nonetheless recorded in 2012. Nevertheless, the share of Mauritian exports marketed in high-income economies has decreased from a high of 95.5% in 1990 to 79.2% in 2011 (Figure 1.5).

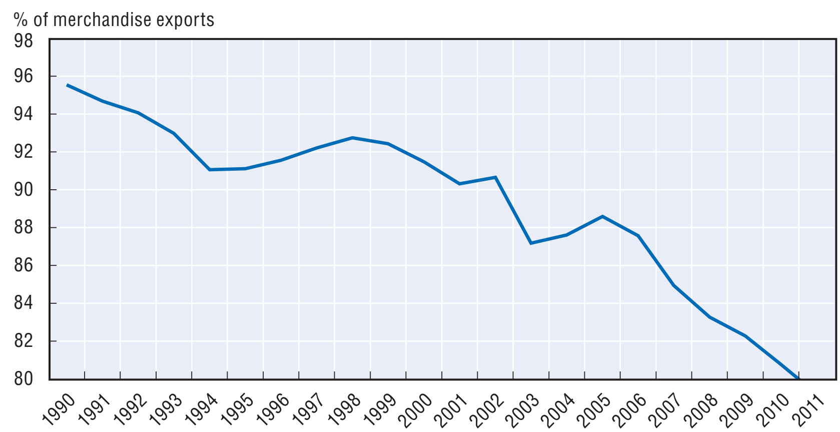
Replacement of the Lomé Convention with the Cotonou Agreement and more recently the interim Economic Partnership Agreement (EPA) with the EU has therefore not sufficed to maintain Mauritius's market shares in these high-income markets, largely due to a lack of competitiveness *vis-à-vis* Asian exports. Indeed productivity and value-addition have not recorded substantial improvements in Mauritius – as Figure 1.6 indicates, **industry value-added as a per cent of GDP** has almost continuously declined since 1990. In 2011, the majority of value-addition was derived from the services sector (where value-added reached 67% of GDP), distantly followed by manufacturing (19%),

Figure 1.4. **Mauritius rank in world trade, merchandise exports, 2005-11**




*Source:* *WTO Trade Profiles*, 2006, 2007, 2008, 2009, 2010, 2011 and 2012.

Figure 1.5. **Share of total merchandise exports marketed to high-income economies, 1990-2011**

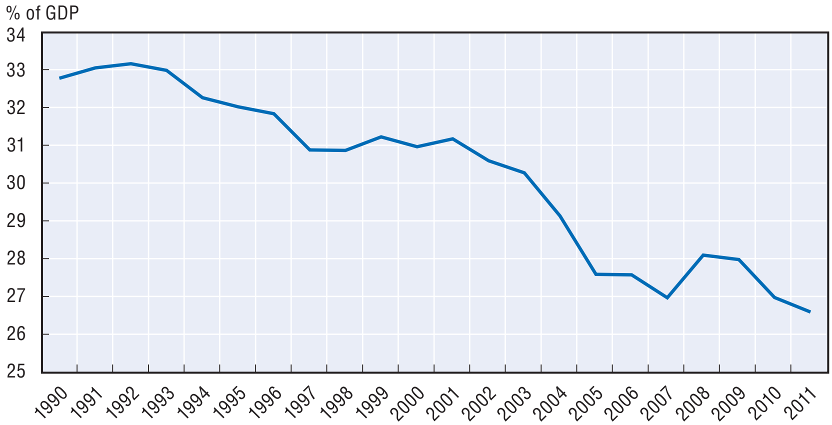



*Source:* *World DataBank*, 2012.

non-manufacturing industry (10%), and agriculture (4% of GDP). In the manufacturing sector, labour productivity thus increased by only about 60% over 2000-12 while employee compensation more than doubled.

Unsurprisingly, this decline in export competitiveness is reflected in a deterioration of the **external balance** over the past two decades: from a record surplus of 6% of GDP in 2001, the current-account has been in increasing deficit between 2004 and 2011 (when the deficit reached 12.6% of GDP). This contrasts with the majority of African countries, which have known balance of payments surpluses since 2004-05.

Figure 1.6. **Industry value-added as % of GDP, 1990-2011**



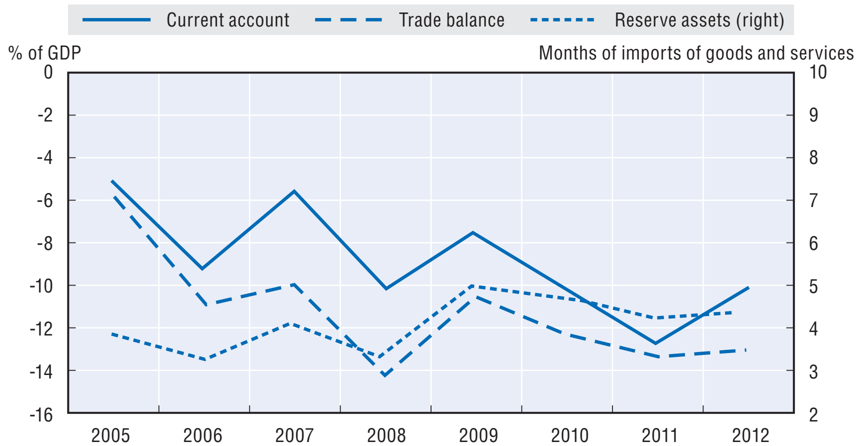

*Source:* *World DataBank*, 2012.

Nevertheless, in recent months an increasing number of sectors have been showing **resilience to the economic downturn**. Following several years of decline, the textiles sector displayed positive export growth in 2012. Business activities, transport, food manufacturing, banking and insurance, and tourism have also maintained consistent growth since 2010. Total tourism receipts in fact reached MUR 44 378 million (USD 1 420 million) in 2012, a 3.9% increase since 2011. This is in particular thanks to demand from the South African market, to which textile exports grew by 35% in 2012 alone, and where Mauritius' market share on manufactured garments has risen from 1% in 2005 to 12% in 2012. In turn, improvements in banking regulation (Mauritian banks are largely profitable and the governance of almost all banks exceeds Basel II and III requirements) have been paying off in terms of financial sector growth.

As a result of these dynamics, exports picked up by 5% in 2012, and the current account deficit has narrowed slightly (to 10% of GDP – Figure 1.7). Total exports for the period January to October 2013 recorded a 13.5% increase over the corresponding 2012 period, and exports of Export Oriented Enterprises (EOEs) for the first nine months of 2013 amounted to 35 billion Rupees (USD 1.15 billion), a 5% increase compared to the previous. *Statistics Mauritius* reports a trade deficit of 53 290 million Rupees (USD 1.7 billion) for the first three quarters of 2013, 8.6% lower than for 2012. The IMF expects further narrowing of the current account deficit (to 7% of GDP by 2018) if Mauritius follows through with fiscal consolidation and planned sectoral reforms for greater competitiveness.

External trade is of crucial importance to the Mauritian economy: the average ratio of trade in goods and services for 2009-11 to GDP was 112%. To a far

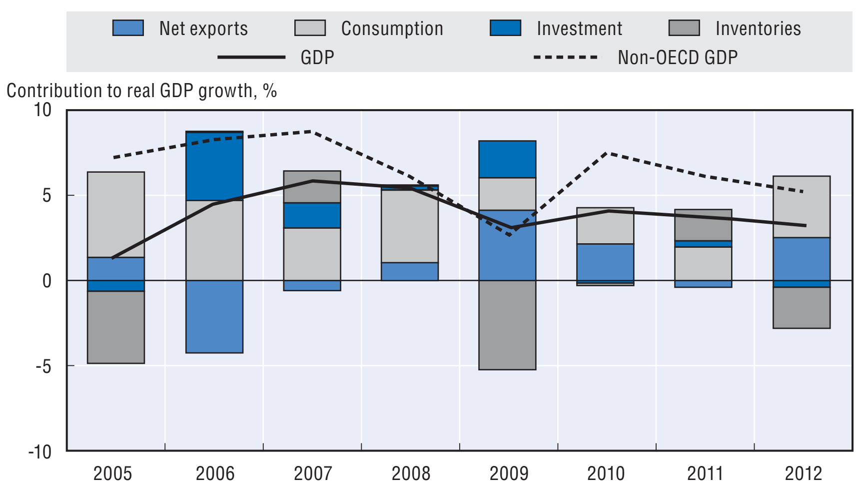
Figure 1.7. **External Balance for the Mauritian economy, 2005-12**




*Source: IMF Country Report*, April 2013.

greater extent than investment inflows, domestic consumption and exports have driven **GDP growth** in recent years (especially in 2010-12, Figure 1.8).

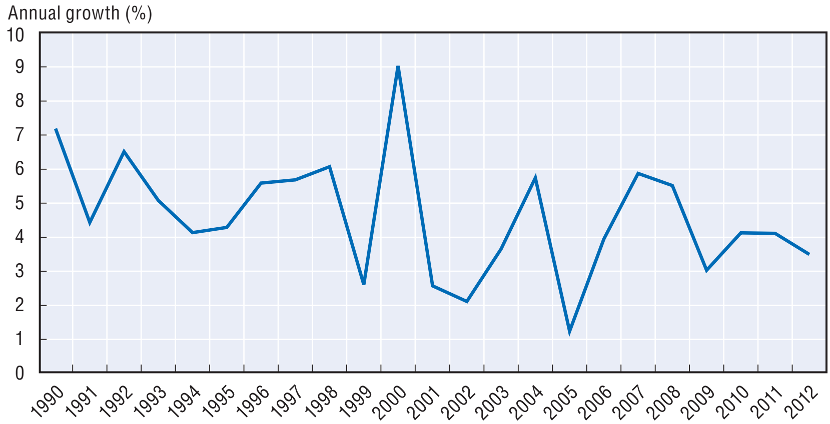
Figure 1.8. **Drivers of real GDP growth, 2005-12**




*Source: IMF Country Report*, April 2013.

Consequently, the deterioration of external trade caused by the 2008 financial crisis and more recently by the Euro-zone crisis considerably cut back GDP growth rates: following a peak at 9% in 2000, annual growth has varied mostly between 3 and just under 6%, dropping to 3-4% since 2009 (Figure 1.9). Overall growth (3.4% for 2012 and 3.75% forecast for 2013) has been kept from

Figure 1.9. **Annual GDP growth, 1990-June 2012**




*Source:* *World DataBank*, 2012.

dropping further by the boosting effects of new industries – especially financial services and ICT. These sectors have also safeguarded the island's rank in global exports of commercial services, which improved from 89th to 82nd of 181 economies over 2005-12.

Mauritius is fully aware of the urgency of a well-formulated growth and competitiveness strategy, which will diversify both export sectors and markets. It is notably aiming to reduce its dependence on demand from France and the United Kingdom as its main markets: 95% of sugar industry earnings and 72% of tourists to Mauritius were from European markets in 2010. As part of the national Resilience Programme (2012-15), Mauritius is therefore **gearing its target export markets towards emerging countries** in Asia, the Middle East and especially Africa. The 2012 Budget Speech plans for "more focused and more carefully thought-out promotion campaigns in India, China, and Africa", and the 2013 Budget introduces an "Africa Strategy", which aims to attract an increasing number of African investors, professionals and tourists to the island. By 2011 16.8% of total merchandise exports from Mauritius already went towards markets in Sub-Saharan Africa, up from only 7.5% in 2000.

As announced in the 2013 Budget, Mauritius is formulating a joint "trade and investment strategy for Africa" which will notably explore opportunities for better positioning the country's **financial services sector** *vis-à-vis* the rest of the continent. The Commonwealth Secretariat will assist Mauritius in: refocusing the country's trade and investment towards Africa; assessing the competitiveness of the Mauritius International Financial Centre (MIFC), in view of developing a marketing plan for the financial sector; and proposing the development of a "global Africa hub" in Mauritius. Meanwhile, expansion of the **tourism industry** will particularly target Chinese and Russian markets; and since 2013 Mauritius has begun establishing a textile corridor with India and South Africa.

The government of Mauritius has recognised that current competitiveness risks derive not only from global economic contractions in EU markets, but also from a weak economic and productive structure – and therefore that basing the island's trade and growth model on trade preferences and on diversifying export markets alone cannot be sustainable. Rather, beyond demand-side strategies the government is increasingly emphasising **supply-side policies for improving productivity and competitiveness**. Mauritius will need to upgrade both its domestic and export industries, and also to encourage a more risk-taking and innovative stance among domestic private entrepreneurs, so as to better address international competition.

These elements are recognised to some extent in the Economic Restructuring and Competitiveness Programme (ERCP, launched in 2010 and currently replaced by the **Restructuring Working Group**, RWG). The latter promotes a restructuring plan based on SME support, market diversification (especially towards emerging market economies), improvement of products, efficiency, and productivity. This long-term stance in policy planning has since been further reflected in the **Economic and Social Transformation Plan** (ESTP), currently under development to guide transformation of the productive structure of Mauritius over the next ten years. Such an approach can enhance macroeconomic stability – indeed the credit rating of Mauritian sovereign debt has been upgraded from Baa2 to Baa1 by Moody's Investors Service in 2012.

The importance of supply-side determinants of growth and competitiveness is also fully acknowledged in the context of **international trade negotiations**: the WTO notes that the Mauritian stance in these negotiations places priority on addressing the **supply-side constraints** of developing economies in order to improve competitiveness and upgrade their standards and technical regulations – and therefore considers trade preferences as a temporary arrangement, which should progressively be replaced by trade-related solutions. Likewise and within the context of the Aid for Trade initiative of the Doha Development Agenda, the Mauritian government is advocating a wider interpretation of the term "trade-related capacity-building": it argues that this should be interpreted as "building capacity to produce and trade", rather than being limited to training and information dissemination alone.

In addition, any improvements in competitiveness and productivity will be linked not only to external trade policies, but also to policies supporting **internal trade and the domestic factor markets**: in the face of increasing competitive pressures – especially from Asian production – Mauritius essentially has the choice between a policy framework based on import tariffs or local content requirements for labour and other factor inputs, and a more competitive regime for stimulating trade linkages within the domestic economy. To date, the latter approach has prevailed; for example the large-scale customs tariff reforms that began in the 1990's and that were accelerated with the 2005 Budget have not been reversed despite the contextual and structural constraints since faced by the Mauritian economy. Rather, government has continued to ensure that all trade decisions related to meeting both its regional and WTO commitments are transposed in domestic legislation. It is also increasingly seeking to enhance the quality of local factor markets by improving the domestic human resource and infrastructure base (as addressed in Chapters 4 and 5).

## 1.2. Investment policy context

### *Investment and business environment improvements*

Government policy in Mauritius is firmly centred on **promoting foreign and domestic investment**. For the Mauritius Board of Investment, "the growth equation is simple: no investment, no growth". There is strong recognition of the continuing importance of both domestic and foreign direct investment (FDI) as: generators of employment and income; vehicles for technology transfer; and means for higher economic growth. In recent years, government has been especially intent on **attracting FDI from emerging economies**. Throughout the liberalisation process, government has co-operated closely with the private sector, emphasising the importance of private-sector-led growth and introducing supportive legislations and policies. Multiple reforms have been undertaken in this perspective, including:

- strengthening provisions for investor protection – the 2012-13 World Economic Forum's Global Competitiveness Report gives Mauritius a score of 7.7 out of 10 on the **strength of investor protection**, which places the island at the 13th position out of 144 economies covered;
- opening most economic sectors to **foreign ownership** – with some exceptions, listed in Section 1.4.1;
- enactment of the **Investment Promotion Act 2000**, which established the Board of Investment; and
- enactment of the **Business Facilitation (Miscellaneous Provisions) Act 2006 (BFA)** – this marks the start of a new approach to attracting investment inflows in Mauritius, by privileging simplification of business procedures and of the fiscal system.

As concerns incentives for investors, over the 2000's and in line with the rationalising approach of the above measures, Mauritius has gradually moved away from an investment regime based on numerous and overlapping incentives towards one based on a simplified low-tax regime. The BFA facilitated and simplified business procedures, and removed investment incentives (with the exception of the Freeport Scheme and the Integrated Resort Scheme, and the subsequent creation of the Real Estate Scheme). In parallel with the amendment of the investment incentives regime, the tax system was flattened and a single taxation rate of 15% was adopted for corporate and personal tax, in order to create a level playing field for everyone in the country and improve tax administration. In recent years this rationalisation strategy has been particularly spearheaded by the Ministry of Finance and Economic Development (MOFED) as regards simplification of the tax framework, for instance with the recent reduction of registration duty (from 13.2% to 5%), and abolition of the Capital Gains Tax among others.

The regime for **business licensing and acquisition of property** by foreigners was also streamlined since the enactment of the BFA. The trade license was removed and replaced by a single trade fee, and separate permits were merged (leading to the Occupation Permit and the Building and Use Permit, discussed in Chapter 3). Since July 2013, the Registrar of Companies has begun acting as a single point of payment for trade fees, and makes the following online services available: incorporation of companies, company search, and payment of annual fees. Moreover, the Companies Act created a unified core legal regime for all companies set up in Mauritius. Foreign companies, which are incorporated outside of Mauritius, are also allowed to conduct business in the country. Direct ownership by foreigners of shares of Mauritian companies nonetheless requires an authorisation from the Prime Minister.

In order to derive the maximum benefits from these investment facilitation reforms, over the last decade Mauritius has built a sound network of **Investment Protection and Promotion Agreements** (IPPAs), notably with other African countries. Coupled with its network of Double Taxation Treaties, it reinforces the country as a major investment hub for FDI into Africa. Many investors channel their investments into Asia and Africa via Mauritius, as the country offers offshore jurisdictions' traditional advantages, such as favourable tax policies, combined with the benefit of its BITs, such as core protection standards and access to Investor-State dispute settlement systems. The BIT programme and the prospect to engage further into treaty negotiations is part of this strategy to establish Mauritius as a launch-pad for investment. So far, Mauritius has signed 39 BITs, out of which 16 are still pending ratification. Once entered into force, they will play a crucial role to strengthen Mauritius unique position as a gateway to investment in Africa.

**The Mauritian business environment has visibly improved** as a result of these many reforms, as measured by the World Bank Doing Business rankings: from 49th place in the 2007 *Doing Business Report*, Mauritius reached the 27th place in 2008 and the 20th out of 189 economies in 2014. The 2013-14 World Economic Forum's Global Competitiveness Report also reflects the effects of this simplification approach; over 2013, Mauritius moved up by nine notches (from 54th to 45th out of 148 economies, the best ranking in Africa) in terms of overall competitiveness. It is moreover ranked far ahead (9th overall for both 2012 and 2013) in terms of effect and extent of taxation.

### *Public-private platforms to accelerate business facilitation reforms*

In order to further this progress, a **Joint Public Private Sector Business Facilitation Task Force** was set up and operates since October 2011. It is co-chaired by the Financial Secretary of MOFED and the Director of the Joint Economic Council (JEC, representative of private sector). The function of this Task Force has been to identify bottlenecks and review systems, procedures and legislations in order to continuously improve the business environment in Mauritius. The Task Force has notably contributed towards a system, operational since early 2012, to reduce time for registering property from 15 days to two. More recently this mandate of providing strategic guidance for the removal of red tape and bureaucracy has been shouldered at the highest level of government, within an **Inter-Ministerial Committee (IMC) on business facilitation.** Set up in August 2012, Committee is chaired by the Minister of Tertiary Education, Science, Research and Technology, and also comprises the Ministers of: Housing and Lands; Local Government; Tourism and Leisure; Industry, Commerce and Consumer Protection; and Business, Enterprise and Co-operatives.

## 1.3. Investment trends

### *Foreign and domestic private investment are falling as a share of total investment*

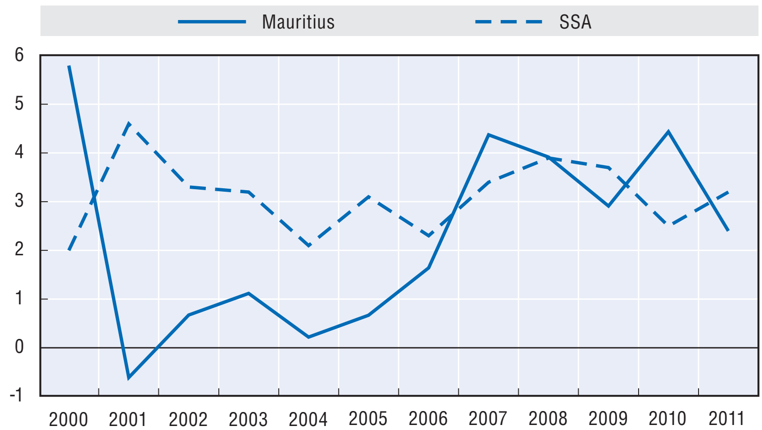
**Net FDI inflows into Mauritius** reached a high of USD 431 million in 2010, followed by USD 273 million in 2011. Cumulatively the island has attracted approximately MUR 70 billion (USD 2.24 billion) in FDI over 2005-13. FDI inflows then witnessed a 20% increase in the first half of 2012, reaching an estimated USD 320 million by the end of the year. Yet **FDI inflows as a share of GDP** have not shown a consistent increase – these reached just 2.4% of GDP in 2011, after a spike to 5.8% in 2000 and a dip into negative figures in 2001 (see Figure 1.10). As such, since 2006 Mauritius has been roughly on par with the Sub-Saharan African average in terms of the share of FDI in GDP.

It should nevertheless be noted that although the absolute levels of FDI in Mauritius remain rather low by international standards, **on a per capita basis** FDI levels far outstrip those of Sub-Saharan Africa (Figure 1.11). Thus, per capita FDI reached USD 212 in Mauritius in 2011, compared to only USD 46 for the sub-continent overall.

### *Gross Fixed Capital Formation (GfCF)*

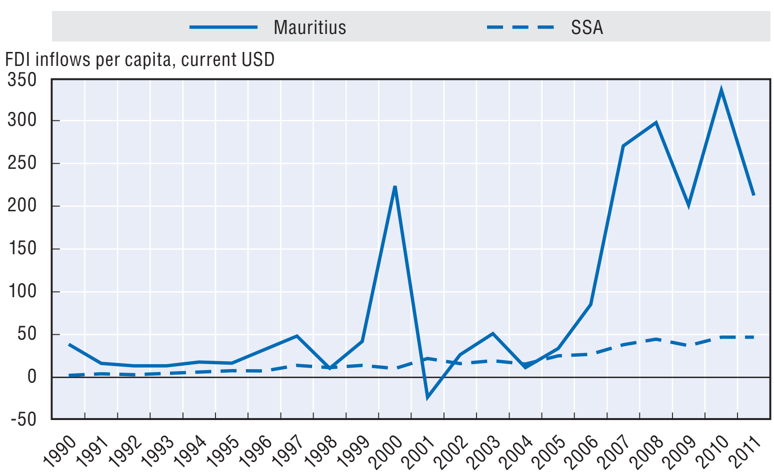
In Mauritius, FDI has trended between 16% and nearly 18% of GFCF since 2007, which compares quite favourably against international standards. However the fact that the FDI/GFCF ratio has barely increased since 2006 is not encouraging. Meanwhile, **GFCF as a percentage of GDP** fell to an all-time low

Figure 1.10. **Net FDI inflows as a per cent of GDP in Mauritius and Sub-Saharan Africa, 2000-11**




*Source:* *World DataBank*, 2012.

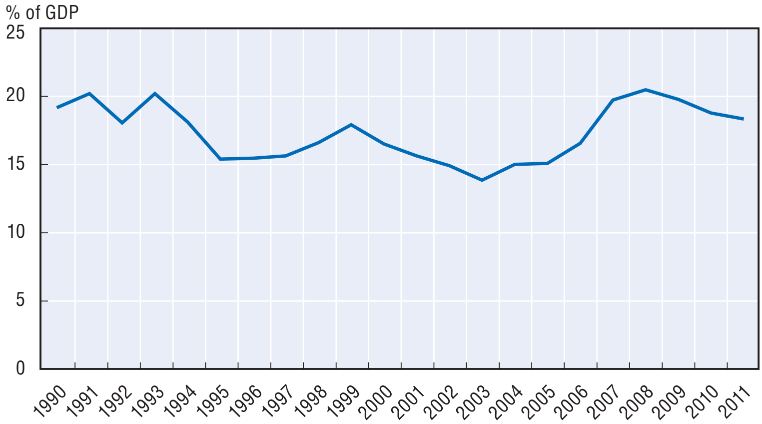
Figure 1.11. **Net FDI inflows per capita in Mauritius and Sub-Saharan Africa, 2000-11**




*Source:* *World DataBank*, 2012.

(just below 14%) in 2003, but then increased sharply to peak of above 20% in 2008 before the financial and economic crises took their toll (Figure 1.12). This ratio signals how much value-added in total domestic production has been invested rather than consumed (notably in the form of land improvements, machinery and equipment purchases, and physical infrastructure). In 2012, the leading sectors as a share of total GFCF were real estate (32%), hotels and restaurants (10%), wholesale and retail trade (10%), and electricity and water

Figure 1.12. **GFCF as a share of GDP, 1990-2011**




*Source:* *World Bank Stats*, 2012.

(8%), whereas other sectors – arguably the most labour-intensive and "productive" ones, including manufacturing, construction and agriculture – were far behind. The GFCF/GDP ratio thus remains slightly below the standard not only for African countries (about 21-22%) but also for industrialised countries (where marginal returns to additional capital are in any case low, due to large volumes of pre-existing capital stock – about 23-25%). The ratio falls especially short of fast-growing countries in East Asia, which have reached rates as high as 40%. Such stagnation can seriously limit the room for progress in terms of economic competitiveness; it also reveals that private investment in Mauritius may not be functioning effectively as a relay of public investments (see further below).

Therefore, there is a **strategically important role for FDI to play in increasing the GFCF/GDP ratio** in the short-term: FDI is indeed the component of GFCF in which government has the most room for manœuvre, since domestic investment is generally limited by more structural factors and is often less directly responsive to investment promotion activities. In the longer-term better **stimulating domestic private investment** will in turn require clear supply-side policies for competitiveness and value-addition in strategic economic sectors. This necessity has been noted by Mauritian entrepreneurs themselves – in its memo for the 2013 budget, the Mauritius Chamber of Commerce and Industry (MCCI) for instance proposes that the BOI complement its role of promoting the Mauritian destination to foreign investors, with increased and proportionate efforts to stimulate domestic investment. This will nonetheless also require a more responsive and dynamic attitude from the domestic private sector itself, which has to date responded only weakly to BOI efforts to stimulate niche economic sectors (as for instance exemplified by the stalling of government efforts to promote the land-based oceanic industry in the past).

### *Inward and outward FDI by sector and alignment with investment strategies*

Investment promotion and industry support efforts in Mauritius are targeted at several specific sectors, as outlined in the latest Budget Speech. **Sector-specific consolidation plans** include: consolidating and increasing productivity in sugar; boosting non-sugar agriculture with a view to increasing food security; ushering in agri-technology and biofuel; passing enabling legislation to widen the spectrum of financial vehicles under MOFED's jurisdiction, and to facilitate investment in the financial sector (including in insurance); increasing the attractiveness, visibility and accessibility of the tourism sector; and pushing emerging and high value-addition industries, such as knowledge services, commercial marinas and film. BOI has additionally identified five promising sectors (all at high levels of industrial sophistication) for focus in coming years: agribusiness and biotechnology, hi-tech manufacturing, medical tourism, seafood/aquaculture, and knowledge-based industries.

**These sectoral priorities are not very visibly reflected in FDI inflows by sector** – perhaps because these sectors are primarily identified for industry support, with investment attractiveness being a secondary consideration in many cases. Short-term imperatives of employment creation and domestic economic resilience sometimes dominate at the expense of strategic investment objectives, as is indeed visible in national development strategy documents (see Section 1.4). Over 2006-12, FDI inflows have been strongest – but irregular – in financial services and real estate (Figure 1.13). Tourism has suffered some decline in investor interest since 2007, but new FDI sectors such

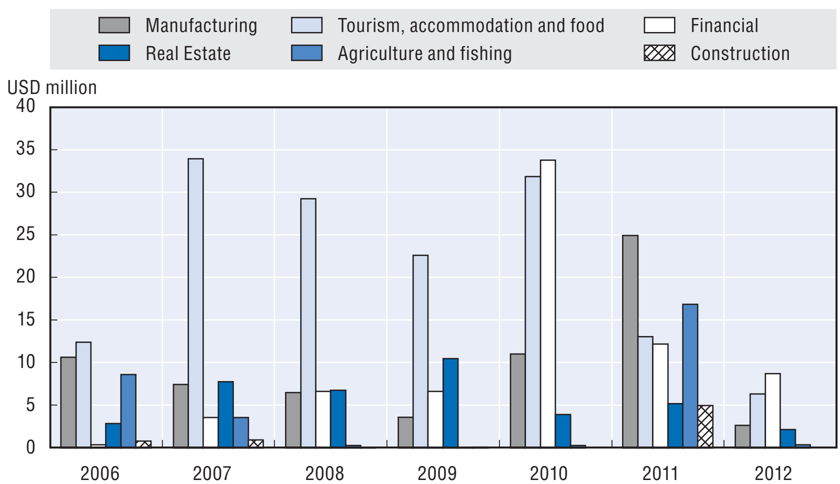
Figure 1.13. **Inward FDI by sector, 2006-March 2012**


*Source: Bank of Mauritius*, Q1-2012.

as healthcare and construction have emerged in 2010. By 2011, the leading sectors in terms of share of FDI were: real estate (48%, through the IRS, RES and IHS incentive schemes); construction (22%); and financial services (17%).

Trends for sector composition of **outward FDI flows** (OFDI) have likewise lacked specific direction: while tourism has received the largest share of outward investment since 2006, health and financial services spiked very visibly in 2010 but have fallen off since (Figure 1.14). The absolute volumes of OFDI (USD 89 million in 2011) are still much lower than for inward investment (USD 273 million). These distributions further highlight the importance of increasing the strategic weight of long-term inwards and outwards FDI objectives in Mauritius's overall development and competitiveness strategy.

Figure 1.14. **Outward FDI by sector, 2006-March 2012**




*Source:* *Bank of Mauritius*, Q12012, 1.4.

Comparing the volumes of FDI, ODFI and domestic private investment to public-sector investment reveals some stagnation in the relative share of overall private investment in total investment. While total investments in Mauritius grew by 2.1% in 2011 for instance, this trend was mostly upheld by a 9.9% real increase in public investment. By contrast, private investment grew by only 4.0% in 2011 (a decline of 0.6% in real terms). **Private-sector investment as a proportion of GDP** therefore declined to 17.9% in 2011 from 18.8% in 2010, and private investment fell from 75.5% to 73.6% of total investment over 2010-11. An important challenge for Mauritius in the current financial context, and which is fully recognised by government, will therefore be to strongly stimulate both domestic and foreign private sector investment so as to consolidate private investment inflows and ensure that these are not crowded out by public-sector investments.

## 1.4. Main policy challenges and opportunities

The policy context and investment trends described above depict a strong and maintained momentum for simplifying business establishment and rationalising investment incentives and tax frameworks so as to better stimulate foreign and domestic investment in the economy. However, this overview also suggests that although Mauritius has undertaken multiple reforms – spearheaded by BOI and MOFED – to improve the investment environment, there remains scope for enhancing **competitiveness and growth prospects**. As previously mentioned (and as current trends in foreign and domestic private investment, GFCF, export market shares, and value-addition suggest), **Mauritius appears to be at a crossroads**: current and future policy choices may well determine whether the island's long-term dynamic of economic progress will be sustained. While many policy documents point to the ongoing economic downturn as a principal cause behind the current economic standstill, such a picture is overly focused on demand-side elements and might overlook more **structural issues hampering Mauritius supply-side capacity.**

As reflected in national resilience and economic restructuring programmes, government justly perceives that the current challenges in terms of deteriorating export competitiveness, insufficient employment generation, and weak growth of domestic private (and especially SME) investment, pose considerable long-term development risks. To date however, **investment policy has not been fully leveraged as a tool for tackling these structural challenges** – as is demonstrated by an insufficiently unified investment regime, and by the absence of a coherent and overarching national investment strategy which is aligned with long-term infrastructure and human resource development plans. In order for the investment policy framework to efficiently tackle these supply-side challenges, it is essential to address remaining bottlenecks to enhancing both foreign and domestic investment. This section highlights several of the most apparent policy issues as well as promising "niche" opportunities for further competitiveness; and Section 1.5 makes a few recommendations for each of the relevant policy areas.

### *1.4.1. Investment policy*

Investment policy relates to the laws, regulations and practices which directly enable or discourage investment and that enhance the public benefit from investment. It covers, *inter alia*, policies for transparent and non-discriminatory treatment of investors, expropriation and compensation laws and dispute settlement practices. Transparency, property protection and non-discrimination are core investment policy principles that underpin efforts to create a quality investment environment for all. In general the Mauritian laws and regulations dealing with investments and investors provide for a predictable and transparent regime, and Mauritius is upheld in the international community as a model of compliance with investment policy international best practices. The recommendations that follow from the observations below are detailed in Section 1.5.1 and relate to: the overall legal framework; the ownership registration system; the implementation of Intellectual Property Rights; foreign investors' access to dispute settlement means; and the protection and promotion provisions contained in investment agreements.

### *Openness to foreign investment*

Over the last decade, the Government of Mauritius has made continuous efforts to establish a conducive and transparent legal and regulatory framework for foreign and domestic investment. Mauritius' investment climate is generally transparent and open, although several restrictions apply in various sectors to both domestic and foreign investors. As regard foreign investors, a few sectors contain some restrictions, which are not unusual, including in OECD countries. In particular:

- In **television broadcasting**, foreign capital in a company must be less than 20%.
- Non-citizens are not allowed to hold more than 15% of shares in listed **sugar companies**.
- A certificate of authorisation from the Prime Minister's Office is required for non-citizens to acquire **real estate property** in Mauritius, or to acquire shares in a company that owns immoveable property in Mauritius. Such purchases must be financed with funds transferred from abroad through the banking system.
- Approvals from the Prime Minister and the Minister of Home Affairs are also required for investments in **banks** that hold immovable property in Mauritius.
- In the tourism sector, several limitations apply to foreign investors in addition to general requirements for both domestic and foreign investors. Foreign investment is restricted to a maximum equity participation of 30% in diving centres. Tourist guide services, as well as activities requiring low level of investment, are reserved to Mauritians only.
- In the legal services sector, foreign law firm can provide legal services only in relation to non-judicial proceedings (i.e. arbitration, mediation, conciliation and other forms of consensual dispute resolution), or in relation to foreign law or international law. A liberalisation of the legal services markets is however currently envisaged by the government.

- In the fisheries sector, licenses to operate a Mauritian fishing vessel can only be granted to Mauritian nationals or to bodies incorporated in Mauritius and having a place of business in Mauritius.
- Several threshold criteria apply in the tourism sector.

### *Protection of immovable property rights and access to land*

Investors' rights are soundly protected both by domestic law and through international commitments. For example, investors benefit from a remarkably **strong constitutional safeguard against expropriation**, whose scope stretches from nationalisations to regulatory takings. In line with international best practices, the government reserves the right to take private property for public purposes, under the condition of a timely, adequate and effective compensation. The constitutional provision on expropriation contains very clear and detailed rules on what constitutes a taking for public purposes, thus providing for a predictable and transparent regime for expropriation. Independent channels are in place to review or contest expropriation decisions. Moreover, foreign investors benefit from an additional layer of protection provided via the expropriation provisions contained in all Bilateral Investment Treaties ratified by Mauritius. The **regulatory and implementing infrastructure** has been continuously modernised in order to better meet the business community's needs.

Nevertheless, and although Mauritius has a strong legal system of **immovable property protection**, the land administration system appears to be outdated and prone to errors and delays in processing and frequent fraudulent practices in land have been reported. This has prompted the government to undertake a modernisation reform of the registration of property ownership system as well as of the cadastral system, which is currently being implemented. The computerisation of the system is expected to speed up the registration process and to better protect users of the land transaction system. Moreover under the Non-Citizens (Property Restriction) Act, foreigners do not have the same rights as nationals to access to land ownership. Although land access has been considerably facilitated for foreigners participating in the IRS/RES/IHS schemes, in other sectors the purchase, acquisition or holding of property by foreigners remains subject to a rather complex regime. Authorisation of the Prime Minister's Office is required for non-citizens to acquire real estate property, and these purchases must go through the local banking system. Specific measures regarding foreign ownership rights do not appear to be in the land reform pipeline yet. The authorisation system is crediting with providing a great degree of clarity and transparency, and foreigners acquiring real estate property for business purposes benefit from a set of clear guidelines.

### *Protection of intellectual property rights (IPR)*

Mauritius has a long-standing tradition of **legal protection of IPR**. Over the last decade, the government has updated its IPR framework to meet its commitments under the WTO TRIPs Agreement and to enable the country to become a leading knowledge-based economy (a strategic objective reiterated in several government budgets). Mauritius is a party to the main international conventions for the protection of IPR and patents, copyrights and trademarks are well protected through domestic laws. The main piece of legislation relating to IPR is the Patents, Industrial Designs and Trademarks (PIDT) Act 2002, which was enacted in order to curb the production of counterfeit products. The government of Mauritius recognised the need to revise the existing laws to better address the needs of all stakeholders and, in particular, to promote innovations. To achieve this goal, Mauritius is currently working towards the adoption of an Intellectual Property Development Plan, in co-operation with WIPO. This Plan should also help address inconsistencies in the institutional framework, which is composed of several, sometimes overlapping bodies. For example, both the Industrial Property Office and the Anti-Piracy Unit have investigative powers in cases of breaches of copyrights and trademarks. The current enforcement mechanisms are dispersed among various institutions. Such fragmentation of competences does not help in the fight against counterfeit products.

### *Development of international arbitration*

Mauritius judiciary is independent and has been modernised, over the last years, in order to better manage the courts caseload. **Access to dispute settlement** by investors has been facilitated with the establishment of a Commercial Division of the Supreme Court. This is aimed to reduce long delays for dispute resolution, although the positive impact of the modernisation process in terms of accessibility and time required for dispute resolution is still to be confirmed. In parallel with the improvement of the judicial system, Mauritius appears to have given due consideration to the fact that the business community generally prefers to settle its disputes through **Alternative Dispute Resolution** means. The government has spent some efforts on promoting mediation and arbitration and has integrated such dispute resolution means into its legal framework. In order to facilitate commercial and investment arbitration proceedings, an International Arbitration Act was passed in 2008. It follows the amended UNCITRAL Model Law on International Commercial Arbitration, and is therefore in line with global best practices. The Mauritian legislature made the policy choice to establish two distinct regimes for domestic and international arbitration. While the former is regulated by the Code de Procédure Civile, the enactment of the International Arbitration Act (with a specific focus on investment arbitration) reflects the political will to promote the country as a preferred jurisdiction for the conduct of international arbitration.

Mauritius therefore has some characteristics that should allow the country to become the attractive jurisdiction for international arbitrations that it ambitions to be. It is ideally located to become a centre of reference for disputes involving African, Asian, and European businesses, and it is endowed with an extensive network of Investment Treaties and Double Taxation Treaties. A centre for arbitration was recently established, in co-operation with the London Court of International Arbitration, to conduct international commercial and investment disputes in Mauritius. Yet, there are currently very few international arbitration proceedings being conducted in Mauritius. The government therefore **needs to continue its efforts to position the country as an important regional centre for arbitration.**

### *1.4.2. Investment promotion and facilitation*

Mauritius is a regional front-runner on investment promotion and facilitation, in part because of the co-ordination role of the Investment Promotion Agency, the BOI. BOI has been repeatedly ranked by international institutions among the best IPAs. Especially since 2006, BOI and the MOFED have also led **dynamic reforms aimed at simplifying frameworks for corporate taxation and investment incentives**, paving the way for further liberalisation of the Mauritian economy. The abolition of most investment incentive schemes since 2006 additionally improves fiscal sustainability and allows BOI to focus its role on ameliorating the business climate. Alongside the BOI and MOFED, the Ministry of Foreign Affairs, Regional Integration and International Trade also plays a role in investment promotion and facilitation – notably through its diplomatic representations overseas, positioning it as the first interface of government with foreign investors. In close collaboration with MOFED and the BOI, the Ministry thus helps sensitise potential investors on the benefits of investing in Mauritius.

Both within Mauritius and overseas, **communication with investors** is regular and transparent: BOI organises regular workshops and discussion sessions with investors to collect information so as to propose to government facilitation measures, and MCCI and JEC also provide venues for voicing private sector concerns. As for **encouraging business linkages**, the Industrial and SME Strategic Plan 2010-13 commits – among other priorities – to: improving access to markets by better connecting suppliers to buyers, better branding, and new marketing infrastructure; improving the technology base for SMEs, including through an industrial linkage programme; and developing new growth poles for smaller enterprises.

Nonetheless, observed declines in investor confidence over 2010-12, the drop in foreign and especially domestic private investment, and the challenges faced by many export industries suggest that **additional promotion and facilitation efforts remain necessary in order to shore up investment**. While an encouraging regain in investor confidence has been noted in early 2013 (the latest MCCI Business Economic Indicator shows that confidence has risen from 85.6 points in the last quarter of 2012 to 91.6 points for the first quarter of 2013), sustained interventions are necessary to uphold this momentum in the longer-term. Investment promotion should be aligned with external and internal trade strategies, and should address the needs of domestic as well as foreign investors. Observations below and subsequent recommendations (in Section 1.5.2) concern: developing an overarching investment strategy; SME promotion; evaluation of investment incentives; and further facilitating investment linkages in the economy.

### *Weak coherence of investment policy with the national development and competitiveness strategy*

The national development strategy in Mauritius is currently encapsulated within the **National Resilience Plan**, which is designed for 2012-15 and covers enterprises of all sizes, but with a special focus on SMEs, infrastructure development and job creation. Meanwhile the ECRP – and the Restructuring Working Group (RWG) which follows it, designed to build greater resilience to economic crises in the economy – place special emphasis on restructuring both the tourism and sugar sectors to make them more export-competitive and to attract greater foreign and domestic investment. These documents, together with the **Government Programme 2012-15** for Moving the Nation Forward, place dominant emphasis on wide-ranging social objectives such as employment, education and health. Aside from attempting to steer FDI promotion efforts towards sectors with high wage potential, however, they **do not establish any dedicated and strategic long-term goals for investment itself**.

In a similar manner, while the 2013 and 2014 Budgets dedicate sections to "improving the business environment", neither document places emphasis on investment strategy more broadly. The main 2013 Budget measures announced aim only to: facilitate residence by foreign nationals in Mauritius; amend the visa regime; and increase the business facilitation efforts undertaken via BOI, the Registrar of Companies, and e-payment systems. Likewise, the 2014 measures pertain mostly to fast-tracking business establishment for important projects and reducing delays in the processing of Building and Land Use Permits. Few wider-ranging reforms are announced, nor inscribed within a long-term investment vision.

The alignment between broad investment and export competitiveness objectives is therefore only implicit. No specific provisions are made to increase coherence between trade and investment policy, and to ensure that both of these are consistent in their approach to priority economic sectors. The policy momentum for regulatory rationalisation that emerged in 2006 does not yet appear to have been translated at the sector level or in terms of specific investment goals. **Mauritius indeed lacks an overarching investment strategy** in which strategic and time-bound investment objectives are defined. The forthcoming ESTP, under elaboration since 2013, could be a useful platform for this, as detailed below. This overarching strategy would need to recognise not only the systemic constraints to investment in Mauritius (small size and geographical isolation, high labour costs, incentives biased towards traditional sectors, etc.) but also the impediments posed by a skill base which is not tailored to suit the requirements of the investment sectors promoted by government (see below), and a prevailing reluctance among the domestic business community to take on opportunities beyond the "established" sectors of sugar, tourism, financial services and real estate.

### *Need for better evaluation of investment incentives*

**Abolition of the 20 investment schemes** existing prior to 2006 with the BFA is a valuable step which privileges simplification of doing business instead of providing investors with fiscal benefits. The major poles of the business reform programme instead focus on fiscal consolidation, labour market reforms and business registration. This is a very good step towards reducing reliance on incentives. However there does not appear to be an **explicit mechanism for regular cost-benefit analysis of the incentive schemes** that do remain operational (including Mauritius Freeport, export-oriented enterprises, the Global Business sector, and also some *ad hoc* incentives for small-scale firms operating in specific labour-intensive industries). For example, the Integrated Resort Scheme seems to have suffered since the financial crisis, with many luxury development projects remaining vacant today. The IRS, IHS and RES schemes also create a heavy bias towards investments in real estate and property development which could be a cause for concern: such investments considerably depend on availability of land – a particularly scarce factor in the island – and may also expose Mauritius to speculative risks. This, again, demonstrates the need to regulate access to land independently from the origin of the investor.

Moreover, while some of these leading sectors may be labour-intensive (such as construction), they do not open as many avenues for value-addition or international trade linkages as other labour-based industries (such as tourism and agriculture, which attracted only 6% and 2% of FDI inflows respectively in 2011). As the sectors targeted by the IRS, HIS and RES present a particularly favourable risk-return payoff, they may additionally have weakened or distorted FDI incentives towards other sectors. The current situation may make re-evaluation of the structure of the maintained incentive schemes timely.

### *Addressing the needs of small enterprises*

**Small enterprises continue to face operational challenges**. The very low level of domestic private investment in Mauritius, of which SMEs are often the primary source, is a sign of this challenge. Indeed, the stagnation of GFCF (even in years where FDI has grown) suggests that domestic private investment faces especially severe structural problems. The Restructuring Working Group (RWG) has placed a strong emphasis on reducing import dependence, promoting SME development, and facilitating technology transfer; and the 2012 and 2013 government budgets devote considerable attention to SME needs, both in terms of financial support and of capacity-building. However, beyond addressing challenges of creditworthiness, a strategy to increase SME awareness of investment opportunities, and to **channel their investments towards sectors of priority** (as determined by national investment, infrastructure and competitiveness strategies) might be needed. SME access to market intelligence, especially for export,oriented production, could for instance be improved.

### *1.4.3. Infrastructure investment, SOE governance and competition*

Mauritius is recognised as a best-performer in terms of infrastructure development on the African continent. In recent years government has been especially intent on developing the ICT/BPO sector, given its considerable potential for investment and higher quality FDI, and for creating higher paid jobs for youths. Government recognises in the Government Programme 2012-15 it will be necessary to aggressively seek **FDI inflows and private participation** to finance its ambitious plans for infrastructure investment while maintaining control of public debt. By 2015, 10% of the financing of major public infrastructure in the Mauritius Public Sector Investment Plan (PSIP) should be through FDI flows.

Nonetheless, as acknowledged by the 2010 strategy for Facing the Eurozone Crisis "there is an acute problem of capacity in the implementation of public infrastructure". As concerns the coverage and capacity of infrastructure networks, remaining infrastructure challenges for Mauritius include: over 80% **external energy reliance**, combined with the recognised need to invest in "green" (rather than "brown") energy infrastructure; increasin**g traffic congestion in** Port Louis, which costs the economy an estimated 1.2% of GDP; a strong need for **water supply investments**, as aged infrastructure affects efficient water availability; and developing the potential of Port Louis as a key **shipping hub**, in the absence of which capacity constraints could limit the island's strategic trade and development objectives (including the potential of Mauritius Freeport as an investment and re-export hub). Several initiatives are already underway to tackle these capacity constraints, such as: the Maurice Île Durable (MID) Initiative for energy management; the introduction of PPP schemes across the road sector over 2012-15; and the expansion and modernisation of the port and the airport with a view to extending their regional span.

More complex and structural challenges for infrastructure development in Mauritius are posed by the **dominant position of state-owned enterprises** (SOEs) in the utilities sectors (including for electricity, water, waste water, postal services, and television broadcasting). This limits competition and efficient service provision in these sectors, and has a deterrent effect for private investors seeking to engage in infrastructure markets. Moreover, the performance and service delivery of SOEs could be better monitored and enforced: until recently procurement by public entities had been poorly regulated due to the weak clout of the Independent Review Panel (IRP); and while an independent sector regulator operates effectively in the ICT sector, there is no independent mechanism in place for pricing and regulating water and energy markets. Encouragingly the government is taking steps towards addressing both of these regulatory shortcomings as of 2013.

In addition to reviewing the position of SOEs in infrastructure markets, private participation in infrastructure could also be enhanced by **improving the regulatory and institutional framework for public procurement and PPPs**. While the latest Government Programme and Public Sector Investment Plan (PSIP) both highlight the crucial necessity of increasing private investment in infrastructure, the enabling regulatory framework indeed remains incomplete and insufficiently enforced. There are a lack of clarity and blurring of responsibilities in existing procurement and PPP legislation, and a confusing multiplicity of responsible bodies for PPP. Moreover, the PPP legal framework is somewhat disjointed, with some inconsistencies and overlaps among the PPP Act, legislation on public financial management, and public procurement laws. This has been reportedly blocking progress on major PPP projects.

Suggested policy recommendations to address these infrastructure investment challenges, as detailed in Section 1.5.3, include: strengthening corporate governance of SOEs; creating a more level playing field between private and public infrastructure providers (including the implications on competition, pricing and regulation of infrastructure sectors); and enhancing the legal framework for private participation in infrastructure procurement.

### *1.4.4. Grasping available opportunities for trade*

#### *Need for a more structural approach to export competitiveness*

As recognised by the Government Programme 2012-15, **export-oriented enterprises are facing sharp challenges**. Despite slightly improved results in tourism and textile exports in 2012, Mauritian exports are at constant risk of losing competitiveness *vis-à-vis* other countries participating in global markets. As a result, it will remain challenging to narrow the deficit in the external balance and to improve the terms of trade for Mauritian exports. Internal trade is also facing challenges, as Mauritius has not sufficiently positioned its domestic production in international supply chains. The Government Programme commits to rebalancing exports and capturing new opportunities in existing and emerging markets. Yet, this demand-side approach will provide mostly short-term solutions if **more structural strategies** are not developed alongside. It will also be important for such strategies to be coherently aligned with targets in other policy areas, such as infrastructure, human resource development and investment.

This weakness is pointed out by the Mauritius Chamber of Commerce and Industry (MCCI), which deplores the "lack of a strong dedicated organisation that would **specialise in the promotion of export of services in a strategic manner**"; as a result most efforts on this front so far have instead "been performed in a fragmented approach". Currently only the Industry Division of the Ministry of Industry, Commerce and Consumer Protection has developed a Market Penetration and Development Plan – with an emphasis on consolidating traditional markets, diversifying into new and emerging markets (including SADC and COMESA regions), and providing structured support to develop export readiness of enterprises. While these are important features of trade facilitation, such a time-bound plan cannot substitute for a **long-term strategy built on market diversification, product upgrading, and addressing structural and supply-side impediments to export competitiveness**. Given the importance that Mauritius places on ensuring the sourcing of raw materials from its trade and investment partners, this approach should notably consider the island's factor input challenges and also incorporate a comprehensive import strategy.

### *Institutional co-ordination on the design of national trade and investment strategies*

International trade policy is overseen by the **International Trade Division** (ITD) of the Ministry of Foreign Affairs, Regional Integration and International Trade (MoFARIIT). Within this Division, since 1996 the Trade Policy Unit (TPU) has ensured that obligations under international and regional trade agreements are integrated into domestic laws and regulations, and also has primary responsibility for the formulation, review, and assessment of trade policies. MoFARIIT has instituted several levels of inter-Ministerial and inter-institutional co-ordination on all aspects of trade at technician, high official and ministerial levels. The regular exercise of WTO Trade Policy Review, carried out on three occasions by MoFARIIT to date, serves as an important platform for consultation, co-ordination and comprehensive review of trade strategy and economic policies. As the last Review was concluded in 2008, and given that several new trade policies have been concluded over the past five years, it may now be desirable to embark on a new Trade Policy Review.

Moreover, two trade Committees (the Trade Co-ordination Committee and the Joint Public-Private Sector Committee) involve the private sector, BOI and other government agencies in trade policy formulation. This can provide a promising standing mechanism for **addressing bottlenecks to both investment and trade simultaneously**, especially if further efforts are made to enhance long-term co-operation and regular communication among these bodies. This would help ensure full policy coherence between trade and investment strategies in the country – including at industry and sector-specific level. Reinforcing such institutional co-operation will notably be necessary for the elaboration of complementary trade and investment strategies at the national level (as recommended in Section 1.5.4). In addition concrete implementation and follow-up on trade policy reform would be facilitated by tempering the current demarcation between agencies charged with trade policy formulation and implementation. Fusing these functions rather than addressing them in parallel could help streamline trade and contribute to the expansion of trade both regionally and in Mauritius's traditional markets.

### *Role of the State Trading Corporation and Agricultural Marketing Board*

Through the **State Trading Corporation** (STC, set up in 1982 as the trading arm of the Government of Mauritius for the importation of certain essential commodities), government controls the import of rice, wheat flour, petroleum products, Liquefied Petroleum Gas, and – until July 2011 – cement. Prices of these products are thus fixed by the STC. Meanwhile the importation or exportation of a specific set of agricultural products requires clearance from the **Agricultural Marketing Board** (AMB). However, it is unclear whether the end-goals of food and energy security, as well as domestic competitiveness and environmental protection, are truly met by the actions of the STC and AMB (the STC's re-exports activity in the rice sector being a case in point – see Chapter 5). Moreover, the maintenance of import and export controls entails high fiscal costs: the IMF projects that untargeted subsidies on LPG, rice and flour cost 0.4% of GDP in 2013. Furthermore, the price-setting functions of these bodies may be obsolete, and often cause market inefficiencies rather than ensuring affordability for domestic consumers: since 2010, the STC's automatic pricing mechanism for petroleum has for instance resulted in high price volatility and in poorly understood price movements, in part because fuel retail prices were adjusted only in response to significant changes in international prices – thus generating delays in adjustment. As noted by MCCI, with the Competition Commission and the Price Observatory being fully operational in Mauritius, the need for maintaining any form of price control through these bodies thus needs to be re-assessed.

#### *1.4.5. Human resource development*

**Unemployment** remains a challenge in Mauritius, and lack of skilled human resources is often considered a constraint to the country's competitiveness. This is despite a high Net Enrolment Rate in primary education (97%), gender parity (at 1.0), and generalised literacy (literacy for young adults between 15 and 24 years of age reaches 94.5%). Major problems include finding and keeping employment. Although the youth unemployment rate fell marginally over 2010-11, by 2013 it had risen to 37% of overall national unemployment (estimated at 8.3% for 2013). Female unemployment is disproportionately higher amongst the unemployed youth (at 26%, compared to 19.2% for young men). There is a considerable mismatch between labour supply and demand, with insufficient workers both at high-skill and low-skill levels: around 40% of unemployed do not have a School Certificate, and yet there is also reluctance to train for the most labour-intensive jobs (which therefore also experience shortages, and where most workers are sourced from abroad). The government acknowledges this as a central problem, given its repercussions both on unemployment and on technological progress (the ability of companies to absorb new technology being linked to a firm's skill composition). As a result employment is one of the priorities of the Government Programme for 2012-15, including through the launch of a three-year Youth Employment Programme, and the launch of a series of sector "skills gap surveys" to inform the development of a National Training Strategy.

## 1.5. Policy options to consider

### *1.5.1. Investment policy*

#### *Clarify the national framework for investor protection*

Despite laudable efforts of modernisation and streamlining, the national regulatory framework is still dispersed over various legal and regulatory instruments. Mauritius has a number of laws and regulations related to the investment environment, but no all-encompassing Investment Law or Code. Moreover, all sectoral limitations and regulations are administered by distinct public agencies and institutions in charge of providing guidelines and *ex post* control of compliance.

For clarification and coherence purposes, **all relevant regulations and laws could be gathered in a single instrument** that would include core investment protection and promotion provisions, and provide the institutional framework for investment regulation and promotion. This document should also include a negative list of sectors in which foreign investments remain restricted. Such a process of clarification would provide a valuable opportunity to further engage all relevant stakeholders in an effort of co-ordination, consultation and consensus. A consolidated investment policy framework could feature in a practical *Guide for Investors* and would provide greater predictability and transparency to investors.

Alternatively, the authorities could consider the **option of putting together an Investment Code**. In addition to promotion and facilitation elements, a Code could also gather core principles of investor protection, such as the guarantee of free transfer of funds, the Full Protection and Security standard, the Fair and Equitable Treatment, protection against expropriation without fair compensation, foreign investors' land rights, and dispute resolution. Such document could also set out a national treatment standard of protection, with a negative list of exceptions contained in an Annex. Although Mauritius has committed, through non-discriminatory regulations and investment treaties, to the National Treatment and the Most-Favoured-Nation standards with respect to investment, these standards are not clearly provided for, as general principles, in the overarching framework for investment. It could therefore be useful to firmly reaffirm such core protection standards within a general Code. **Such a code would indeed send a strong signal *vis-à-vis* partner countries to firmly reaffirm core protection standards, including the principle of non-discrimination.** This would not involve enacting new laws that would add to the already existing legal regime, but rather gathering all existing protection provisions and remaining restrictions within the same document, mainly for clarification and promotional purposes. Mauritius is already considering such possibilities following discussions with the OECD and across government stakeholders, with the possible formulation of a "compendium of investment laws" in the course of 2013.

A third option to consider, when deciding on Mauritius institutional set-up for adjusting foreign investment policy, would be to follow the approach taken by countries such as China and India, which have established **specific guidelines** under which their FDI policy is constantly reviewed. For example, since 2010, India has formulated, on a yearly basis, a consolidated FDI Policy, with the intent of enhancing the transparency, predictability and simplicity of the FDI regime. India's "Consolidated FDI Policy" gathers all information that may be necessary for established as well as prospective investors. The scope of FDI provisions is clearly delineated in a definitional section, followed by a chapter that lists all conditions on FDI (such as entry conditions on investments, specific conditions, entities into which FDI can be made, entry routes for investment, etc.). A subsequent chapter provides for the promotional framework for FDI and the necessary approval procedures. All sector specific conditions on FDI are exhaustively listed in another chapter. Lastly, provisions are made for penalties in case of violation of FDI regulations.

### *Continue streamlining of the land administration system*

The clarification of investor protection safeguards as recommended above could be enhanced by **continued efforts to streamline the land administration system**. Currently, while in most cases access to land for foreigners is subject to specific authorisation from the Prime Minister's Office, approval is not required when property is acquired under a lease agreement not exceeding twenty years, or under the Real Estate Development Scheme to purchase a villa for non-business purposes, or when the investor has obtained the approval of the BOI for business purposes investments. Along these lines, further efforts towards simplification of the approval procedures for non-citizens could be usefully considered. **Government has started undertaking reforms to set up modern and harmonised registration and cadastral systems**, which are also needed to actually measure the extent to which foreign acquisitions take place. Only then may the authorities reconsider the degree of access to land by foreigners. Streamlining the land administration system is also key for allowing the sound management of a scare resource for a small island, notwithstanding the foreign or domestic origin of the investment. It may indeed be more relevant to regulate access to land broadly speaking, taking into account the fragility of Mauritius ecosystem, instead of establishing a restriction based on the origin of the investors.

### *Strengthen the enforcement mechanisms of the regulatory framework for Intellectual Property Rights*

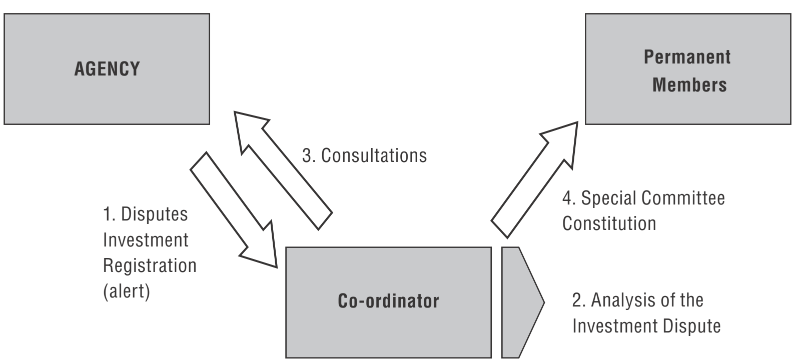
The **creation of a single national regulatory authority with enforcement powers,** in charge of all issues related to IPR would likely increase efficiency and coherence of the national framework for IPR. Institutional arrangements need to be realigned to meet the operational functions required for this sensitive sector. Further efforts in terms of **capacity building** must also be undertaken to strengthen supervising and enforcing functions. **A holistic approach is required across all institutions** involved in the administration of IPR to achieve a streamlined and integrated management system in order to better enforce IPR. The government seems to have been aware of these challenges and is in the process of setting up an empowered Mauritius IP Office in charge of administering all IP-related issues, as well as a supervising institution, the IP Council, expected to ensure co-ordination and synergies among all relevant institutions.

### *Give further momentum to the development of international arbitration*

In order to **better position Mauritius as an important regional centre for arbitration**, government should uphold efforts to promote arbitration infrastructure existing within the Mauritian jurisdiction. This will notably involve carefully considering the arbitration implications of the BITs signed by Mauritius, for which a few recommendations are provided below.

In addition to the provisions of the International Arbitration Act, access to arbitration is also granted to foreign investors through investor-State dispute settlement clauses in Bilateral Investment Treaties. Such clauses have a very liberal approach to arbitration, as they do not require foreign investors to exhaust local remedies before going to international arbitration. In this regard, although it is noted that Mauritius has never been involved in an ICSID case, it could be useful to **set up an investor-State dispute avoidance mechanism**. Such early alert mechanisms for the prevention of disputes are an increasingly common practice, notably in Latin America. For example, relevant public entities in Peru are required to share any information they have on potential emerging investment disputes to a designated Co-ordinator, within the Ministry of Economy and Finance. This early alert mechanism to central authorities, set up in a 2006 Law on the "co-ordination and response system of the State on investment-related disputes", allows for early and co-ordinated action to be taken. By virtue of the law, the co-ordinator is responsible for centralising information on concluded IIAs, in order to keep track of all commitments made by the State, and provides guidelines for the negotiations of dispute settlement processes (see Figure 1.15). Such initiatives are part of a broader effort to optimise the defence of the State in the event of international investment disputes.

Figure 1.15. **Co-ordination and response system of the State on investment-related disputes in Peru**




*Source:* Author calculations.

Mauritius, like most countries, commits itself to international arbitration through bilateral investment treaties, therefore providing a more favourable treatment, in terms of options for dispute resolution, to investors from treaty partner countries. In some countries' treaty practices, such unilateral undertakings are made under national investment legislation, rather than through BITs or investment contracts. This alternative approach means that the consent to arbitration in the event of a dispute is offered to all foreign investors without regard to their nationality. Inserting a provision regarding dispute-settlement into the domestic investment legislation is, however, an onerous commitment that would require a thorough a cost-benefit assessment before being taken. The consequence would be that the State allows all foreign investors to directly go to international arbitration against Mauritius without additional consent required. Mauritius has a more cautious approach when providing its consent to arbitration, which has proved to be as efficient as the potentially more costly option of the unilateral consent given through national legislation.

Whatever the policy option Mauritius may choose, whether it is to provide a clear unilateral offer to arbitrate, or to simply recommend or authorise investor-State arbitration, it is crucial to avoid any ambiguous language on consent to arbitration. Should this not be the case, it would hamper legal predictability and potentially give rise to controversial arbitration awards. For example, Article 22 of Venezuela's Law for the Promotion and Protection of Investments has been interpreted, in some arbitration awards, as providing a unilateral offer to arbitration, while other arbitral panels reached opposite conclusions.

Likewise, the dispute settlement procedures provided for in Investment Agreements might deserve **more detailed guidance for the conduct of the arbitration and on other procedural requirements**. For example, the government is encouraged to clarify how the submission for ISDS will interact with domestic judicial and administrative adjudication procedure, through the **inclusion, for example, of a "fork-in-the-road provision" that requires investors to choose between litigation in domestic courts and international arbitration with the effect that once that choice has been made, it becomes final**. In order to ensure **greater control over potential arbitrations**, Mauritius should also consider whether it wants to exclude procedural matters from the scope of the Most-Favoured-Nation standard. There is indeed no clarification, in its existing BITs, as to whether the MFN provision must apply to procedural matters or merely to substantive rights.

Mauritius might also wish to further promote the **principle of judicial economy**. To this end, it is useful to set up a **mechanism to avoid frivolous claims**, i.e. claims that lack a sound legal basis, to better protect the country against potential abuses of the ISDS system. Another mechanism to foster judicial economy and to avoid inconsistent results is to allow the consolidation of claims having a question of fact or law in common, or arising out of the same circumstances.

### *Expand the network of Bilateral Investment Treaties and update their key content*

In this context, and with the rapid evolution of investment law over recent years, it would be advisable to further **clarify and update the content of BITs core standards of protection** in order to better protect Mauritius' interests, both as a host and a home country. When deciding among various policy options, Mauritius must take into account its peculiar position, compared to other African countries, as it is not only an investment destination.

In this context, Mauritius plans to further clarify **policy directions in a revised Model BIT that would better reflect recent innovative practices and support further coherence among future BITs**. In order to support future treaty drafting, the government should undertake a **stocktaking and analysis of its existing BITs** to highlight potential inconsistencies and ensure that the provisions contained in the Model BIT are better reflected in individual BITs. In this endeavour, Mauritius might wish to refer to international best practices in investment agreements, as well as Model BITs developed in regional contexts, such as the SADC Model BIT Template. Another potential source that could be used for guidance purposes is the handbook prepared by the Secretariat of the Commonwealth, entitled "Integrating Sustainable Development into International Investment Agreements: A guide for Developing Countries", which identifies best practices in existing BITs and provides for innovative sample provisions. It could help Mauritian negotiators to make an informed choice between various policy options. Drawing on such Guides, Mauritius could enhance the coherence among future investment treaties.

Mauritius' investment agreements should better reflect innovative treaty practice, in particular with regard to the **admission of foreign investments**. So far, Mauritius has adopted an admission model, which requires the entry of foreign investments to be made in accordance with the laws and regulations of the host country. As a capital exporter and a platform for trade and investment, Mauritius might want to take into consideration, when negotiating with partner countries that act as capital importers, the liberalisation dimension of recent investment agreements and therefore extend the scope of core standards of protection (such as the Most-Favoured-Nation Treatment) to the pre-establishment phase. A liberalisation clause implies that all barriers to access are removed and that the national laws pertaining to the establishment are in conformity with the treaty provisions. Such liberalisation commitment often comes with a negative list of closed sectors or non-conforming measures. Mauritius treaty practice adopts an all-encompassing, **open-ended definition of investment**. The implicit inclusion of portfolio investment under the umbrella of Mauritian investment treaties might be part of Mauritius' strategy to become a hub for capital flows and therefore to bring under the umbrella of its treaties all types of investments. On the basis of reciprocity, such a broad definition of covered investment also grants re-exported capital a better protection in partner countries' jurisdictions.

Additionally, Mauritius might wish to insert in its investment agreements a provision containing specific and detailed measures aiming at promoting investment flows. In its existing BITs, Mauritius adopts a best-endeavour approach and merely commits to encourage and promote investment. It could be beneficial to go a step further and to specify promotional activities that should be undertaken. For example, a provision requiring the State parties to exchange information on investment opportunities with a view to increasing investment flows could be inserted. Transparency has also a key role in **fostering investment flows**. Mauritius might want to include transparency regulations in its future BITs and impose on both host States and foreign investors an obligation of transparency in the exchange of information and in the process of domestic rulemaking. Finally, Mauritius could consider inserting more provisions safeguarding fundamental values, such as public health, environmental protection and labour standards. The inclusion of such general exceptions ensures that the BIT obligations will not prevent the country from applying its domestic legislation in order to safeguard any of these values.

In light of these observations, Mauritius might wish to reconsider and **regularly update** its current investment agreements through **renegotiations** with partner countries, and in line with the provisions of its Model BIT. So far, Mauritius does not have a programme of periodic review of existing international treaties and commitments. Regular revision of treaties should be the responsibility of a dedicated team, well trained, aware of new legal developments and sensitised to ISDS issues. Mauritius should usefully **keep track of treaty negotiations** to ensure a correct interpretation of the meaning given to the treaty provision at the time of the negotiations.

### *1.5.2. Investment promotion and facilitation*

#### *Elaborate a consolidated investment strategy document for Mauritius*

An **investment strategy document** would need to: define strategic and time-bound investment objectives; ensure better coherence with other national strategy documents (on fiscal policy, trade, human resource development, infrastructure, etc.); and facilitate the alignment of the overall investment policy framework with these investment objectives. This would help boost growth in important industries, as well as improve policy coherence and predictability for investors. Moreover, while different **priority sectors** are outlined in several broad policy documents (like the 2010 report on Facing the Eurozone Crisis, government budgets, or the Government Programme for 2012-15), information on the process for identifying these sectors remains scarce and fragmented across the existing documents. The elaboration of a national investment strategy should be based on broad and comprehensive consultations across government, private sector bodies, and civil society. The ongoing formulation of a ten-year Economic and Social Transformation Plan in Mauritius could be a fitting venue for developing such a strategy, perhaps as one of the ESTP's sub-components.

### *Establish a mechanism for examining the relevance and appropriateness of investment incentives at regular intervals*

The systematic evaluation of investment incentives should cover not only the impact of these schemes on fiscal sustainability and investment flows, but also on socio-economic factors such as employment creation, business linkages, value-addition and technology transfer. These assessments should also consider whether or not the forgone fiscal resources would not be better employed in training, research and development, infrastructure investment, and other efforts that can potentially mitigate some of the structural and supply-side shortfalls that are currently constraining export competitiveness in Mauritius. Incentives should only be maintained as a compensation for proven market imperfections that cannot be otherwise addressed.

This evaluation of incentives should be consolidated within the Tax Authority and MOFED. Consolidating administration of all incentives under a single body can: limit risks of corruption and rent seeking; increase transparency by limiting the discretionary power of policymakers; help to avoid unintended overlap and inconsistencies in incentive policies; and enable policymakers to coherently address problems that may arise with the governance of tax incentives. These assessments should also involve open public consultation so as to accurately include social – and not only financial – costs and benefits in the analysis. Renewal of these studies on a biennial basis could ensure that incentive schemes continue to abide to all requisite principles for effectiveness and fiscal sustainability (see Box 3.1 in Chapter 3).

### *Comprehensively address operational challenges of smaller investors*

The elaboration of an overarching national investment strategy (mentioned above) could be co-ordinated with a **streamlined strategy for SME support** (along the lines of the Industrial and SME Strategic Plan 2010-13, which will need to be revised and renewed post-2013). This could allow to further mainstream SME concerns and develop SME opportunities across all areas of investment policy and export promotion. **Implementation of the Industrial and SME Strategic Plan** should itself be carefully followed up on by the Ministries responsible (the Ministry of Industry, Science and Research, and the Ministry of Business, Enterprise and Cooperatives). It should also be aligned with the work of the relevant agencies and initiatives, such as the Small and

Medium Enterprises Development Authority (SMEDA) and the Mauritius Business Growth Scheme (MBGS).

Implementation and re-prioritisation of the SME-specific facets of the Strategic Plan could be undertaken by the Ministry of Business, Enterprise and Co-operatives. This could be facilitated by **rationalising the three arms of the Ministry** (namely SMEDA, the Cooperatives Division, and the MBGS), under the leadership of a single SME task-force which could consider means of further mainstreaming SME concerns and developing SME opportunities across all areas of investment policy and export promotion – together with representatives from the private sector and exporting businesses (through JEC and MEXA, for example).

In addition, government should actively implement considered efforts to include **SME in procurement contracts**, particularly if these are related to potential export niches; indeed as introduced in the Government Programme 2012-15, Mauritius has begun making modifications to its public procurement framework, so as to provide for a greater number of SMEs in the short list of restricted bidding for procurement. Bidding documents and processes are also being simplified to encourage SMEs to submit bids. For instance, as of 2013, SMEs bidding for contracts of under MUR 5 million (USD 160 000) no longer need to submit Performance Bonds and Advance Payment Guarantees within this process. These important initiatives should again be co-ordinated with awareness-raising among SMEs so as to ensure that the available opportunities are utilised to their best advantage. It is also necessary to ensure that these SME empowerment objectives do not come at the cost of procurement quality; facilitating SME participation in procurement should therefore be accompanied by **targeted supply-side policies for increasing SME capacity to latch onto procurement opportunities as well as new growth poles** – such as vocational training that could be directed at specific sectors of competitiveness.

### *1.5.3. Infrastructure investment, SOE governance and competition*

#### *Corporate governance of SOEs*

Government established a **National Committee of Corporate Governance** (NCCG) in 2001, which set out the National Code of Corporate Governance in 2003. This Code applies to all enterprises, whether private or state-owned. The structured legal framework for corporate governance in Mauritius today also operates through the Companies Act 2001, Financial Reporting Act 2004, the Insurance Act, and the Listing Rules of the Stock Exchange of Mauritius. However although financial reporting has generally improved in quality over 2003-12, Mauritius would benefit from a stronger regulatory regime combined with effective monitoring and enforcement mechanisms. Based on the mixed results of a 2011 ROSC report, the Corporate Governance Code will be revised, notably to make enforcement more adequate.

**SOEs face distinct governance challenges** from the private sector. Mauritius counts around 100 parastatal bodies, which contribute some 13% to GDP. Corporate governance difficulties derive from the fact that the accountability for the performance of SOEs involves a complex chain of agents (management, board, ownership entities, ministries, the government), without clearly and easily identifiable, or remote, principals. The 2010 strategy paper for building resilience in facing the Eurozone crisis highlights the importance for parastatals to "operate on a commercial basis and stop acting as a drain on the budget". As highlighted in a 2009 NCCG survey, SOE compliance with the national Code of Corporate Governance was much lower than by companies from the private sector listed on the stock exchange (at 44%). The **Office of Public Sector Governance** (OPSG, under the Prime Minister's Office) has been making progress on this front since, and has been granted the responsibility to ensure that SOEs become more cost-effective and outcome-orientated. While SOE compliance with the Code of Corporate Governance had risen above 50% by late 2012, poor governance remains a challenge – especially as there are no processes in place to ensure that the state does not interfere in day to day management of SOEs.

**Functional separation of SOEs** can help enhance corporate governance and financial management, by shedding light on the operational segments where losses and profits are made and increasing revenue transparency. Functional separation of integrated utilities thus can allow to better identify the segments which would be best-suited for private sector participation. The scope for unbundling of transmission and distribution facilities in the electricity and water sectors will however be somewhat limited given the small market size of the island.

### *Level the playing field between public and private infrastructure providers*

To encourage private investment in infrastructure, it is indeed necessary to ensure that there is a **level playing field in infrastructure sectors** and that private investors are not disadvantaged with respect to state-owned infrastructure providers. In this context the monitoring role of OPSG should be carefully co-ordinated with other relevant bodies for SOE governance, including the Competition Commission of Mauritius (CCM) and sectoral regulators across infrastructure sectors. As elaborated below, the **independence and legal clout of such bodies** will be necessary to ensure efficient monitoring and enforcement of decisions *vis-à-vis* SOEs.

Mauritius should consider establishing an **independent regulatory agency for the electricity and water sectors**, as provided for in the 2005 Utility

Regulatory Authority Act (for which enactment is still pending). Notwithstanding the eventual setting up of the URA, the Central Electricity Board (CEB, the monopolist for electricity transmission and distribution in Mauritius) would continue to report to the Ministry of Energy and Public Utilities (MEPU) as it operates under its aegis. Although URA establishment was initially intended to take place in the course of 2013 to oversee the electricity as well as water and wastewater sectors, however, as of early 2014 this has not taken place and the measure is not mentioned in the 2014 Budget Speech. More momentum would therefore be needed on this front. Other reforms currently considered for the water sector include setting up a Water Authority (by merging the Central Water Authority, the Wastewater Management Authority and the Irrigation Authority), so as to improve water management and to also conduct regulatory functions. As suggested by MEPU, government should additionally consider renewed attempts for private participation in water provision, with input both from the CCM and from the suggested regulator.

The country could also consider establishing an **independent regulator for transport sector**. As of 2009, the **Mauritius Land Transport Authority** has taken over the activities of the Road Development Authority, the National Transport Authority and the Traffic Management and Road Safety Unit. One of the aims of the 2009-25 Long-Term Energy Strategy is to establish a new Land Transport Authority (or to revise its prerogatives), with the mandate to plan, implement and manage land transport with improved co-ordination and efficiency. Revision of the Authority's mandate could be a good opportunity to consider options for more independent regulation. The Land Transport Authority Bill of 2009 also empowers the Land Transport Authority to set up and manage a General Fund and a Road Decongestion Programme Fund. It should be ensured that these funds function as "second generation road funds", to help manage the financial side of road transport projects (in such arrangements, management is transferred from a ministry to an autonomous road agency in order to improve project management and to ensure that road maintenance funds are appropriately used and budgeted for over the long-term lifetime of road projects).

The establishment of independent regulators for these infrastructure sectors could take possible **guidance from the ICT Authority** (ICTA), which is leading the way for independent regulation in the ICT sector, with the appropriate legal statutory safeguards (through the amended 2011 ICT Act). It would be of equally crucial importance to ensure that the transport and electricity networks are competitive, fluid and responsive to industrial, commercial and other needs of the island.

Alongside these sector regulators, **competition authorities** also play an active role in levelling the playing field for private investment in infrastructure markets. This is especially the case for privatisation processes, including in the upstream and preparation phases. Competition authorities require adequate resources, political support and independence to exercise these functions effectively, and to appropriately co-ordinate their work with that of sector regulators. CCM has effectively concluded MOUs with infrastructure sector regulators as well as relevant ministries (such as MEPU). Of the 21 cases under investigation by CCM since its inception in November 2009, several include parastatals as the main parties.

Nevertheless, the advisory role of the CCM could be strengthened: currently, while CCM can make **recommendations to Government** on the competition effects of policy, CCM is not viewed as competent for deciding how to weigh competition considerations against other effects of suggested policy – such as social or environmental objectives. Thus while CCM has worked on several projects of other regulatory authorities from a competition policy perspective, its role and advice on overall government policy could be enhanced and more systematically sought out. In addition, further collaboration between CCM and sector regulators in infrastructure markets could be facilitated by bolstering the technical capacity of CCM to engage in technical infrastructure **market studies** – particularly in cases of SOEs dominance, and where some form of private participation may be desirable.

### *Enhance the legal framework for private participation in infrastructure procurement*

Government should consider revising the coherence of the **legal framework for PPPs**. Reforms to consider include by establishing an authority responsible for capacity-building, clarifying responsibilities among relevant bodies (including the PPP Unit and PPP Committee), strengthening the pipeline of PPP projects in strategic sectors, and updating the 2006 *Manual for PPP Guidance*. Alongside, government should increase efforts for **infrastructure financing** and explore ways for integrating these provisions into innovative PPP contracts (rather than depending on government funding, or on loans under the Maurice Ile Durable Fund).

Mauritius could also consider strengthening the role of the **Procurement Policy Office** (PPO) in monitoring and oversight of the behaviour of procuring entities as well as of privatised companies (former SOEs). Meanwhile the powers of the **Independent Review Panel** (IRP) for public procurement have already been increased as of 2013: as per the latest amendment to the 2006 Public Procurement Act, the fees submitted for appeals to the IRP have been made non-refundable. This can reduce abusive use of the procurement appeal mechanism by dissatisfied bidders, and help cut down the case backlog faced by the IRP.

### 1.5.4. Trade policy

#### *Review trade strategies in view of greater competitiveness of both internal and external trade*

In addition to diversifying export partners, trade policy should seek to: balance exports with growth of the domestic market; focus on more capital-intensive sectors so as to overcome the erosion of its comparative advantages; and upgrade and facilitate the links of Mauritian industry with international value chains. The step towards a coherent global economic strategy has not yet been taken in Mauritius, and foreign trade must be put in perspective with enabling human resource, infrastructure and investment strategies. Existing platforms for private sector consultation on trade policy – such as JEC, Mauritius Chamber of Commerce and Industry (MCCI), and the Mauritius Export Association (MEXA) – could be useful venues for a consultative and comprehensive review of trade strategy. In addition, given that the last *WTO Trade Policy Review* was concluded in 2008, and as several new trade policies have been concluded over the past five years, Mauritius is considering embarking on a new Review in 2014. This exercise could likewise contribute to developing a more coherent and well-rounded national trade strategy.

The **Government Programme 2012-15** makes several commitments in view of rebalancing exports and capturing new opportunities in existing and emerging markets. These include revamping the Export Promotion Strategy and Plan and developing a new industrial investment promotion strategy. Both of these objectives are particularly crucial and would fill important gaps in the current investment and competitiveness landscape of Mauritius. The forthcoming **Economic and Social Transformation Plan**, which is under elaboration since 2013 in view of addressing competitiveness concerns, could likewise be a useful platform for addressing these shortfalls. The ESTP will notably focus on: streamlining trade regulations; improving vocational and on the job training; raising the efficiency of SOEs; boosting public investment efficiency; and land law reform. It could provide a means of ensuring better coherence between trade and investment objectives and other national strategies (on fiscal policy, trade, human resource development, infrastructure, etc.), so as to address more structural bottlenecks to export competitiveness and to investment attraction. Such an integrated strategy should notably carefully consider the **potential and role of the Mauritius Freeport and of EOEs** in positioning Mauritius as a trade and investment destination – as these two sectors uniquely combine elements of both trade and investment facilitation.

#### *Improve institutional co-ordination across trade and investment bodies*

If Mauritius is to formulate the above two strategies (whether within or outside of the ESTP framework), given the very strong links between investment and trade it is essential that the authorities responsible for elaborating and renewing them operate in close collaboration. This will require **stronger institutional rationalisation and co-ordination of the relevant bodies**, especially as communication between trade and investment authorities is currently mostly *ad hoc* in Mauritius. It may thus be desirable to formalise the communication between TPU/ITD, Enterprise Mauritius and BOI – for instance, by having a high-level representative from ITD as a board member of BOI, and/or by creating a high-level position for a trade development expert within BOI. In addition, the strong demarcation between bodies tasked with trade policy formulation and implementation may need to be reduced, to the extent that it has complicated policy roll-out and follow-up in the past. Stronger institutional co-ordination in the elaboration of national trade and investment strategies would allow to address not only existing structural obstacles to productivity and competitiveness in specific industries, but also to consider the island's needs in terms of sourcing of raw materials. It would thereby allow trade policy to serve a much more strategic and enabling role for promoting both external and internal trade in Mauritius.

A **common task-force** could be a useful venue for elaborating both investment and trade strategies concurrently, with frequent inputs from other relevant government bodies (such as the Human Resource Development Council and the Mauritius Institute of Training and Development, to optimise the absorptive capacity of the labour market in the priority economic activities identified by these plans). This will also need to **engage the private sector** (using the JEC, MCCI and MEXA platforms, as well as Enterprise Mauritius) in a regular consultative process so as to identify, in a realistic and pragmatic manner, sectors of priority focus for export promotion and investment attraction. This joint consultative platform or taskforce would also be well-placed to co-ordinate the elaboration of an "**Africa trade and investment strategy**", on which Mauritius will embark as of 2013 with assistance from the Commonwealth Secretariat. In addition the taskforce could, together with BOI, consider how to better promote and raise awareness of the facilities and opportunities offered by Mauritius Freeport among the international investor community.

### *Review role of the State Trading Corporation and Agricultural Marketing Board*

**The role of the AMB and STC in fixing prices and regulating trade would deserve careful re-consideration** by government, as their current activities might fall short of intended social and economic objectives, create market distortions and come at considerable fiscal cost. Encouragingly, government remains open to re-evaluation of existing trade restrictions; this has been demonstrated in the cement sector (where upon recommendation by the CCM, the STC's control was phased out and the sector was liberalised beginning in July 2011). In the same light, existing price-setting and export and import controls across all controlled sectors should be subject to frequent review – especially if these controls increase input prices and uncertainty for foreign and domestic investors. This regular assessment should cover the proportionality of the imposed controls, the associated economic costs and benefits, and any alternative and more efficient means of achieving food and energy security objectives. The STC and AMB may also benefit from better co-ordination with bodies responsible for trade and investment policy formulation, so as to verify that the rationale behind import and export controls remains relevant to current national trade objectives. In the short-term and absent immediate liberalisation of existing controls, price-setting by the STC should be determined according to more precise automatic pricing mechanisms, so as to limit distortion effects on the domestic market. In the longer-term, government should consider whether these bodies could not better deploy their resources for strategic market research or technology transfer rather than their current roles.

### *1.5.5. Human resource development*

Government should enhance strategic investments across a **wider range of skills** (including both sophisticated and more basic skills, according to different industry needs). The projected strong demand for higher skilled occupations in high-skilled sectors underlines the importance of continuous redevelopment of existing education and vocational training policies, including career orientation and skill upgrading, to cater for the full range of skills needs. In view of better targeting vocational and academic training to the needs of industry, government should also review and strengthen existing mechanisms to encourage businesses to offer training to employees and to play a larger role in co-financing training, perhaps in an industry-specific manner.

The recently undertaken sectoral labour shortage and "skills gap" surveys (which have been validated through consultative workshops beginning in the second half of 2012) are a very useful step towards better aligning career guidance with existing labour demand. To the extent possible, such surveys should be conducted on a regular basis, and accompanied by frequent and systematic studies (such as tracer studies) that investigate the impact of vocational training programmes and human resources policy on: the investment environment; and their effectiveness in creating a workforce that can attract and seize investment opportunities. The statistics and forecasted skills gaps identified in the recent skills surveys could be brought to contribute to the overall investment strategy and inform the choice of sectors of focus for the latter. The forthcoming National Training Strategy should indeed be aligned with master-plans for investment, trade and infrastructure development. Integration of HRD objectives and needs within a national investment and trade strategy should also involve more

**structured institutional collaboration** between the Human Resource Development Council, the Mauritius Qualifications Authority and investment bodies, such as BOI, relevant Ministries, JEC, and the National Productivity and Competitiveness Council (NPCC).

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# Chapter 2

# Investment policy in Mauritius

*Mauritian laws and regulations dealing with investments and investors provide for a predictable and transparent regime. Mauritius' investment climate is generally open, although several restrictions apply in various sectors to both domestic and foreign investors. Investors' rights are soundly protected both by domestic law and through international commitments. Over the last decade, the government has also updated its Intellectual Property Rights framework to enable the country to become a leading knowledge-based economy. Access to dispute settlement by investors has been facilitated with the establishment of a Commercial Division of the Supreme Court. There have thus been a wide range of laudable efforts to modernise and streamline the regulatory framework for investment. Nevertheless this framework is still dispersed over various legal and regulatory instruments, and sectoral regulations are administered by distinct public agencies. A number of recommendations can therefore be made to further improve and clarify the investment policy framework.*

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Property protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all. Policy coherence has the strongest impact on the investment environment and standards for investment protection and openness must be of wide applicability to international as well as domestic investors – including small- and medium-sized enterprises (SMEs). Transparency is another key principle for fostering a favourable environment for investment. Transparency reduces uncertainty and risk for investors as well as the transaction costs associated with making an investment, and facilitates public-private dialogue. Over the last decade, Mauritius has undertaken multiple reform measures to improve its business climate and to create the most favourable regulatory environment for the private sector.

## 2.1. Legislative and regulatory framework for investment in Mauritius

### *Enabling legislation for private investment emerged in 2000 and has gained momentum since 2006*

Over the past decade, Mauritius has built a safe regulatory environment, and the country has prided itself as a business-friendly jurisdiction on the trade corridor to Asia and Africa. Mauritius has a modern and flexible commercial and company legislation that was strengthened through regulatory initiatives and efficient implementation of measures and policies by government. Reform efforts have paid off and Mauritius is now recognised by international observers as a well-suited jurisdiction for setting up investment vehicles to structure cross-border investments. Mauritius is ranked 54th out of 144 countries in the 2011-12 Global Competitiveness Report, second country in the region after South Africa. The report highlights the country's strong and transparent institutions and the sophistication of its regulatory framework for business. Mauritius features in the top twenty countries in the 2013 *Doing Business* Report for the protection of investors, the strongest performer in the region. Such a favourable regulatory framework has allowed Mauritius to attract more FDI during the past decade than it had done over the previous 40 years.

The regulatory framework governing investments is provided in different sector-specific legislations. Relevant legislations include, among others, the **Investment Promotion Act**, the **Tourism Authority Act**, the **Financial Services**

**Act**, **Securities Act**, and the **Non Citizens (Property Restriction) Act**. Mauritius has a sophisticated legal infrastructure for business activities and does not have an all-encompassing investment law.

In 2000, government, with the support of private sector, enacted the **Investment Promotion Act (IPA)** whose objective, as set out in the preamble, was not only to make better provisions for the promotion and facilitation of investments in Mauritius, but also to streamline the legal framework for investment. Established through this act, the Mauritius Board of Investment (BOI, see Chapter 3) notably acts as a focal point for voicing investors' views on improving business related policies when they are being developed and revised.

In 2001, the **Companies Act 2001**, which provides for several forms of business structures and facilities, underwent a major revision from its 1984 version. The amended version was specifically tailored to businesses willing to use Mauritius as a hub for their international activities. The act is largely based on the New Zealand Company Act, which is widely recognised as providing a model of liberal and efficient regulatory framework for businesses. It is a forward-looking piece of legislation and seems to have successfully achieved its goal of providing an investor-friendly and a flexible regulatory framework. It strongly illustrates Mauritius' commitment to establish itself as a modern offshore (or "Global Business") jurisdiction and provides specific business structures to encourage and facilitate investment activities through the local stock exchange.

In addition to this enabling regime for companies, the parliament has planned to review and modernise the legal framework regulating the co-operative sector in order to enable co-operatives to become a robust alternative way of doing business.

Following the update of the Companies Act, the Parliament enacted the **Financial Services Development Act 2001** (since replaced by Financial Services Act 2007), to regulate the non-banking financial services sector. The 2001 and 2007 Acts clearly separate regulatory activities and promotional activities and therefore provide for a regulatory authority, the Financial Services Commission (FSC), responsible for the administration of all legislation governing financial services, and for the establishment of a Financial Services Promotion Agency. The FSC has supervising powers and issues rules and guidelines for the conduct of non-banking financial businesses. The FSC also issues licenses and may grant GBC1 and GBC2 to applying offshore companies (see Chapter 3). Following consultations among the Ministry of Finance and Economic Development (MOFED), FSC, the Stock Exchange of Mauritius, the Central Depository and Settlement Company and other stakeholders of the industry in the context of preparing the US Bilateral Investment Treaty, most recently the FSC has repealed the Stock Exchange

### Box 2.1. **Salient features of the 2001 Companies Act**

The Companies Act provides for several types of companies and contains regulations governing their incorporation. In addition to domestic companies, two types of offshore companies have been specifically created to provide international investors with modern vehicles to invest in and from Mauritius: **Corporations holding a Global Business License Category 1** (GBC1) and **Corporations holding a Global Business License Category 2** (GBC2). Investment incentives provided to these companies are listed in Chapter 3.

A **GBC1** is tax resident in Mauritius and can therefore benefit from the provisions of Mauritius DTAAs and is liable to tax under Mauritian laws. It is most often used as a vehicle for investing from Mauritius into countries with which Mauritius has ratified a double tax treaty. A GBC1 can carry out any type of business activities, including those involving capital raising from the public. A GBC1 can be established by incorporation and by having its central control and management in Mauritius. Any corporate body, trust or partnership, including limited partnerships, may apply for a Global Business License.

As for **GBC2**, it is considered as a non Mauritian resident only for tax purposes. Therefore, it cannot benefit from Mauritius' DTAAs network benefits. A GBC2 can conduct any type of business activity except for banking and financial services, dealing with a collective investment fund or scheme, providing directorship and secretarial services or other services to corporations, and providing trusteeship services. GBC2 is the preferred type of structure for companies engaged in international trade activities. Any person wishing to conduct global business requires a license from the Financial Services Commission, which is the regulatory authority for all non-banking financial services and global business.

The Act also innovated in permitting the incorporation of one-person companies, Limited Life Companies, and hybrid companies, both limited by shares and by guarantees. It has also introduced the concept of dormant companies, which permits companies that have no recent significant accounting transactions to be subject to lowered fees if they declare themselves to be dormant by passing a special resolution which must be filed with the Registrar of Companies.

As for foreign limited-liability companies, they must locally register a branch within one month of their establishment in Mauritius with no minimum capital requirement. If the company invests a capital exceeding USD 10 000 000, the investment is considered a "qualifying investment" under the Investment Promotion Act, and the foreign company must then apply to the Board of Investment for an Investment Certificate.

Under the act, all companies, be they domestic or foreign, must register with the Registrar of Companies before their incorporation can be lodged. Information on forms and registration of companies is available online. Once the incorporation process is completed, companies must register their business activities with the BOI to be then entitled to apply for occupation permit, when necessary.

(Foreign Investment) Rules 1994 and replaced these with the **Securities (Investment by Foreign Investors) Rules 2013** (see below).

Another milestone in the economic reform process was the promulgation of the **Business Facilitation (Miscellaneous Provisions) Act 2006**, which aimed at eliminating bureaucratic obstacles to start a business and eliminating trade licenses (see Chapter 3). The new legal framework set out in the act allows business to start operating on the basis of self-adherence to the guidelines, with an *ex post* control exercised by competent authorities. According to the Budget Speech 2013, the Business Facilitation Act is expected to be amended in order to reflect a more holistic approach to investment facilitation and to remove bottlenecks to investment in Mauritius. In addition to the Business Facilitation Act, the Companies Act has been supplemented by securities and insolvency legislation through the **Securities Act 2005**, the **Insolvency Act 2009**, which gives companies greater flexibility to restructure, the **Finance (Miscellaneous Provisions) Act 2009**, and the **Economic and Financial Measures (Miscellaneous Provisions) Act No. 20 of 2011**. The latter amendment was aimed to provide for company licensing by the Financial Reporting Council (FRC), which has been established under the Financial Reporting Act. As announced in the Budget Speech 2013, Mauritius will also introduce a Limited Liability Partnership (LLP) legislation that is expected to encourage attract high value-added services (such as tax advisors, accountancy practices, law and audit firms) to set up base locally. The future LLP structure should allow more international service providers to serve the local and regional markets by limiting the liabilities and exposures of partners of these professional firms.

Overall, the investment regime is considered transparent and regulatory information is easily accessible by stakeholders. Relevant laws and regulations are readily available to foreign investors on the BOI website. Mauritius is held up in the international community as a model of compliance with investment policy international best practices and performs well in terms of transparency of its investment rules. However, in the absence of an overarching investment law, the national regulatory framework described above is dispersed across diverse laws and regulations. Such a dispersion of provisions relevant to investors reduces predictability and clarity of the investment regime. Although strong protection standards are contained in the regulatory framework, it still lacks clarity in the sense that investors have to look into a number of distinct laws and regulations to be aware of the applicable legal regime. In addition, the government would be well advised not only to focus on promotion and facilitation, but also to clearly set out core principles of investor protection such as the guarantee of a free transfer of funds and a fair and equitable treatment. It should also set out a national treatment standard of protection, with a negative list of exceptions in an Annex.

The government has started addressing this issue in order to make the laws and the ways of accessing standards of protection more comprehensible. It is currently working on crafting an **all-encompassing, cross-sectoral national investment policy** to enable all parties – government and governmental agencies, the business community and foreign investors – to benefit from a single document for investing in Mauritius that would take the form of a **compendium of investment regulations**. Centralising all relevant regulations in a single body, be it under the form of a Code or a practical Guide for investors, is a welcome step towards greater coherence, transparency, openness and predictability. Gathering all provisions that pertain to foreign investors' activities would also have promotional benefits to attract prospective investors. Parallel with the current creation of a consolidated FDI policy document, and following India's example, the government could establish specific guidelines under which the FDI policy would be constantly reviewed and adjusted.

### *Principle of Non-Discrimination on Laws Relating to Investment*

According to various international rankings, Mauritius is one of the world's most open economies to foreign ownership. The majority of economic sectors are open to foreign investment. In addition, all IPPAs signed by Mauritius contain a number of non-discriminatory treatment provisions (see Section 2.6). There is no restriction in Mauritius regarding transfer of capital and profits, and foreign investors have full access to local credit markets. No approval is required for the repatriation of profits, dividends, and capital gains earned by a foreign investor. In addition, Mauritius has suspended, in 1994, foreign exchange controls.

The government has no economic or industrial strategy that discriminates against foreign investors. A foreign investor in export-oriented manufacturing is permitted 100% equity, although the government does encourage local participation. Foreign participation may be limited to 50% in investments serving the domestic market. Foreign investors do not need approval to trade shares on the stock market, with some exceptions in the sugar sector. In March 2013, the Financial Services Commission developed the **Securities (Investment by Foreign Investors) Rules 2013** which came into force on 1 April 2013. These Rules require that prior written consent from the FSC is secured whenever a foreign investor makes an investment in a Mauritian sugar company (whereby the foreign holding of voting capital exceeds 15%). Securities exchanges are moreover required to notify FSC and all investment dealers whenever 10% or more of the voting capital of a Mauritian sugar company is being held by foreign investors. Whereas previously foreign investment for the purpose of obtaining legal or management control of a local sugar company was also entirely barred, the amended 2013 rules allow broader exemption of certain investors from these restrictions by FSC (if they are passive investors, established only with the objective of spreading investment risk and managing assets for the benefit of shareholders and participants).

Under the 2000 Investment Promotion Act, which is aligned with the WTO's Agreement on Trade Related Investment Measures, foreigners apply for occupation (formerly work and residence) permits if the following conditions are met:

- For an investor: the proposed business activity should generate an annual turnover exceeding MUR 4 million (approx. USD 126 000) annually, with an initial investment of USD 100 000 or its equivalent in freely convertible foreign currency. If there is more than one investor in the same company applying for an Occupation Permit, the turnover criteria should apply in respect of each applicant (i.e. MUR 8 million for two applicants, MUR 12 million for three applicants, etc.).
- For a professional: the basic monthly salary should exceed MUR 45 000 (approx. USD 1 430), except for professionals in the ICT Sector where basic salary should exceed MUR 30 000 (USD 950) monthly. And
- For the self-employed: the annual income from the proposed business activity should exceed MUR 600 000 (approx. USD 19 000) with an initial investment of USD 35 000 or its equivalent in freely convertible foreign currency.

Some market segments, however, remain restricted for foreign investors. Such restrictions are not subject to any benchmark against those in neighbouring countries. Restrictions are either contained in the law or in administrative practices, in which case they are decided by relevant Ministries, depending on the sectors. It is worth noting that such restrictive sector-specific policies are not unusual, including in OECD countries. The main restrictions, screening requirements and threshold criteria applying to foreign investors are as follows:

- In **television broadcasting**, foreign capital in a company or body corporate must be less than 20%. A maximum of 20% of foreign national directors is allowed. The Independent Broadcasting Authority is responsible for the screening of applications for licenses.
- A certificate of authorisation from the Prime Minister's Office is required for non-citizens to acquire **real estate property** in Mauritius, or to acquire shares in a company that owns immoveable property in Mauritius. Such purchases must be financed with funds transferred from abroad through the banking system. Investment approvals are not issued for a limited period of time. However, investment approvals may contain a condition that the project has to be started within a set period of time, failing which the approval can lapse. However, approval is not required when property is acquired under a lease agreement not exceeding 20 years, or under the Real

Estate Development Scheme, or when the investor has obtained the approval of the BOI for business purposes investments.

- Approval from the Prime Minister is also required for investments in **banks** that hold immovable property in Mauritius.
- In the **legal services sector**, a foreign law firm can provide legal services only in relation to arbitral proceedings, mediation, conciliation and other forms of consensual dispute resolution, or in relation to proceedings before bodies other than courts, and in relation to foreign law or international law. In addition, the foreign law firm must be licensed in accordance with the Law Practitioners Act. However, the legal services market is currently being liberalised and enables foreign law firms to establish local offices or joint ventures alongside Mauritian lawyers under the Law Practitioners Act 1984 (last amended in 2008), which also allows Mauritian law firms, joint law ventures and foreign law firms to practice foreign law and international law in Mauritius.
- In the **fisheries sector,** licenses to operate a Mauritian fishing vessel can only be granted to vessels registered under the Merchant Shipping Act to Mauritian nationals or to bodies incorporated in Mauritius and having a place of business in Mauritius, or to maritime entities as defined in Section 2 of the Fisheries and Marine Resources Act 2007.
- In the **tourism sector**, several limitations apply to foreign investors (in addition to general requirements for both domestic and foreign investors to invest a minimum of MUR 10 million in pleasure craft operations). Foreign investment is restricted to a maximum equity participation of 30% in stand-alone diving centres. Tourist guide services are restricted to Mauritian nationals, except where the relevant language is not spoken by Mauritian nationals. Activities requiring low level of investment, such as beach hawking, are reserved to Mauritians only.

In addition, Box 2.2 lists reforms undertaken to modify restrictions for foreign participation in the financial sector – while some of these measures facilitate operations by foreign investors, others may have a mixed effect as they introduce new restrictions or requirements on foreign participation (often in the interest of stimulating more engagement by domestic companies in the sector).

Moreover, despite the absence of *de jure* restrictions, it is difficult to invest in some sectors such as electricity generation and distribution, waste management and port and airport management markets, due to their monopolistic structure and the significant presence of State-owned-enterprises in such sectors. Their dominant position in these sectors, as well as in market segments such as broadcasting telecommunications and software development represents a serious barrier to the entry of private investors (this issue is discussed further in the infrastructure chapter).

Box 2.2. **Reforms to modify restrictions on foreign participation in the financial sector**

The following steps have recently been taken in Mauritius to modify restrictions on participation by foreign institutions in the development of the financial sector. While some of these measures facilitate operations by foreign investors, others may have a mixed effect as they introduce new restrictions or requirements on foreign participation:

- In the **global business sector**, the government introduced S 71(6) in the Financial Services Act – whereby holder of a Global Business Licence 1 (GBL1) can deal to a certain extent with residents of Mauritius.
- For the **Insurance sector**, there are no restrictions. Foreign investors, however, need the prior approval of the Prime Minister's Office. Following the 2012 Budget Speech, the provision of the Insurance Regulations 2007 that would have allowed local assets to be insured with insurance companies not registered or licensed in Mauritius in 2013 has been repealed. This aims to give a boost to local insurance and encourage new insurance companies to serve the sector. Moreover, the Budget speech for 2013 announced that in order to offer added security to exporters, foreign insurance companies will be allowed to offer export credit insurance. Hence, as the law stands now, except for reinsurance contracts and contracts relating to export credit insurance, no person may enter into an insurance contract with an insurer not registered or licensed in Mauritius.
- The **Stock Exchange of Mauritius** (SEM) amended the Listing Rules to allow Global Business Collective Investment Schemes (CIS, as defined under the Securities Act; this includes closed-end funds, global schemes, professional CIS and expert funds). Prior to these amendments, the Listing Rules catered only for investment companies, unit trusts and authorised mutual funds as these were the only legal forms of investment funds recognised under Mauritian law.
- The **Law Practitioners Act 1984** has been amended since 2008 to provide for the setting up and functioning of law firms, the status of a legal consultant, the registration of law firms, foreign law firms, joint law ventures and foreign lawyers, the framework for the regulation of the practice of foreign law and international law in Mauritius.
- As concerns **Capital Markets**, the Stock Exchange (Investment by Foreign Investors) Rules 1994 were detailed under the repealed Stock Exchange Act 1988. Rule 3(1)(a) of the Rules provides that: "no foreign investor shall, without the prior written consent of the commission, make any investment in securities for the purpose of or resulting in, the exercise of legal or management control of a Mauritian company".

Domestic regulations also contain some requirements pertaining to companies' **performances and key personnel**. Such requirements appear not to be reflected in Mauritius' bilateral investment treaties, which most often do not contain "key personnel and specific performances requirements clauses". In particular:

- A company incorporated in Mauritius must have at least one resident director. For companies holding a GBC 1, the requirement is to have at least two resident directors.
- Performance requirement: in the Freeport sector where Freeport operators are required to export at least 50% of their turnover value.

In 2008, the investment climate also became temporarily more restrictive for foreign workers – although foreign investors were not penalised. This was in reaction to the economic crisis, and in the aim of shoring up domestic resilience: the Additional Stimulus Package of December 2008 for instance states that for all public sector construction projects, a higher preference margin would be given to local and foreign companies employing Mauritian workers. The Ministry of Labour established guidelines in this regard and closely monitored the situation, and the private sector was urged to adopt a similar approach over the following two years. These preferences in public procurement have been renewed more recently, in particular to create more space for domestic SMEs in procurement: in 2013, the Public Procurement Act was being amended to grant a 15% preference margin to companies employing at least 80% local manpower, when competing for public works contracts.

## 2.2. Steps taken to improve processes of land ownership registration and other forms of property

Mauritius has limited land resources and the authorities are under great pressure to allocate land for a variety of uses. Issues relating to land ownership are crucial in particular with regards to the important share of property development, real estate and construction in total GDP. Before the recent implementation of legal reform plans, the land administration system was reported to be rather inefficient. Over the past years, the government has made continuous modernisation efforts towards a sound and clear registration system of immovable assets. Clear property and titling system is also crucial as it facilitates access to credit, because land rights are the main form of collateral pledged by firms that is accepted by banks. The recent reforms were therefore needed for business development purposes and to further improve the already well-advanced credit market in Mauritius. Partly thanks to these reforms, the legal framework for immovable property rights has been much improved – in fact, at the 24th Congress of African Notaries (CAAF-UINL, held in Cameroun in 2012) it was decided that legislation relating to immovable property would be adopted by the 18 CAAF-UINL member countries, taking Mauritian legislation as a model.

Two institutions are in charge of land administration: **The Ministry of Housing and Land**, which has been responsible for land administration since independence and whose activities focus on the management of State Lands; and **the Registrar-General Department** (RGD), which operates under the aegis of MOFED. The RGD does not operate as a regulatory body but solely as a revenue collection and registration administration. Organisational means for the implementation of various policies on land taxation, valuation, registration and development remain fragmented and would benefit from greater co-ordination.

According to the 2012-13 Global Competitiveness Report, the country benefits from clear property right principles. In addition, the purchase, acquisition or holding of property by foreigners is clearly laid down in guidelines that provide foreigners with a great degree of legal predictability. The Constitution of Mauritius protects the right of land owners and the right from deprivation of property. Guarantee of an ownership title means that an owner may not be deprived of his ownership rights other than by a court decision. The Mauritian property law is based on a civil law system, with some elements borrowed from British law: land ownership and real estate assets transfer to the buyer at the moment there is an agreement on the property and price – vide Article 1583 of the Civil Code. Sale of immovable property is carried out by means of an "acte authentique", which must be notarised and registered in order to be binding to third parties. By virtue of Section 1 of the transcription and Mortgage Act, registration only operates to preserve third parties' rights. Moreover, besides entering into a purchase agreement, registration with the Registrar General is indispensable for acquisition of title. Ownership, therefore, is created by way of registration with the Registrar General, and extinguishes upon the person in title being removed from the Register. There is no dedicated Court that specifically deals with land related disputes.

### *Access to land for foreigners has been liberalised but remains subject to specific procedures*

Access to land for foreigners remains rather complex and restricted. **The Non-Citizens (Property Restriction) Act** of 1975 covers the purchase, acquisition or holding of property by non-citizens, as well as disposal of property by non-citizens. In order to hold, purchase or acquire an immovable property in Mauritius, a non-citizen needs to obtain the approval to acquire the property from the Prime Minister's Office. Clear guidelines are readily available to investors wishing to acquire real estate property for business purposes: the application should include the precise location of the property, the nature of the interest to be purchased or otherwise acquired or held, and the reasons for

**Box 2.3. Statutes relating to property and process for sale and purchase in Mauritius**

Real estate relations are governed by laws pertaining to various branches – civil, land and planning. The statutes relating to property include:

- State Lands Act.
- Non-Citizens (Property Restriction) Act.
- Pas Géométriques Act.
- State Land (Alienation) Act.
- Landlord and Tenants Act.
- Planning and Development Act.
- Land Acquisition Act.
- Registration Duty Act.
- Land (Duties and Taxes) Act.
- Transcription and Mortgage Act.
- Cadastral Survey Act 2011.

which the application is made. Authorisation is not automatic if the concerned activity comes into competition with Mauritian-owned companies. With the promulgation of the Business Facilitation (Miscellaneous Provisions) Act 2006, where an immovable property is acquired by a non-citizen for business purposes, an investor who is registered with the Board of Investment (BOI) requires an authorisation from the BOI. An investor is a person who is carrying out or who intends to carry out an economic activity generating an annual turnover exceeding MUR 4 million in Mauritius and has invested an initial amount of USD 100 000. An investor cannot purchase any immovable property in his/her own name. An immovable property or part of a building can only be registered and transcribed in the name of a company incorporated in Mauritius under the Companies Act 2001. Where property is purchased or otherwise acquired or held in contravention of the act (that is, absent Ministerial authorisation via a Certificate, and when the non-citizen does not qualify from exemption from the certificate), or if the property acquisition contravenes a condition imposed in a certificate, the Curator is empowered to take possession of the property and cause it to be sold in accordance with the Sale of immovable Property Act.

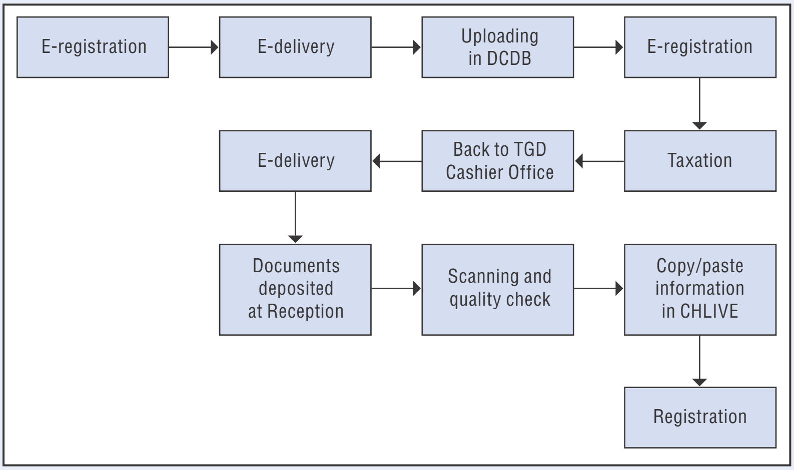
Transfer of immovable property among foreigners requires prior approval from Prime Minister's Office. Approvals of land conversion and of environment impact assessment need to be sought from cabinet. If the approval for land conversion or morcellement is not obtained, the aggrieved investor has no recourse to an appeal tribunal. Once land is acquired or leased, enterprises then need to apply for a Building and Land Use permit (BLP), for permission to carry out proposed development or building. Applications can be made online or at the planning department of any local authority. Enterprises will also have to pay an appropriate trade fee with the local authority (Municipality or District council) concerned, prior to starting operations.

The Non-Citizens (Property Restriction) Act has since been amended several times. The current Act states that no certificate shall be required for: a non-citizen holding property in virtue of a lease agreement or tenancy agreement for a term not exceeding 20 years; or for acquisitions made under the Integrated Resort Scheme once the company holds an investment certificate in respect of a project as prescribed under the Investment Promotion Act. When the Integrated Resort Scheme was introduced in 2002, express provisions were made for the non-application of the act to allow the acquisition of luxury residences by high net worth foreigners. In 2006, in line with the stated objective of government to open the economy additional flexibility was introduced by the Business Facilitation Act 2006 to allow foreigners to acquire property in Mauritius for business purposes by applying directly through the Board of Investment.

Also now exempt are investor purchases of immovable property for business purposes, upon production of a certificate from the Board of Investment. When foreign companies intend to hold land for more than 20 years, they must obtain prior approval of BOI. Publicly held land is rarely sold but can be leased through public auction and for a maximum of 99 years. When public leases are granted for industrial or commercial purposes, their maximum duration is limited to 60 years. Further liberalisation of access to the land market should be implemented in the course of the year 2013. **The Business Facilitation Act** 2006 is expected to be amended to enable Permanent Residence holders to purchase an apartment, which should attract more foreign direct investment and boost the construction industry while making more economic use of residential land. As announced in the 2012 Budget, the "Code Civil Mauricien" will also be amended to allow for appropriate legal framework which would govern leasing of both immovable and movable property, especially finance leasing. This aims to provide more comfort to leasing companies and entice international leasing companies to enter the Mauritian market.

### *The government has initiated programmes to modernise land registration and administration*

Mauritius has made one of the most important improvements in the ease of registering property, improving its ranking from 66th to 60th in the 2013 Doing Business Report (Box 2.4 highlights remaining processes for registration of land ownership). The Registrar General works closely with Notaries Public to ensure effective and secure transfer of properties. In 2005, Box 2.4. **Current process for registration of land ownership**




*Source:* Registrar General Department, Ministry of Finance and Economic Development

duplicities in operations of the Registrar General were removed, a one stop shop was created, and a **Performance Management System** (PMS) was introduced. In 2007, an **Electronic Search Room**, equipped with 50 stations, was set up to facilitate search on land transactions by members of the public. Information on titles is now available within ten minutes from the time the title number is allocated to a deed, compared to 36 hours when recorded in the paper-based Register. In 2008, a project for the scanning of paper-based repertories was implemented. This project has facilitated search and eliminated tampering. As a result, a lower number of tampering cases have been reported to the police. In 2010, the scanned images were linked to the electronic repertory. This second phase of the project, which is due to be completed by December 2012, has completely eliminated search on paper.

A milestone in this reform process was the introduction of time limits at the land registry and the computerisation of procedures through the implementation of an electronic information management system at the General Department of the Registrar. This has drastically reduced, over the past year, the time required for registering transfer. Moreover, the current reform is expected to reduce the number of land disputes for both boundary and ownership in courts. The reformed land record system should also improve efficiency in collecting land and property taxes.

As announced in the 2012 budget, government has invested in a new system to cut time for registering property, which is operational since early in the year. The **Land Administration, Valuation and Information Management System Project** (known as LAVIMS) is currently being implemented under the joint authority of the Ministry of Housing and Lands and MOFED to computerise and streamline land administration and management procedures. LAVIMS – which integrates the Land Registry of the Registrar general Department, the Valuation Department, and the Digital Cadastre – is composed of the following four sub-projects: development of the cadastre, implementation of a digital Deeds Management System, Valuation of properties and Information Management. Through the LAVIMS project, the Government of Mauritius aims to enhance the efficiency and security of the existing system in order to deter and prevent fraudulent practices, foster professional responsibility and duty of care, support a secure registration system and ensure confidence in Mauritius Land Transaction system. This is expected to efficiently address a serious problem of fraudulent practices in land transactions. All records and archives are now kept electronically, resulting in the elimination of a huge paper-based archive. Request for valuation of property is made electronically and reports from the Valuation Department are received electronically. Letters to be issued to parties are generated automatically. The cadastre is now fully digitalised and contains an index of land parcels based on existing survey plans and aerial photography.

With the effective implementation of the Deed Component of LAVIMS project since November 2011 and the creation of a computerised, parcel-based deed registration system, the RGD can now register a property within 48 hours instead of 15 days and the processes have been considerably streamlined. In addition, the creation of a Parcel Identification Number (PIN) has already proved to further secure the land market. The 2014 Budget announces that unique PINs will be distributed to all landowners in the course of the year, so as to facilitate real estate transactions through the Mauritius e-Registry Project. Such modernisation efforts were widely lauded by international observers, as reflected in the 2013 and 2014 *Doing Business* Reports. The Valuation component has encountered difficulties in identifying market value of residential and commercial properties, and its full completion has thus been delayed. In parallel with the implementation of the LAVIMS project, the Cadastral Survey Act 2011 has been enacted to update the legal framework for the maintenance of the digital cadastre and to set up new cadastral survey regulations.

Yet, even with the implementation of LAVIMS, RGD is still providing services using semi-automated systems that are outdated and are prone to delays and errors. In order to overcome such remaining obstacles, RGD has launched the **Mauritius eRegistry Project (MeRP)** to computerise the system and to transform RGD from a Service to an e-Service organisation. In this context, the RGD plans to introduce online services such as: eSubmission, eTaxation, ePayment, eDelivery for movable and immovable properties and to provide information to stakeholders and government agencies online. The objective pursued through the implementation of the MeRP in year 2013 is to shorten the time taken to register property from 48 hours to 2-3 hours for immovables, and from 2 hours to 15 minutes for a movable property. This will be achieved by replacing the current sequential series of steps (taxation, payment, registration and delivery) to a parallel stepped process, by introducing a fully integrated online registration system. From 2013, valuation of property will be undertaken upfront in the registration process, instead of being done at a post-transaction stage. This is expected to eliminate revenue arrears, collect government revenue upfront, and give greater certainty to stakeholders and members of the public in land transactions.

### *Land use planning in Mauritius*

The Town and Country Planning Division of the Ministry of Housing and Lands is responsible for land use planning, including policy formulation in respect to land development. The Ministry manages lands belonging to the State; it has powers under various legislations (e.g. the Pas Géométriques Act and the State Lands Act) to grant leases over such State lands to individuals. Mauritius has a "plan-led" system of development control. Development plans have two purposes: to describe the intended use of land in an area, and to provide an objective basis for the consideration of planning applications. There are two types of plans in Mauritius: the National Development Strategy, a 20-year framework which provides a strategic framework for national land use planning; and local plans known as Outline Planning Schemes, which are regional plans for a Municipal Council or District Council area. First elaborated in 1994 and since renewed in 2005, the National Development Strategy is designed to encourage economic growth in the conurbation (the urban areas), the countryside and the coast, while maintaining and enhancing the quality of the environment and striving for a more sustainable pattern of development.

Local authorities are empowered by the **Town and Country Planning Act**, 1954, to grant planning permits; a permit is required for the development of land and development is defined as involving building operations, change in the use of land or buildings, or the subdivision of land. The law also makes provision for an administrative appeal against the decisions of the local authorities – notably where development permits are refused or where conditions attached therein are considered as being unacceptable. A new **Planning and Development Act** was passed in 2004, to replace the 1954 Act. As per this act, the current National Development Strategy is active as of 22 June 2005. It provides a spatial framework for public sector investment programmes, including for housing, various productive sectors (agriculture, tourism, etc.), and infrastructure (transport and physical infrastructure, including water and energy utilities). The 2006 Business Facilitation Act states that authority for execution and enforcement of the Building Act and Town and Country Planning Act shall be the local authority of the respective town or district where the relevant building, structure or tenement is to be found or where the land is to be developed. It moreover requires every person who intends to commence construction of a building or carry out development of land to apply to the local authority for a Building and Land Use Permit, in accordance with the guidelines issues under the Building Act, the Town and Country Planning Act, and the Planning and Development Act 2004. The Business Facilitation Act sets a two-week limit for the subsequent issuance of permits to large companies, once the applications have been approved at central level by the Permits and Business Monitoring Committee. For SMEs this limit is only three days long.

### *More flexibility to land management introduced with the Additional Stimulus Package*

Several references to land allocation and use frameworks are made by the Additional Stimulus Package, announced by government in 2008 to complement the earlier stimulus package in shoring up the economy's resilience to the economic crisis. The package recognised that certain aspects of the land allocation framework in Mauritius were insufficiently flexible for the needs of stimulating particular economic sectors. Proposed modifications included:

- improving the process for the acquisition of land required for public infrastructure projects, particularly roads: instead of waiting for final project approval to acquire land, the government would henceforth begin the process as soon as a project is accepted in the PSIP, so as to reduce implementation delays;
- in the sugar industry, the system of land conversion did not allow for relocation of projects on different sites than initially approved; although the process for obtaining the land conversion permit would remain unchanged, applications for relocation of new projects would be entertained;
- also for the sugar industry, it was recognised that the current system of land valuation for conversion purposes was time consuming and imposed an undue administrative burden by requiring the valuation of each and every plot; the government would henceforth introduce a simple, transparent and rule-based method through the determination of an average net realisable value;
- in the construction sector, the requirement that land should have been purchased 5 years in advance before being used for development under the Real Estate Scheme (RES) was removed; and
- also for construction, as an exceptional measure the land transfer tax and registration duty were suspended for the period 1 January 2009 to 31 December 2010 for approved projects undertaken by developers registered with the MRA in respect of land for a development project; the land transfer

tax would also be allowed as a deduction for income tax purposes (since 2012, this land transfer tax has in fact been abolished in the case of sale by financial institutions when relating to debt recovery; and the 2014 Budget announces the streamlining of this tax to a single rate for all entities, at 5% instead of 5-10% previously).

In 1997, government published its Vision 2020, which – as stated by the Government Programme 2012-15 for Moving the Nation Forward – the country now needs to update so as to provide an overarching view of its development plans for the decades to come. Government notably proposes to set up a National Strategic Transformation Commission which will make recommendations on optimal use of resources, inclusive growth, sustainable development, urban planning, land zoning as well as on promotion of new sectors. This may have implication for sector land use in Mauritius. More recently, the Inter-Ministerial Committee on business facilitation (IMC, set up in August 2012) has also taken land management into its agenda – forthcoming initiatives for consideration by the IMC include developing a Land Conversion Permit, and enquiring on the allocation and management of State land in the Ebène province (for which a taskforce was set up in February 2013). This investigation may create precedents and guidance for land management in other provinces as well.

## 2.3. Protection of Intellectual Property Rights

### *Mauritius has enacted and updated a number of IPR related laws to meet international standards*

Sound Intellectual Property Rights (IPRs) legislations are crucial for the development of an innovation-led industrial base in Mauritius and for FDI growth, as this will in turn act as a channel of technology transfer. Mauritius already has a long standing tradition of legal protection of patents and trademarks, and the government strengthened further its efforts and sent a strong positive signal to the business community by translating the provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement into domestic laws to cope with its WTO obligations. The capacity to tap intellectual property is now widely recognised in Mauritius as a determining factor in the development of the economy, especially given the strategic role envisaged for several new knowledge-based industries and sectors that were identified by BOI, in particular biotechnology, medical tourism, renewable energy, and biomedical research. However, in order for Mauritius to diversify successfully and to become a knowledge-based economy and business hub for high value-added technologies, its stance in enforcing IPRs and combating piracy still needs to be further strengthened.

The main laws governing the protection of Intellectual Property Rights in Mauritius are the following:

- **The Patents, Industrial Designs and Trademarks Act 2002** (PIDT Act, supplemented by the PIDT Regulations 2004 and Amended Regulations No. 1 and 2 of 2011). This act clearly sets out all procedures and provisions for registering intellectual property, including with regards to the Unity of Invention, Right of Priority, and change of ownership. In line with the provisions of the TRIPs Agreement, it provides for the establishment of the Industrial Property Office and the Industrial Property Tribunal, with a view to curb the production of counterfeit products.
- **The Copyright Act 1997**, which covers the protection of artistic, literary and scientific works. The act created the Mauritius Society of Authors, which protects interests of copyrights' owners and licensees of works.
- **The Protection Against Unfair Practices (Industrial Property Rights) Act 2002** (PAUP Act) protects against unfair commercial and industrial practices.
- **The Geographical Indications Act 2002** protects against practices misleading the public in suggesting that a product originates from a geographical area differing from its actual place of origin.
- **The Layout Designs (Topographies) of Integrated Circuits Act 2002** protects original and recent layout designs of integrated circuits.

However, both the Geographical Indications Act 2002 and the Layout Designs (Topographies) of Integrated Circuits Act 2002 are still pending ratification.

In order to give full efficiency to the updated and amended legal framework, several public outreach campaigns were launched over the past few years to sensitise the business community and the public on the need to protect and enforce IPRs and to tackle counterfeiting. In parallel with these awareness-raising activities, the Mauritius Chamber of Commerce and Industry (MCCI) provides businesses with detailed legal advice on intellectual property rights (as well as on company law, laws related to the business environment, and to fair competition and trading practices) in Mauritius. Moreover, the Ministry of Arts and Culture operates a **Copyright Desk** responsible for information to the public.

Mauritius is also a party to all of the most important international conventions on IPRs. Among other international commitments related to IPR protection, such as the Geneva Universal Copyright Convention, it has acceded to the WIPO Convention and the Paris Convention for the Protection of Industrial Property in 1976. Since 1989, the country is also bound by the provisions of the Berne Convention for the Protection of Literary and Artistic Works. As a WIPO Member State, Mauritius has also signed the recently-concluded Beijing Treaty on Audio-visual Performances, which is expected, after its entry into force, to strengthen the protection provided to performers in the audio-visual industry. In addition, Mauritius is a party to the Cultural Charter for Africa, which puts strong emphasis on protection of African intellectual goods and rights, since 1990. In addition, the promotion and protection of IPRs are key pillars of the US – Mauritius trade and Investment Framework Agreement (TIFA).

### *Government has initiated action for the review of the current IPR framework*

In order to create an enabling environment for the efficient and effective use of the intellectual property system as a tool for the socio-economic development of the country, the government has started reviewing the current intellectual property framework. Since 2009, it has worked towards the adoption of an **Intellectual Property Development Plan (IPDP)** in co-operation with WIPO. The IPDP aims at ensuring that all institutions involved in IP enforcement, IP users and generators have the technical capacity and know-how to use IP as a tool to promote research, innovation and investment growth. One of the main recommendations of the IPDPD is to put in place a comprehensive national IP policy and to establish a national policy forum involving stakeholders from both the public and the private sectors. Another suggestion that has since been implemented is the establishment of a co-ordinating mechanism through an IP Council that will bring together all the various institutions and stakeholders dealing with IP.

IPDP also plans to revise the existing laws on intellectual property in order to better address the needs of all stakeholders. Trademarks, Patents, Industrial Design, and geographical Indications and Integrated Circuits Acts should soon be merged into one comprehensive piece of legislation. In addition, the consolidation of the laws is expected to help the country to meet its international requirements. IPR laws are notably being consolidated, in line with its WTO obligations, to promote innovative practices and inventions. Along with most African countries, Mauritius is notably a sponsor of the "W52" group in WTO negotiations – which proposes "modalities" in negotiations on geographical indications, and "disclosure" by patent applicants of the origin of genetic resources and traditional knowledge used in their inventions. Mauritius has also adopted a **Data Protection Act**, which safeguards the processing of personal data to build confidence for local and foreign investors in an age of information and communication. Over 2012-15, the Data Protection Act will be amended to incorporate new international data protection principles and attract further investment in the ICT sector through a free and secure flow of personal data between investors and local agents.

### *Institutional capacity for enforcing IPR laws in Mauritius needs further improvement*

Mauritius has enacted various legislations for the enforcement of IPRs in order to send a positive signal to prospective investors and to the overall international business community. However, the effective protection of IP remains one of the areas where Mauritius obtains some of its weakest results in international rankings. Further efforts in terms of capacity building must be undertaken to strengthen supervising and enforcing institutions.

The institutional framework for IPR enforcement and administration is made of several bodies and the enforcement mechanisms are thus scattered among various institutions:

- The **Industrial Property Office** (IPO) under MoFARIIT, was set up by the PIDTA ACT 2002. The IPO is administered by a Controller mandated to examine patent and trademark applications, and to grant the patents and register the marks, industrial design, geographical indication or Layout Designs. The Controller has investigative powers and can apply to a Judge for a right to search premises, either on his own initiative or upon a complaint made. He is also responsible for the compliance of the policies and procedures of the office with international standards and guidelines concerning industrial property.
- Meanwhile, the **Mauritius Society of Authors**, created by virtue of the Copyrights Act, is in charge of defending and representing copyright owners and exclusive licensees, grants authorisation for the use of protected works and is responsible for the collection and distribution of royalties.
- Under the aegis of the Police, the **Anti-Piracy Unit**, set up in 2001, is responsible for investigating cases of breaches of copyrights and trademarks. Over the last decade, the unit has continuously combated and seized counterfeit materials, as frequently reported by the press.
- The **Customs Department of the Mauritius Revenue Authority** can intercept the entry of goods suspected of being counterfeits, provided that the trademark owner has undertaken prior registration procedures. Action can be taken against IPR infringement only in cases where the IPR owner has an official representation in the Mauritian jurisdiction.
- PIDTA also established an **Industrial Property Tribunal**, which rules on cases such as rejected applications for registration. The tribunal, among various functions, may also hear appeals of decisions of the Controller and give binding interpretation of provisions of any IPR law. Under Section 51 of the act, any person who knowingly performs any act in breach of the rights conferred by the act shall commit an offence and shall, on conviction, be liable to a fine not exceeding MUR 250 000 and imprisonment for a term not exceeding five years.

Despite the establishment of such a comprehensive supervising and enforcing framework, the IP infrastructure could be further strengthened in order to improve Mauritius' record on IP enforcement. This need is acknowledged by the Mauritius Chamber of Commerce itself as well as by the International Trade Division of MoFARIIT. Views within the government on the need to address these challenges by establishing a single, all-encompassing IP Office appear to be split. Although the Ministry of Arts and Culture appears to be aware of the need to have a more coherent approach and is considering the establishment of an advisory council which would take on board all IP sectors, its view is that the specificity of each IPR sub-sector makes the setting-up of a single agency in charge of all IP issues undesirable, as it would supposedly not be likely to increase efficiency and coherence of the national IP framework.

It seems, however, that another approach has been favoured by the government, which has given due consideration to the recommendation towards the establishment of an **all-encompassing IP institution** that was issued in the context of the IPDP. The State Law Office is therefore currently finalising a bill that would establish an **Intellectual Property Council** with the responsibility of co-ordinating across government agencies, between government and the private sector and with international and regional bodies all matters relating to IP. The IP Council would involve all key stakeholders both from ministries and the private sector, under the Prime Minister's Office, in order to ensure a co-ordinated approach to IP management. In addition, in the context of the ongoing IP policy review, consideration is being given to the creation of an empowered **Mauritius IP Office (MIPO)** to better harness the potential of IPR as a development tool. MIPO would encompass both the regulatory and enforcement functions and therefore ensure a more co-ordinated and coherent approach. It would advise and administer IP legislation, be responsible for IP registration and work with economic agencies and the IP community to formulate and review IP policies and practices. For example, MIPO could be responsible for leading Free Trade Agreements negotiations on IP issues. In addition, MIPO is expected to carry out an important sensitisation role on the use of IP for the economic development of the country. The government could indeed usefully consider undertaking institutional arrangements to enhance the regulatory and operational functions involved in the governance of such a sensitive sector. A holistic approach across all institutions which participate in the administration of IPRs is necessary in order to achieve a streamlined and integrated management system. It can be best achieved through the establishment of an IP umbrella institution, for example under the proposed form of a supervising IP Council coupled with an empowered IP Office.

## 2.4. Expropriation procedures

### *Mauritius' Constitution provides strong protection against unfair expropriation or nationalisation*

Protection against expropriation without fair compensation is one of the most crucial rights of investors and must be granted in the regulatory framework for investment through provisions providing for transparent and predictable procedures. Mauritius appears to provide high protection against arbitrary or uncompensated dispossession of their property, while maintaining sufficient policy space to regulate in the policy space. There are clear legal criteria that distinguish between the legitimate right of the State to regulate in the public interest and the legitimate right of investors to have their property rights duly protected. Moreover, expropriation appears to be unlikely in Mauritius: there is no known expropriation dispute between the government of Mauritius and an international investor and the government has never nationalised an industry.

The **Constitution of Mauritius** contains strong and clear safeguards against arbitrary expropriation of assets. Article 3 of the Constitution enshrines a general principle of non-discriminatory right to protection from deprivation of property without compensation. More specifically, Article 8 of the Constitution provides for a remarkably strong and clear protection against expropriation. It states that "no property of any description shall be compulsory taken possession of, and no interest on or right over property of any description shall be compulsory acquired", except for well-defined and limited cases where expropriation with compensation can legally occur. The scope of the constitutional safeguard extends from nationalisations to regulatory takings. Moreover, the Article contains very clear and detailed provisions on what constitutes a taking for public purposes: "The taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius".

In addition to these conditions relating to the purposes of the expropriation, there must be "reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property" for the compulsory taking of property with adequate compensation to be legal. Where an expropriation is conducted for public purposes, compensation mechanisms are governed by the **Constitution** and by the **Compulsory Land Acquisition Act**. The decision to compulsorily acquire property by government can either be the subject of an appeal before or of a judicial review by the Supreme Court. By virtue of Article 8 of the constitution, the Supreme Court is competent for the determination of the investor's right or interest, "the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation". Where there is a dispute in relation to the quantum of compensation, the minister must, within 28 days of the claim, refer the matter to a board of assessment for enquiry and determination. A board of assessment typically consists of a judicial officer assisted by two assessors who have expertise in land valuation. Lastly, Article 8 of the constitution grants non-residents who have received compensation with a right to a free and timely transfer of funds received as compensation. There is no known dispute case related to expropriation in Mauritius.

### *An additional layer of protection from unfair expropriation is provided through Mauritius' BITs*

In addition, all Investment Promotion and Protection Agreements (IPPAs) concluded by Mauritius contain a provision protecting against unlawful expropriation, in line with the international customary law "**Hull Rule**" and granting a prompt, adequate and effective compensation for investors in case of expropriation. The guarantee against expropriation included in Mauritius' IPPAs extends to indirect expropriations, and is typically provided for in the following terms: "Investments […] shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be made without delay and be effectively realisable" (Mauritius-Pakistan IPPA). The protection against expropriation provided for both in Mauritius domestic legislation and through its treaty commitments is consistent, although it is understandably much more detailed in domestic legislation. It is also in line with international best practices, as it covers direct and direct expropriation, provides detailed guidance on compensation mechanisms, clearly delimitates the scope of events where the government is legitimate to take private property for public purposes, and grants investors with a right to judicial review of the decisions taken throughout the whole process of expropriation.

## 2.5. Access to justice for investors and alternative dispute resolution

Mauritius has a hybrid legal system, based on French civil law, with some elements of English common law. The country has a sound and independent judicial system, which has been continuously modernised, over the past years, in order to better manage the caseload. It has a single-structured judicial system composed of the Supreme Court, which is the highest judicial authority, and subordinate courts. As a member of the Commonwealth, Mauritius continues to refer legal and constitutional matters of undeterminable jurisdiction to the

Judicial Committee of the United Kingdom Privy Council, which is thus the highest court of appeal of the country.

Mauritius is endowed with a well-developed legal infrastructure, which is considered as transparent and non-discriminatory. The 1968 Constitution provides for an independent and impartial judiciary and the government respects judicial independence in practice. According to the World Bank's Governance Indicators, Mauritius ranks first in sub-Saharan Africa for its robust rule of law, and strong judicial independence is widely acknowledged by international observers. Disputes may be resolved before the courts, or through mediation or arbitration. Overall, the legal framework appears to be fairly efficient in settling disputes. In parallel with the judicial settlement of disputes, a whole chapter of the Constitution provides for the institution of the Ombudsman, whose mission is to investigate complaints against government institutions and seek redress as an alternative to the court system. The office of the Ombudsman has authority to make mere recommendations and has no power to impose penalties on a government agency.

### *Various modernisation initiatives were launched to boost judicial efficiency in Mauritius*

However, Mauritius appears to progress rather slowly in terms of contract enforcement efficiency, according to the 2013 *Doing Business* Report, and still needs to boost efforts to improve its judicial caseload management system. Proceedings are reported to be rather slow. Although access to justice is ensured, delays for dispute resolution are often too lengthy due to extensive backlogs of cases. Over recent years, the Government of Mauritius has therefore undertaken various reforms to modernise its judiciary and further improve the commercial justice system. The reduction of delays in the disposal of cases and delivery of judgments was identified as a top priority objective to be provided for 2012-14. In 2009, a dedicated **Commercial Division** was set up within the Supreme Court to speed up the settlement of commercial disputes. The commercial division of the Supreme Court has jurisdiction to deal with all matters of bankruptcy; insolvency; matters arising out of the Companies Act; banking; insurance; bills of exchange; global business; industrial property; patents and disputes between traders in relation to dispute of commercial nature. There are two judges to hear the commercial court cases. In 2010, an additional impetus to the improvement of the judiciary was provided with the establishment of a **fast track procedure,** under the aegis of the new commercial division, to resolve run-of-the-mill cases within 100 days. In 2011, the judicial staff capacity was increased: more judges were recruited and more courtrooms were created.

In addition, the Supreme Court has adopted, in 2011, the **Mediation Rules**, and has created a **Mediation Division** to facilitate the litigation of civil and commercial disputes and streamline judicial processes. Where a case for commercial contract enforcement is entered before the Supreme Court, the chief justice may refer the matter to a judge of the court for mediation; either of his own volition or at the request of one of the parties. As a result of the creation of dedicated and specialised divisions, cases are now reported to be disposed of more efficiently and speedily. In particular, the establishment of the mediation division resulted in a sustained decrease in the backlog of cases at the Supreme Court.

In order to boost judicial efficiency and transparency, Mauritius has also implemented an **e-judiciary programme** to facilitate access to justice and speed up the pre-trial procedures. The project is expected to enable the judiciary to move towards a paperless system, through the establishment of an e-judiciary platform that delivers e-filing and case management capabilities to computerise processes. As per the Doing Business Report 2013, the time taken to resolve a dispute is 645 days. With the implementation of the e-judiciary project, disputes would be settled within a timeframe of 100 days. Over the coming two years, the implementation Phase II of the E-judiciary is expected to be extended to all levels of the justice system. The number of procedures (36) that are needed for the enforcement of contracts has not changed over the past decade.

The judiciary has set up strategic directions for the coming two years. In this context, one of the main initiatives will be the creation of a Court of Appeal to hear appeals from every level of court in the country.

### *Mauritius has developed a comprehensive legal framework for international commercial arbitration*

Mauritius has given due consideration to the fact that the business community generally prefers to settle its disputes through alternative dispute resolution means. In parallel with the traditional system of contract enforcement through courts, investors now have the possibility to resort to arbitration. Although the legislative and logistical framework for arbitration are still at an early stage, Mauritius is strongly committed to developing international arbitration and ambitions to position itself as a regional hub for international arbitration. The passing, in 2008, of a state-of-the-art **International Arbitration Act**, based on the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006, represented a milestone in this endeavour to make Mauritius a regional centre for arbitration.

The Act has the most innovative features and offers a sound framework to global businesses, which is unique in Africa. The legislation includes best-practices drawn not only from the UNCITRAL Model Law, but also from the English Arbitration Act and from the experiences of other Model Law jurisdictions. The Mauritius legislature decided to establish, through this act, two distinct and entirely separate regimes for domestic arbitration and for international arbitration. Domestic arbitration remains regulated by the Code de Procédure Civile, on the basis of the French model of 1981. It has been widely used by the Mauritian business community, in particular in the construction industry. This already well-developed regime for domestic arbitration has prepared the ground for a pro-arbitration attitude in Mauritian courts. The legislation respects parties' autonomy and is in line with international arbitration standards. Under the provisions of the act, all court applications are made to a panel of Judges of the Supreme Court, with a direct right of appeal to the Privy Council. This is a very positive signal sent to international investors as it grants them that their case will be heard by the most eminent jurists.

A significant and innovative feature of the law is the specific provision pertaining to the arbitration of disputes arising out of the constitution of Global Business Companies (GBCs) incorporated in Mauritius. Before the entry into force of the act, any dispute arising under the constitution of such companies had to be litigated before Mauritian courts. Introducing the possibility to resolve such disputes through arbitration is an important step towards the creation of an even friendlier environment for GBCs. Moreover, the act, following the approach taken in the amended UNCITRAL Model Law, covers not only commercial arbitrations, but also investment arbitrations, as it explicitly mentions investment treaty arbitrations. The act also explicitly permits foreign lawyers to act as counsels or as arbitrators in arbitration proceedings. Parties may also appoint arbitrators of any nationality for both international and domestic arbitration proceedings. By virtue of the act, arbitral tribunals are given the power to grant interim measures and order specific performance of a contract or the payment of a sum of money. Thus, arbitral tribunals have the same powers as Mauritian domestic courts. Another innovative feature of the Mauritius International Arbitration Act is that it does not contain any requirement pertaining to confidentiality. This welcome policy choice will make the application of a future set of rules on transparency possible.

The International Arbitration Act is likely to further strengthen Mauritius as a safe place for conducting arbitration. It adds to other positive characteristics, such as the geographical position of the country, its extensive network of double taxation treaties and bilateral investment treaties, and its physical and telecommunications infrastructures. The recognition and enforcement of awards rendered under the act is regulated by the **Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001,** which translates into domestic law the provisions of the New York Convention to which Mauritius is a party. It takes around 16 weeks to enforce an arbitration award rendered in Mauritius, from filing an application to a writ of execution attaching assets, and 11 weeks for a foreign award. The efficiency of foreign arbitral awards enforcement is crucial because many holding companies based in Mauritius are potential award-debtors who hold assets in the Mauritian territory, making the enforcement of awards more likely to be successfully conducted. As a Global Business jurisdiction, Mauritius is indeed a strategic place in which to enforce an award.

Another positive signal sent to the global business community is that all appointing functions under the act are given to The Hague **Permanent Court of Arbitration (PCA)**. This means that when an international arbitration is to take place in Mauritius, the PCA is in charge of appointment and administrative functions, thus ensuring a high level of credibility. In 2009, the Government of Mauritius has concluded a host country agreement with the PCA in order to appoint a permanent representative of the PCA in Mauritius. Any commercial or investment dispute held in Mauritius may now be determined in an arbitration administered by the PCA, which set up an office in Port Louis, in cooperation with the Mauritius Chamber of Commerce and Industry. The PCA was also mandated to support the implementation of the 2008 International Arbitration Act, in particular with regard to the enforcement of arbitral awards. The PCA had a rather subdued beginning but now seems to be active, although it has registered only one case since 2008.

In 2011, the Government of Mauritius also set up the **LCIA Mauritius International Arbitration Centre** (LCIA-MIAC), through a co-operation between the London Court of International Arbitration and the Government of Mauritius. The creation of the independent arbitration institution, in parallel with the enactment of the International Arbitration law, will allow Mauritius to further position itself as the first regional centre for arbitration in Southern Africa. LICA-MIAC, which is effective from December 2012, provides a venue for the conduct and administration of both domestic and international arbitrations, with a focus on the latter – especially for disputes related to the constitution of GBL companies. The Secretariat of LCIA-MIAC also holds, in co-operation with ICISD, UNCITRAL, the PCA, LCIA and the International Council for Commercial Arbitration, biennial conferences that are attended at the highest level. Endowed with a set of arbitration and mediation rules, MIAC ambitions to establish Mauritius as a first choice place of arbitration for the resolution of cross-border disputes in the SADC region.

Mauritius has not inserted in its domestic law any dispute settlement clause. Specifically, Mauritius legislative framework for investment does not contain a unilateral offer to arbitrate investment dispute. Consent to arbitration is given only through bilateral investment treaties. This is a useful illustration that consent to arbitration through national legislation is not necessary, as it is undeniable that even in the absence of such a dispute settlement clause, the country still manages to provide a safe and attractive environment for investment. Although it is noted that Mauritius has never been involved in an ICSID case, it could nonetheless be useful to set up an investor-State dispute avoidance mechanism. Such early alert mechanism for the prevention of disputes is an increasingly common practice, notably in Latin America. The identification of potential disputes at an early stage could be the responsibility of the BOI.

## 2.6. International co-operation in the promotion and protection of investment

### *Mauritius is a signatory to major international arbitration instruments*

In addition to its extended network of IPPAs detailed below, which provide access to international arbitration, Mauritius has committed itself to the most important international conventions for the settlement of investment disputes. Mauritius is a member of the Convention on the Settlement of Investment Disputes between States and National of Other States (ICSID Convention), which convention has been transposed into domestic law by the Investment Disputes (Enforcement of Awards) Act. The Supreme Court is competent for the recognition and enforcement of ICSID awards. Mauritius has also ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which provides a legal mechanism for enforcement of awards that are not rendered under the auspices of ICSID. Foreign arbitral awards may thus be enforced in Mauritius, in accordance with the provisions of the Recognition and Enforcement of Foreign Arbitral Awards Act, which transposes the New York Convention into domestic law. Moreover, Mauritius has followed the updated UNCITRAL Model Law on International Commercial Arbitration in its 2008 International Arbitration Act. To date, Mauritius has never been involved in an investor-State dispute before an ICSID arbitral tribunal.

Mauritius is also a member of the Multilateral Investment Guarantee Agency. MIGA provides political risk insurance guarantees to private sector investors and lenders and protects investments against non-commercial risks. It has been actively supporting Mauritian investors, as well as foreign investors using Mauritius as an investment platform, venturing abroad, particularly into sub-Saharan Africa. The agency is working to further strengthen relations with the local business community, creating synergies that will continue to support development in the SADC region and other regions of Africa.

### *Mauritius is expanding its network of bilateral investment treaties*

When investing abroad, foreign investors face a risk related to the uncertainty of the type of treatment they will receive in the host country. In such a context, bilateral investment treaties (BITs) guarantee certain standards of treatment to foreign investors and ensure transparency and stability. Since the mid-1990s, most BITs have introduced stronger investor-state dispute settlement (ISDS) mechanisms that allow for contracts to be enforced outside the host country, adding another guarantee to foreign investors. Despite the growing number of BITs worldwide, their impact on FDI inflows remains unclear (as detailed in Box 2.5). Nevertheless, empirical studies suggest that

Box 2.5. **Do bilateral investment Treaties promote FDI flows?**

Over the past two decades, the rise in FDI has been accompanied by a growing number of BITs between developed and developing countries and, increasingly recently, between developing countries. Treaty shopping cases, whereby one company invests in another country via a third country to benefit from an existing BIT, also reinforce the idea that BITs raise the level of FDI inflows into signatory countries.

Despite the growing number of BITs, their impact on FDI inflows remains unclear. Recent studies have found a positive relationship between BITs and FDI, but a number of other studies find little evidence supporting this:

- Effects of BITs in raising FDI flows to developing countries are conditional on host country institutional quality, as BITs are not always found to substitute for poor institutional environment (Neumayer and Spess, 2005). Nonetheless in cases where BITs do substitute for poor institutional quality, ratified BITs can significantly promote FDI flows to developing countries (Busse, Königer and Nunnenkamp, 2008). BITs therefore have little impact on FDI levels for countries with higher political risks, but are beneficial to low risk countries (Tobin and Rose-Ackerman, 2006).
- BITs with high-income countries raise FDI inflows, although the marginal benefit of an extra BIT is reduced as a result of worldwide BIT proliferation across competing countries (Tobin and Rose-Ackerman, 2006).
- Signing BITs with the US is associated with higher FDI inflows into developing countries but not BITs with other OECD countries, perhaps because US BITs are associated with stronger investor protection. US BITs tend to include FDI liberalising provisions through NT standards at the pre-establishment stage (Sachs, 2009).
- Berger et al. (2010) find no evidence that BITs with a provision on ISDS are more effective than those without it, or that BITs which liberalise market access through pre-establishment NT provisions induce more FDI. Only regional trade agreements (RTAs) which liberalise market access play a significant role.

Box 2.5. **Do bilateral investment Treaties promote FDI flows?** *(cont.)*

- Investors' lack of knowledge of the content of BITs and their lower public profile than RTAs might explain why investors do not respond to BITs in the same way they do to RTAs with stronger market access provisions. It is also possible that existing FDI may actually prompt the establishment of BITs rather than the other way round (Aisbett, 2007). The success of BITs in attracting FDI may also vary with the extent of political risk and institutional quality in signatory countries.

The overall conclusion is that BITs might play a secondary role after economic fundamentals in promoting FDI inflows, depending on the nature of the investment and other economic and regulatory factors.

BITs might be a more significant factor for efficiency-seeking investors than market and natural resource-seeking investors. For efficiency-seeking investors, BITs can more heavily influence the investment decision between equally attractive locations. This suggests that BITs can bring added value for countries like Mauritius in particular. Indeed, by offering a platform for regional investment facilitation rather than by building its investment promotion strategy on its market or on a specific natural resource, Mauritius seeks to attract predominantly efficiency-seeking investors. Empirical evidence also suggests that while BITs therefore have little impact on FDI levels for countries with higher political risks, they are beneficial to low risk countries – again reinforcing the case for a strong BIT network in Mauritius.

As a crossroad of trade and investment, Mauritius is pursuing its strategy of expanding its network of international treaties linked with the promotion and protection of investment. So far, Mauritius has signed **Double Taxation Avoidance Agreements** (DTAA) with a total of 43 countries, out of which 18 from Africa, including Kenya, Zambia and Nigeria, with which DTAAs were signed in 2013 (awaiting ratification), and with six more African DTAAs under negotiation. It also has built a sound network of **Investment Promotion and Protection Agreements** (IPPA) with a total of 37 countries, including 17 from Africa. This observation must however be tempered by the fact that the large majority of IPPAs concluded more recently between Mauritius and other African countries are still pending ratification as of June 2013: of the 26 IPPAs signed since 1999, only 11 have entered into force (see Box 2.6). Although Mauritius' record is well above the average ratification rate on the continent (44%), the government would be well advised to complete the ratification process to ensure that the totality of its BITs is turned into legally binding enforceable commitments. It would be particularly important to follow up on ratification with African counterparts, as these treaties can play a crucial role in strengthening the unique position of Mauritius as a gateway to investment in Africa.

Box 2.6. **Bilateral investment agreements concluded by Mauritius, as of 1 June 2013**

- 1971: Germany (ratified 1973).
- 1986: United Kingdom (ratified 1986).
- 1996: China (ratified 1997).
- 1997: Pakistan (ratified 1997), Portugal (ratified 1999), Indonesia (ratified 2000), Mozambique (ratified 2003).
- 1998: India (ratified 2000), South Africa (ratified 1998), Switzerland (ratified 2000).
- 1999: Czech Republic (ratified 1998), Nepal *(not ratified to date)*.
- 2000: Singapore (ratified 2000), Romania (ratified 2000), Zimbabwe *(not ratified to date)*, Swaziland *(not ratified to date)*.
- 2001: Burundi (ratified 2009), Benin *(not ratified to date)*, Cameroon *(not ratified to date)*, Chad *(not ratified to date)*, Comoros *(not ratified to date)*, Ghana *(not ratified to date)*, Guinea *(not ratified to date)*, Mauritania *(not ratified to date)*, Rwanda *(not ratified to date)*.
- 2002: Senegal (ratified 2009).
- 2004: Barbados (ratified 2005), Madagascar (ratified 2005), Sweden (ratified 2005).
- 2005: Belgium and Luxembourg (ratified 2009), Botswana *(not ratified to date)*.
- 2007: Finland (ratified 2008), Korea, Republic (ratified 2008).
- 2009: Tanzania *(not ratified to date)*.
- 2010: Congo *(not ratified to date)*, France *(not ratified to date)*.
- 2013: Turkey *(not ratified to date)*.

The BIT programme and the prospect to engage further into treaty negotiations is part of this strategy to establish Mauritius as a launch pad for investment. The existence of BITs – providing core protection standards and access to investor-State dispute settlement mechanisms – and double taxation avoidance treaties reinforce the country's position as a hub for channelling investments into Africa and Asia. By virtue of Section 28A of the Investment Promotion Act, the Board of Investment is the institution competent to enter into arrangements for the promotion and the protection of investments by citizens of Mauritius in the territory of other States and by investors of other States in Mauritius. Mauritius' extensive network of IPPAs reinforces Mauritius as a destination of choice to hold investments directed to Asian and African markets.

The government has made it a **priority to expand its network of IPPAs with African countries**, in order to reinforce the country's position as a major investment hub for FDI into Africa. The Multilateral Economic Directorate of MoFARIIT, which acknowledges that great potential benefits lay in speeding regional integration in Africa, aims at accelerating the process of removal of non-trade barriers in the form of both DTAs and BITs between African countries. Mauritius also took a step further in its endeavour to build up a sound network of investment treaties, with the signing, in 2006, of the Trade and Investment Framework Agreement with the United States. The TIFA established a regular forum to address a range of trade and investment issues. In addition, Mauritius and the United States have engaged, since 2009, in negotiations towards a Bilateral Investment Treaty that would further strengthen investor protection between the two countries. As a member of COMESA, Mauritius is also bound by the TIFA signed between COMESA and the US. The Economic Partnership Agreement currently being negotiated with the EU will also contain provisions on investment.

On a regional level, **Mauritius is also a member of SADC, IOC**, and IOR-ARC, and the country actively supports the establishment of the COMESA-EAC-SADC Tripartite Free Trade Area, which aims at establishing a single economic space in the region. Mauritius is part of the SADC Investment Sub-Committee and is actively involved in the implementation of the Finance and Investment Protocol. This includes the elaboration, since 2012, of the SADC Regional Investment Policy Framework (IPF), which will take the OECD Policy Framework for Investment as a reference with the objective of facilitating investment policy co-ordination and coherence among SADC member States. Meanwhile within COMESA, Mauritius has also contributed through BOI to a "Study on Cross-Border Investments in the COMESA Region", completed in June 2012 as a first step towards the establishment of a Regional Investment Observatory (RIO). Mauritius also adopted, in 2007, the COMESA Common Investment Agreement Multilateral Investment Agreement (CCIA Agreement), which is however still pending ratification and seems to have been abandoned.

Overall, **Mauritius' treaty practice appears to be rather homogeneous in the scope and content** of the investment protection standards contained in its BITs. However, Table 2.1, which applies to individual BITs but does not address in detail the Model BIT's provisions, highlights a few inconsistencies among treaties that do not appear to be justified by specific situations and that should therefore, for coherence purposes, be avoided in future treaties. In addition, it is noted that the approaches taken in the 2000 Model BIT appear not to be automatically reflected in individual treaties ratified so far. It is crucial to ensure the greatest consistency possible among all international commitments taken by Mauritius. The government could otherwise find itself in a position where foreign investors can potentially do some "treaty

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1]

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| **Scope issues** | | |
| Investment | Defines assets to which the treaty applies, i.e. assets that qualify as protected investments. The scope of the treaty depends on the definition of the term "Investment". | All of Mauritius BITs, as well as the Model BIT, follow the dominant approach in global BIT practice: a broad-asset based definition, followed by a non-exhaustive illustrative list of the forms the protected investments can take. Under Mauritius BITs, the investment can thus take a wide variety of forms and is typically defined as "every kind of asset established or acquired under the relevant laws and regulations and […] includes movable and immovable property […]; shares and any other form of participation in a company […]; claims to money, or to any performance under contract having an economic value; intellectual property rights […]; business concessions conferred by law or under contract, including any concession to search for, extract or exploit natural resources." (Article 1 of Mauritius India BIT). This language means that portfolio investments, as well as assets used for non-business purposes, can also benefit from the protection accorded by virtue of Mauritian treaties. The implicit inclusion of portfolio investment under the umbrella of its investment treaties might be part of Mauritius' strategy to become a hub for capital flows and therefore to bring under the scope of its treaties all types of investments. If such is Mauritius' strategy, the inclusion of portfolio investment could be more explicitly stated in the definitional section of BITs. There are, however, variations among BITs signed by Mauritius. Some of them exclude assets not acquired in the expectation or used for the purpose of economic activities from the definition of investment. For example, the Mauritius-Swaziland treaty, signed in 2000, defines covered investments as "every kind of asset admissible under the relevant laws and regulations of the contracting party in whose territory the respective business undertaking is made […]." Such limitations are sometimes inserted by countries to target more precisely investments that must be protected. If the authorities wish to exclude investments made for non-business purposes from the scope of the treaties, they should then consider adopting this treaty language more automatically in its future BITs. It would give them more flexibility to regulate non business related investments through domestic regulations. |
| Investor | Defines those persons and legal entities benefiting from the treaty provisions. Nationality of juridical persons for the purposes of BITs is typically determined according to place of incorporation, principal seat of the enterprise, or alternatively, through the notion of control. | According to Mauritius BITs, which appear to be rather homogeneous in this regard, the nationality of covered companies must be determined through the criterion of their incorporation. No reference is made to the nationality of ownership or control as a condition for defining nationality. This approach, which is found in the majority of all BITs globally, reflects the determination of the government not to limit the benefit of the treaty to the sole entities that have genuine ties with the home country. This is coherent with Mauritius' investment strategy to position itself as a platform for international investment. |

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1] *(cont.)*

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| **Admission and treatment** | | |
| Admission of foreign investment | Provides for relative standards of protection, namely national treatment (NT) and most-favoured-nation treatment (MFN). Determines whether NT and MFN apply at the admission phase, or only at post-establishment stage. | All of the reviewed BITs follow the traditional admission approach: they provide for core standards of investment protection only at a post-establishment phase and do not extend the protection to the admission of investment. It means that MFN, NT and FET standards apply only after the investment has entered the country. |
| Most-favoured-nation treatment | Provides investors from the contracting party the best treatment given to investors from any other country. | All of Mauritius' treaties grant the MFN standard of treatment to investors from treaty partner countries. They provide for the MFN and the NT standards within the same article, such as follows: "Each contracting party shall accord to the investment of investors of the other contracting party made in its territory a treatment which is no less favourable than that accorded to investments of its own investors or of any third country, if the latter is more favourable." (Mauritius-Zimbabwe BIT, 2000).<br>The vagueness of the MFN provision language potentially would potentially leave great leeway to arbitrators in the interpretation of its scope of protection. Mauritius might wish to have greater control on its treaty commitments by using a more detailed and explicit language. For example, there is no clarification as to whether the scope of the MFN extends to procedural matters. Mauritius could consider limiting the scope of the MFN and NT standards to substantive rights only and clearly exclude procedural matters, which is a good practice in light of recent high profile arbitration cases (in particular, the Maffezini case).<br>More generally, it is advisable to further clarify and update the content of such core treaty provisions in order to better protect Mauritius' interests, both as a host and a home country. |
| National treatment | Grants foreign investors, in like circumstances, treatment no less favourable than the treatment of nationals.<br>Like MFN, NT is a contingent, or relative standard of treatment, as its content varies according to how other investments are treated by the host State. | See above.<br>Although no NT standard is provided for in the Model BIT, Mauritius' individual BITs appear to provide for the National Treatment standard after the entry of investments, with no list of exceptions or safeguards. |
| Provision on key foreign personnel | Permits or regulate entry and sojourn of key personnel in connection with the investment | The entry and sojourn of foreign personnel appears to be rarely addressed in Mauritius' treaties and the matter is therefore left to domestic legislation. |

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1] *(cont.)*

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| **Investment protection** | | |
| Fair and equitable treatment, full protection and security | Fair and Equitable Treatment (FET), and Full Protection and Security (FPS) are absolute standards of protection, i.e. the required level of treatment is nit contingent on treatment accorded to third parties by the host State.<br>FET (which encompass, inter alia, an obligation not to deny justice) and FPS (of which the scope has recently been extended and is therefore uncertain) are almost always provided for in BITs. However, their meaning and the level of protection they grant remain unclear and subject to debate. | All of Mauritius' BITs provide for the FET and FPS standards of treatment. Such provisions remain succinct and rather vague as they do not clarify what level of protection is given through these standards.<br>When negotiating future BITs, Mauritius could usefully consider adopting a clarified approach to FET and FPS standards. Given some difficulties in the interpretation of these notions, and their potential consequences in terms of legal liability towards foreign investors, some countries now use more precise language in the text of the BITs. For example, some recent BITs of the US and Canada provide that FET "includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process […]".It would be recommended for Mauritius to follow a careful approach when providing these standards of treatment in its treaties, in order to minimise potential controversies as to the content of the standards. |
| Expropriation and compensation | States have a sovereign right to expropriate under certain conditions. Most BITs condition the exercise of this right on being:<br>– non-discriminatory;<br>– taken under due process of law;<br>– for a public purpose;<br>– and against payment of compensation.<br>Almost all BITs provide for "Hull Rule" type compensation, i.e. a "prompt, adequate and effective" compensation. | All of Mauritius BITs follow the most common approach with regard to the protection granted against expropriation. Consistent with customary international law, they subject the right to nationalise or expropriate private properties to a number of conditions (it must be non-discriminatory, taken under due process of law and for legitimate public purposes, and against payment of fair compensation). The expropriation clause extends its scope to measures tantamount to an expropriation – thus covering both direct and indirect expropriation – and enshrines the principle of a prompt, adequate and effective compensation.<br>Mauritius BITs do not contain detailed guidelines to determine when an expropriation has taken place and what amount of compensation is due. Mauritius might wish to adopt the emerging good practice of clarifying in an annex what criteria should be used to determine when an indirect expropriation takes place, in line with the Expropriation provisions contained in the Constitution. Such treaty language grants investors further predictability and legal certainty on expropriation matters.<br>However, all investors, regardless of their nationality, benefit from a sound constitutional protection against unlawful expropriation (see Section 2.4). Such a strong safeguard is balanced with the inclusion, in some of Mauritius recent treaties, of provisions explicitly affirming the State's right to protect certain public interests (see below, Special provisions). |

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1] *(cont.)*

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| Transfer of funds | Provisions of this type reduce – or eliminate – restrictions on monetary transfers arising in connection with investments. Free transfer of funds is a key condition for the proper operation of investments. However, the host country can keep some leeway to administer its monetary and financial policy. This later concern is usually expressed through the inclusion of a list of exceptions. | BITs concluded by Mauritius include a provision granting foreign investors a free and timely transfer of funds related to their investment, in a freely convertible currency and a specified rate of change.<br>The transfer clause covers all funds related to an investment and provides for an illustrative list of covered funds. For example, Article 8 of the Mauritius-Singapore BIT grants the free transfer, on a non-discriminatory basis, of the capital and returns from any investment: "The transfers shall be made in a freely convertible currency without any restriction or undue delay. Such transfers shall include, in particular though not exclusively: a) profits, capital gains, dividends, royalties, interest and other current income accruing from an investment; b) the proceeds of the total or partial liquidation of an investment; c) repayments made pursuant to a loan agreement in connection with an investment; d) license fees […]; e) payments in respect of technical assistance, technical services and management fees; f) payments in connection with contracting projects; g) earnings of nationals of a Contracting Party who works in connection with an investment in the territory of the other contracting Party […]." The adoption of this open-ended illustrative list approach in Mauritius' BITs is in line with the most common approach among recent treaties. It aims at ensuring foreign investors the broadest possible coverage.<br>Most of the treaties that were reviewed do not subject the guarantee of a free transfer to the domestic laws and regulations and do not contain any exception to the transfer of funds. In particular, they do not provide for a balance-of-payment safeguard.<br>Given that this provision may potentially affect the government flexibility to properly administer its monetary and financial policies and hence limits its policy space for capital controls, Mauritius may wish to consider introducing some exceptions to the guarantee of free transfer of funds.[2] For example, in case of a currency crisis, a BOP exception could allow the country to temporarily restrict transfers under certain conditions without legal liability towards foreign investors protected by its BITs.<br>Other exceptions that are often found in investment treaties are linked to the fact that the transfer provision should not prevent a party from ensuring compliance with other measures related to matters such as bankruptcy, insolvency or criminal offences. |
| Umbrella clause | Elevates certain other undertakings by host States into treaty breaches.<br>It can therefore give access to arbitration in the event of a contractual dispute. | The Model BIT contains an umbrella clause, but individual treaties do not appear to follow this approach. This absence from most of Mauritius' BITs is in line with global treaty practice, of which the umbrella clause has not been a prominent feature for many years. It is a cautious and good practice not to include it into treaties; since this clause has given rise to a large number of investment disputes (in particular, SGS v. Pakistan; SGS v. Philippines). |

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1] *(cont.)*

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| | The umbrella clause grants investors the most favourable treatment resulting from the application of the host state's domestic legislation or international obligations. For example, an umbrella clause can be used to limit performance requirements, providing that the host state is party to some international treaties containing a prohibition of performance requirements (such as the TRIMs Agreement). | |
| Denial of benefits | Provides for the right of the State to deny the benefits of the agreement to certain investors. For example, such a clause allows the denial of treaty protection to companies that have no substantial business activities in the State (e.g. a shell company organised under the laws of a Contracting Party but controlled by nationals of a third country), or to companies originating from a country with which the host State does not maintain normal economic relations. | There is no denial of benefits clause in Mauritius BITS, as in the majority of all existing BITS.<br>This means that Mauritius does not require the assets to be first located within its jurisdiction to benefit from the protection provided for in its treaties.<br>The absence of such a clause is coherent with the platform concept used by Mauritius, under which the country has been the base for third party foreign investment to be channelled into China or India, with which Mauritius has BITs.<br>It might mean that shell companies established under the laws of Mauritius by investors from non-parties countries could benefit from treaty protection. |
| **Dispute Settlement** | | |
| Investor-state dispute resolution | Arguably, the most important feature of a BIT. It enables the investor directly to assert its rights accorded under the treaty. | Mauritius' BITs are fairly consistent in their treatment of investor-State dispute settlement issues. The country to refer to international arbitration in case a dispute arises out of a matter under the treaty scope. The ISDS clause in Mauritius' BITs typically gives the investor a right to go, after a cooling-off period during which the parties must try to settle the disputes in an amicable way, before an arbitral tribunal, be it an ICSID tribunal or an ad hoc tribunal that can follow the UNCITRAL rules.<br>However, there are some variations among treaties signed by Mauritius regarding the scope of the ISDS clause. For example, the BIT between Swaziland and Mauritius limits the ISDS provisions only to cases of expropriation and nationalisation. |

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1] *(cont.)*

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| | | Through such clauses, Mauritius gives in advance its consent to international arbitration – it should be recalled that Mauritius' domestic law does not provide for an automatic consent to international arbitration. The country also commits, in its ISDS clauses, to be bound by the content of arbitral awards. Such a liberal and open approach to investment dispute, providing foreign investors with easy access to international arbitration, is in line with Mauritius International Arbitration Act 2008. The combination of both the law and the ISDS treaty provisions should facilitate the practice of referring to international arbitration.<br>Although the approach to ISDS is a very favourable one, the reviewed BITs do not contain very detailed ISDS provisions. Such succinct clauses afford Mauritius little control over potential arbitrations.<br>A recent global trend is to address ISDS mechanisms in more detail, providing greater guidance to the disputing parties for the conduct of arbitration and of other procedural requirements. Mauritius might wish to start doing that in order to ensure greater control over the conduct of potential disputes.<br>The government is also encouraged to clarify how the submission for ISDS will interact with domestic judicial and administrative adjudication procedure, through the inclusion, for example, of a "fork-in-the-road provision" that requires investors to choose between litigation in domestic courts and international arbitration with the effect that once that choice has been made, it becomes final. Mauritius could also insert a mandatory waiting period that investors must observe before instituting proceedings.<br>Mauritius might also wish to further promote the principle of judicial economy. To this end, it is useful to set up a mechanism to avoid frivolous claims, i.e. claims that lack a sound legal basis, to better protect the country against potential abuses of the ISDS system. Another mechanism to foster judicial economy and to avoid inconsistent results is to allow the consolidation of claims having a question of fact or law in common, or arising out of the same circumstances. |
| **Investment promotion** | | |
| Promotion and facilitation | Commitment to encourage the promotion and facilitation of investment. | Mauritius commits, in all of its investment treaties, to encourage and promote investment. Such hortatory approach, encouraging partner countries to a best-endeavour in terms of investment promotion, is expressed in a vague and general wording and does not encompass any specific obligation regarding exchange of information and transparency with mechanisms to implement them. This "best endeavour approach" is taken by the vast majority of existing BITs.<br>Mauritius could adopt a more conducive approach to investment promotion in its treaties and to specify promotional activities that should be undertaken. Measures aiming at promoting outward investment could include actions such as providing information, technical assistance, insurance, and support to aid domestic firms to establish operations overseas. A provision requiring the State parties to exchange information on investment opportunities with a view to increasing investment flows could also be inserted. |
| Transparency | Promotes investment through the dissemination of information. | BITs signed by Mauritius do not have a provision on transparency obligations. Mauritius might be well advised to include transparency regulations in its future BITs and impose on both host States and foreign investors an obligation of transparency in the exchange of information and in the process of domestic rulemaking. |

Table 2.1. **Main features of Mauritius investment treaties and options for treaty drafting**[1] *(cont.)*

| Key provisions | General description | Salient features of Mauritius' BITs and recommendations |
|---|---|---|
| Special provisions bearing on the protection of the environment, labour market rights, public health national security concerns | Language referring to specific public policy concerns. | Crucial emerging issues, such as environmental protection, public health and labour standards, are not yet reflected in all of Mauritius' BITs.<br>Some BITs do however contain safeguard clauses, be they general exceptions, such as in the Mauritius-Singapore BIT, or more specific safeguards protecting policy objectives. For instance, Article 11 of the Mauritius-Switzerland BIT (1998) provides that "Nothing in this Agreement shall be construed to prevent a contracting party from taking any action necessary […] for reasons of public health or the prevention of diseases in animals and plants." Likewise, the BIT signed in 2005 with Belgium and Luxembourg contains a specific clause on environmental protection.<br>In Article 10 of Mauritius-Singapore BIT, Mauritius retains the right to implement national policies: "For avoidance of any doubt, it is declared that all investment shall, subject to this Agreement, be governed by the laws in force in the territory of the contracting party in which such investments are made". Likewise, Article 12 of the BIT between Mauritius and Comoros (2001) states that "Nothing in this agreement shall be construed to prevent a contracting party from adopting any measure whatsoever to protect essential security interests or in the interest of public health or the prevention of diseases affecting animals and plants". Similar clauses relating to the protection of the environment, health and labour rights are contained in some BITs signed during the past decade with African countries, such as with Burundi, Cameroon, Guinea and Benin.<br>Such a cautious treaty language allows the authorities to strike a balance between openness, an overall very favourable environment for investors, the protection of policy objectives, and some political leeway.<br>Mauritius could consider inserting more provisions safeguarding fundamental values. This is a good practice that is increasingly often reflected in recent BITs. This would allow the authorities to invoke public benefit purposes exceptions without violating their treaty commitments. |

1. This table only looks at the most salient and debatable provisions of Mauritius' BITs. It does not analyse widely accepted provisions such as the State-State dispute resolution clause, the compensation for losses clause, the temporal scope of the treaty, limitations to performance requirements, etc.
2. For more information on the management of capital inflows and capital account, see *IMF Discussion Papers*: *www.imf.org/external/pubs/ft/spn/2010/spn1004.pdf*, *www.imf.org/external/pubs/ft/sdn/2011/sdn1106.pdf*, *www.imf.org/external/pubs/ft/sdn/2012/sdn1210.pdf*.

shopping" in taking advantage, through the most-favoured-nation provision, from protection standards that were provided to investors from third countries. As far as it is possible, consistency in treaty drafting should be pursued to give Mauritius the greatest control upon its international commitments. The government itself recognises the need to reinforce the consistency of its treaty practice and plans to update and fine-tune the Model BIT over 2014. The amended Model BIT is expected to include a National Treatment provision and more detailed provisions on the conduct of arbitration, in particular with regard to the transparency of proceedings.

Mauritius' investment treaty policy appears to follow the most **traditional and common approach in investment treaty drafting**. The treaty provisions remain rather succinct. Overall, they do not reflect most of the recent and innovative approaches in treaty practice. For example, crucial emerging issues, such as environmental protection, public health, and labour standards, which are increasingly included in safeguards provisions of worldwide BITs, are reflected in the Model BIT, but not yet contained in the majority of Mauritius investment treaties. Mauritius could also consider inserting detailed guidelines on indirect expropriation and processes of compensation for expropriation. In the context of an active national strategy of expanding the treaty network, and with the rapid evolution of investment law over recent years, it would be advisable to further clarify and update the content of BITs core standards of protection. Reflecting innovative treaty practices is likely to give States greater control upon the interpretation of their treaty commitments. It would also allow Mauritius to better protect its interests, both as a host and a home country and to ensure greater consistency among treaties it has signed. When deciding among various policy options, Mauritius must take into account its peculiar position, compared to other African countries, as it is not only an investment destination, but also a strong outward investor.

**Clear and updated policy directions** could be set out in the revised Model BIT, and treaties concluded in the future could be drafted more consistently along the lines of this Model. Before engaging in a process of treaty drafting with new partner countries, the government should undertake a stocktaking and analysis of its existing BITs to highlight potential inconsistencies. The exercise would allow Mauritian negotiators to make an informed choice between various policy options and to build their treaty policy on international best practices.

Once this stocktaking has been done, and in light of the observations gathered below, Mauritius might wish to reconsider and **regularly update its current investment agreements** through renegotiations with partner countries. So far, Mauritius does not have a programme of periodic review of existing international treaties and commitments. Regular revision of treaties should be the responsibility of a dedicated team, well trained, aware of new legal developments and sensitised to ISDS issues. Mauritius is encouraged to keep track of treaty negotiations to ensure a correct interpretation of the meaning given to the treaty provision at the time of the negotiations.

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# Chapter 3

# Investment promotion and facilitation in Mauritius

*The Government of Mauritius places strong emphasis on attracting FDI, especially from emerging economies. Significant improvements in the business environment have been made, starting with the 2006 Business Facilitation Act and followed by the rationalisation of investment incentives and continuing simplification of business licencing procedures. Strategic bodies (such as the Inter-Ministerial Committee on Business Facilitation or the Joint Economic Council) together with a very dynamic Investment Promotion Agency (the Mauritius Board of Investment) have been established and manage regular communication with investors. However the dominant emphasis in national development strategies (such as the ten-year Economic and Social Transformation Plan, ESTP) is mostly on wide-ranging social objectives, and Mauritius could benefit from a long-term strategy dedicated specifically to investment. The framework for SME promotion and business linkage creation could also be enhanced and better co-ordinated, notably to ensure that SMEs can fully utilise the available support schemes and investment opportunities.*

## 3.1. Investment promotion and facilitation strategy

### *A strong focus on attracting FDI, especially from emerging economies, in current growth strategies*

Throughout the different phases of economic reform, since 2005 government policy in Mauritius has been firmly centred on promoting foreign investment. This followed a period of intense questioning within the Mauritian government, as Mauritius' economy suffered at the turn of the millennium from the erosion of trade preferences and of labour cost advantages. Government therefore embarked on a new economic strategy aimed at creating an open, transparent investment climate to enhance foreign and domestic investment. As expressed by the Mauritius Board of Investment (BOI, the country's investment promotion agency), "the only route to more robust growth is more investment […] for policymakers, the growth equation is simple: no investment, no growth". This reflects the continuing importance of investment as a generator of employment and income, a vehicle for technology transfer, and a means for higher economic growth.

Economic and investment policy post-2005 can be categorised in the following three stages (as outlined by the President of the Republic of Mauritius on the occasion of the Second Session of the Fifth National Assembly, on 16 April 2012):

- The first stage covered the period of 2005 until 2008, during which government embarked on radical reforms to the economy, including simplification of investment procedures (as embodied by the **Business Facilitation Act 2006**, detailed below).
- The second stage covered **2008-12**, when government focused on macro-economic stability in the face of the 2008 global financial crisis. This included the **Economic Restructuring and Competitiveness Programme** (ERCP), launched in 2010 to withstand global economic contractions. The latter comprised measures to provide short-term financial breathing space and support restructuring and deleveraging of firms that were judged to be viable for the long-term. The ERCP (since renamed as the Restructuring Working Group and scheduled until 2014) promotes a restructuring plan based on market diversification, improvement of products, efficiency and productivity.
- The Second Session of the Fifth National Assembly was held to "mark an important third stage of Government's action since 2005". This stage has

emerged in the context of the 2011-12 Euro-zone crisis, which increases the urgency of a well-formulated industrial policy based on market diversification (in 2010, 95% of sugar industry earnings and 72% of tourists to Mauritius were from European markets). The post-2012 stage is expected to shift the focus of economic and investment policy towards new regions (including Asia, Latin America and Africa), and to move Mauritius towards becoming a high income nation – notably by raising the skills and capacities of the Mauritian people, harnessing the power of technology, modernising and streamlining institutions, accelerating innovation in existing industries, and encouraging diversification and growth in new and more sophisticated sectors.

In line with this third phase, Mauritius aims to become a "regional springboard" for innovation and financial market development – both through "horizontal shifts" into more innovative industries and by "vertical shifts" and technological upgrading within existing industries. BOI has notably identified five sectors (all at high levels of industrial sophistication) for focus in coming years: agribusiness and biotechnology, hi-tech manufacturing, medical tourism, seafood/aquaculture, and knowledge-based industries. The government also recognises the need to update the Mauritius Vision, published in 1997. In this vein it proposes to set up a National Strategic Transformation Commission.

Government has also announced preparation of a ten-year **Economic and Social Transformation Plan** (ESTP) which will set out strategies to raise per capita income from the current level (USD 8 000) to high-income levels (at least USD 14 000). This plan is expected to help meet the challenges for an accelerated sustainable and equitable growth through increased human capital, better policies and processes, as well as more complementary public and private investment and productivity advances. The ESTP will gradually be linked to the Performance-Based Budgeting (PBB) plans elaborated by ministries and all government agencies on a rolling three-year basis; in this view a series of consultations with ministries, which seek to align the 2013-15 PBB with ESTP objectives, is already underway. These growth and diversification ambitions provide the guiding directions for investment policy in the country.

Nevertheless, aside from the Industrial and SME Strategic Plan 2010-13 (see below) and the BOI Strategic Plans, Mauritius lacks an overarching strategy dedicated to investment policy: national strategy documents place dominant emphasis on wide-ranging social objectives such as employment, education and health, but do not establish any dedicated and strategic long-term goals for investment itself. The alignment between investment and export competitiveness objectives is only implicit. Moreover, while different priority sectors are outlined in several broad policy documents (like the 2010 report on Facing the Eurozone Crisis, government budgets, the Government Programme for 2012-15, or the industrially sophisticated sectors identified by BOI), the process for identifying these sectors remains unclear and fragmented across the existing documents.

For these reasons, a national investment strategy document could be a useful complement to the above framework for policy design. It could for instance be aligned with the goals and framework of the forthcoming ESTP, which is still in very initial phases of elaboration. Such a document could: define strategic and time-bound investment objectives; ensure better coherence with other national strategy documents (on fiscal policy, trade, human resource development, infrastructure, etc.); and facilitate the alignment of the overall investment policy framework with these investment objectives. This would help boost growth in important industries as well as improve policy coherence and predictability for investors.

### *Business Facilitation (Miscellaneous Provisions) Act 2006*

The economic reform process since 2005, which has brought about radical improvements to the investment climate, began with the promulgation of the **Business Facilitation (Miscellaneous Provisions) Act 2006.** This legislation opened up the economy by facilitating entry of foreign investors as well as attracting foreign talents and technology. The act amended more than ten acts covering business registration, companies, immigration, investment promotion and employment. Many investment incentives schemes were also eliminated (see Section 3.3). To further improve the business climate, the government has recently announced that the Business Facilitation Act (BFA) will be revisited by MOFED and BOI, so as to adopt more of a 'whole of government' approach for business facilitation As it currently stands, the stated objectives of the BFA are to:

- provide for a "new legal framework which allows businesses to start operations on the basis of self-adherence to comprehensive and clear guidelines", with authorities checking for compliance and exercising *ex post* rather than *ex ante* control;
- facilitate doing of business and acquisition of properties by foreigners; and
- enable small enterprises to start their business activities within three working days.

Reforms undertaken to date to facilitate business registration in Mauritius, including through the BFA, include the following:

- Since 2006, all businesses are required by law to register with the Registrar of Businesses; and through on-line reforms, since 2009, companies are allocated a unique business registration by the Commercial Registry, under which all transactions can be conducted remotely.

- Small enterprises, incorporated with a single shareholder, without a constitution and no minimum paid-up share capital, are now able to start their business activities within three days.
- In 2008, a **Central Business Registration Database** was implemented, linking the following governmental agencies directly to the Registrar of Businesses: the Mauritius Revenue Authority; the Board of Investment; the Ministry of Social Security, National Solidarity and Senior Citizens' Welfare; the Small and Medium Enterprises Development Authority (SMEDA); and all Local Authorities. This database enables information-sharing across these authorities; for example companies no longer need to register separately with the tax administration, as the Commercial Registry automatically informs tax and local authorities of their registration.
- As concerns **property registration**, over 2008 and 2009 Mauritius reduced the property registration fee, and two requirements (obtaining clearance certificate from the Waste Water Authority, and obtaining a tax clearance certificate for municipal taxes) were eliminated. In 2010, a statutory time limit of 15 days was moreover placed on delivery of final property titles by the Land Registry. Most recently, in 2012 Mauritius has implemented an electronic information management system at the Registrar-General's Department, in view of further accelerating property transfers (see Chapter 2).
- **Criteria for business registration** are now more clearly set out in the Investment Promotion (Amendment of Schedule) Regulations 2010. For companies intending to carry out economic activities in Mauritius, the initial investment must be of a minimum of USD 100 000 (compared to USD 35 000 for self-employed persons in the service sector), and the annual turnover must exceed USD 130 000. Foreign companies willing to conduct business activities in Mauritius without incorporating a local company must register as a branch of foreign company, within one month of establishment in Mauritius.

### *Reducing and simplifying business licensing procedures*

Alongside the above registration reforms, **business licensing** was simplified post-2006: trade licences were abolished and replaced by a single trade fee; the Development Permit and the Building Permit were merged into a single Building and Land Use Permit (BLP); and the 40 activities covered by Development Permits were rationalised into four clusters – services, industrial, commercial and *sui generis*. With a view to attracting new talent, skill and expertise, the work and residence permits were also combined into a single Occupation Permit (OP, which is now delivered within three days compared to over 80 days previously).

Both the OP and the BLP operate under the "**silent agreement principle**", by which authorisations are automatically deemed to be granted once they have exceeded expected timelines. Most monitoring activities related to the award of these permits therefore take place in an *ad hoc* manner, so as to accelerate initial business establishment: subsequent to the granting of a business license, local authorities are to communicate fees, relevant guidelines, and any other provisions to the businesses that intend to trade within their jurisdictions. These local authorities are also charged with carrying out *ex post* control during company operation to ensure compliance with relevant guidelines. Between October 2006 and May 2012, more than 115 000 individual businesses were registered in Mauritius, more than 11 000 OPs issued, and more than 30 000 BLPs approved.

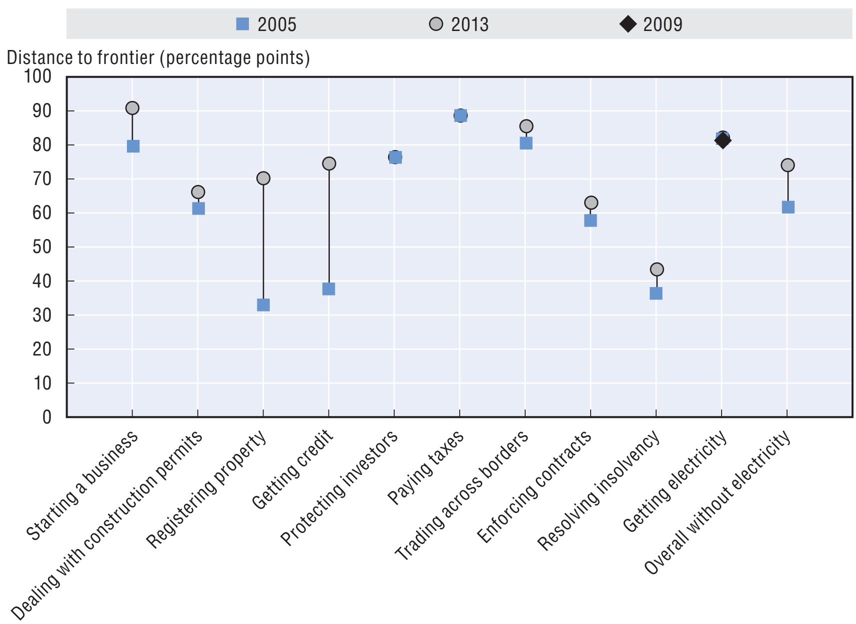
The 2014 Budget Speech plans for the introduction of several additional measures to further simplify business licensing and establishment. To address delays in the delivery of BLPs, a central E-Monitoring system will be created within the Ministry of Local Government and Outer Islands to track applications. In addition, prior clearance on some permits required for the tourism sector will no longer be necessary, and delivery of work permits for Export-Oriented Enterprises (EOEs, see below) will be fast-tracked to two weeks, in recognition of the particular need of EOEs need to rapidly expand operations so as to effectively compete on a worldwide basis. Work permit delivery will also be streamlined by online application and payment in 2014.

### *Doing Business rankings and the Joint Public Private Sector Business Facilitation Task Force*

As a result of the above reforms (barring the 2014 measures which have yet to be implemented), the time taken to start a business according to the World Bank Doing Business Indicators has reduced from 46 to five days between 2005 and 2014. This time is reduced to only three days for small enterprises that are incorporated with a single shareholder, without a constitution, and with no minimum paid-up share capital. As for its overall ranking in annual *Doing Business* reports, Mauritius has progressed from 49th place out of 112 countries in 2007 to 20th out of 189 in 2014. Over the last five years, this has placed Mauritius first out of all Africa countries. Likewise in terms of overall economic competitiveness, the World Economic Forum's 2013 Africa Competitiveness Report ranks Mauritius and South Africa as the continent's top performers (at 54th and 52nd out of 79 countries covered, respectively, just below the Southeast Asian average and above emerging market economies of India and Russia). According to BOI, the considerable increase in FDI since 2005 (from USD 93.6 million to 315.2 million over 2005-11) and the drop in the unemployment rate (from 9.1% in 2006 to 8.3% in 2013) can be attributed to the above investment climate reforms.

More specifically than these annual rankings, the World Bank "distance to frontier" measure shows how far each economy is from the best performance achieved by any economy since 2005 on each of the nine *Doing Business* indicators. This more fully reflects how the business regulatory environment in an economy has changed over time. Figure 3.1 illustrates this dynamic for Mauritius between 2005 and 2013 (that is, since enactment of the Business Facilitation Act and other related reforms). It appears that the most progress has taken place in the areas of registering property and getting credit, both from a rather low base compared to global best-practices; meanwhile the position of Mauritius is closest to the "frontier" of global best performance for starting a business, paying taxes, trading across borders, and protecting investors.

Figure 3.1. **Evolution in *Doing Business* rankings of Mauritius, 2005-13**




*Source:* World Bank (2013), *Doing Business 2014: Understanding Regulations for Small- and Medium-Size Enterprises*, Washington, DC, World Bank Group, StatLink: *http://dx.doi.org/10.1596/978-0-8213-9615-5*, License: Creative Commons Attribution, CC BY 3.0.

However, the 2012 World Bank *Doing Business* Report, published in October 2011, ranked Mauritius three notches worse than the previous year – at 23rd overall. In reaction to this, a **Joint Public Private Sector Business Facilitation Task Force** was set up and is operating since October 2011. It is co-chaired by the Financial Secretary of MOFED and the Director of the Joint Economic Council (JEC, representative of private sector). The function of this Task Force has been to identify bottlenecks and review systems, procedures and legislations in order to continuously improve the business environment in Mauritius. The Task Force comprises five working groups which focus on: land permits; import and export permits; licenses/clearances relating to the tourism and hospitality industry; permits relating to local authorities; and issues relating to utilities.

The collaboration within the working groups of this Task Force has been uneven to date, due to the diverse interests involved (particularly in the case of export and import licensing for agricultural goods for instance), and the Task Force has not been very vocal lately although its committees are still in place. Nevertheless it did make several contributions to the 2012, 2013 and 2014 Budget processes, particularly as concerns simplification of the Building and Land Use Permit (BLP). The five-notch improvement in the overall *Doing Business* rank for Mauritius as per the 2013 report, upheld in the 2014 rankings, may be an encouraging sign that some of the efforts of the Task Force are beginning to bear fruit.

### *Inter-Ministerial Committee on Business Facilitation*

In addition to this Taskforce, an **Inter-Ministerial Committee** (IMC) on business facilitation has been set up in August 2012 to provide strategic guidance for the removal of red tape and bureaucracy in the Mauritius regulatory framework. Removing these barriers is hoped to reduce the cost of doing business in the country and to help position Mauritius as a high-income economy. The IMC is chaired by the Minister of Tertiary Education, Science, Research and Technology, comprises the Ministers of: Housing and Lands; Local Government; Tourism and Leisure; Industry, Commerce and Consumer Protection; and Business, Enterprise and Co-operatives. One of the objectives of the Committee is to position Mauritius among the top 15 destinations for doing business globally – which requires at least a four-notch improvement from its current position, at 19th place worldwide.

Since its establishment, the IMC's first task has been to tackle remaining issues pertaining to the BLP and to the Morcellement Permit (which is required to allow the subdivision of land for residential, commercial, industrial, and agricultural purposes). Together with the relevant ministries and the private sector, the following reforms have been agreed upon by the Cabinet of Ministers:

- A new set of comprehensive guidelines defining the BLP application process has been drafted to replace the existing one, and will be available on the website of the Ministry of Local Government (MLG).
- MLG has re-engineered its BLP application review process, in view of processing all applications within a 14 day timeframe.

- An e-local government system has been implemented in all municipalities and district councils to allow online submission of BLP applications and to facilitate their tracking.

Meanwhile, clear procedural and technical guidelines in compliance with the Morcellement Act have been published, and are available on the website of the Ministry of Housing and Land. An information desk has also been set up, together with a timeframe for application processing: a letter of intent is to be issued within eight weeks from the application date, followed by a Morcellement Permit four weeks later (provided that the applying promoters complete the required infrastructure works). Following these two successes, the IMC is now working on reforms that include, amongst others: developing a land conversion permit; simplifying processes for environmental impact assessments; rationalising import and export permits; and promoting growth and investment in the education and knowledge sector.

Moreover, as announced in the 2014 Budget, in addition to the IMC in 2014 the Prime Minister is to establish a fast track committee under chairmanship of the Financial Secretary (comprising the Board of Investment, the Prime Minister's Office and other ministries) to expedite the processing of all permits and approvals concerning major "big-impact" investment projects. The Budget announces that necessary legislative amendments will be made accordingly to facilitate this fast-tracking (notably to the Investment Promotion Act and the Non-citizens Property Restriction Act; and subsequently to the Planning and Development Act, the Building Act, the Morcellement Act, the Environment Protection Act, the Local Government Act and the Sugar Industry Efficiency Act.). This measure is expected to result in 20 billion Rupees (USD 659 million) worth of additional projects over the next few years.

## 3.2. Establishment of an investment promotion agency

### *Creation and functions of the Mauritius Board of Investment under the Investment Promotion Act*

The Mauritius **Board of Investment** (BOI) was created in 2001 with the mandate of spearheading investment climate reforms in the country. BOI is an apex agency which integrated within its organisational structure: the investment division of MIDA (Mauritius Industrial Development Agency, which was the former One-Stop-Shop division of the Ministry of Industry); the Mauritius Freeport Authority; and the Financial Services Promotion Development Authority. The BOI is administered and managed by a Board whose Chairperson is appointed by the Prime Minister, and which hosts representatives of the public sector, private sector, academia and trade unions. BOI has played a decisive role in: attracting higher levels of FDI into Mauritius; mobilising domestic investments; diversifying the economy into higher value-added industries; promoting knowledge-intensive export-oriented services; and leading policy initiatives to improve the investment climate. BOI has been acclaimed on various occasions by international agencies as "best investment promotion agency" – most recently receiving the Africa Investor "IPA of the Year" award in 2011.

The Investment Promotion Act 2000 (as amended in 2009) clearly sets out the roles and functions of BOI, which include: promoting and facilitating the development of all forms of investment; formulating investment promotion policies and marketing strategies, and serving as a focal point for multi-sectoral promotional activities; highlighting policy issues and making policy recommendations to government; and promoting Mauritius as an international financial centre. Finally BOI is the hub for registering investment proposals and facilitating approval and implementation of projects: it receives all applications for investment certificates and acts as a one-stop service to obtain all secondary permits and clearances from various public sector agencies. These agencies are given four weeks to process permit applications (except where environmental impact assessments or development permits are necessary, in which case the deadline is extended to eight weeks).

BOI also ensures co-ordination and co-operation between public and private sectors on matters of investments and related policy decisions. In this context it has taken several steps to promote transparency and accessibility of information: relevant laws and regulations have been uploaded on the BOI website; it provides free-of-charge counselling and advisory services to potential investors; a Work and Live Department has been set up to provide assistance to non-citizens applying for Occupation Permits; and BOI has launched an e-platform which acts as a repository for license requirements.

### *Co-existence of regulation and promotion functions within BOI*

The powers of the BOI under the amended Investment Promotion Act provide that in addition to licensing and promoting investment, BOI may among others: periodically carry out surveys to assess the socio-economic impact of registered investments; act as government's representative in co-ordinating, facilitating and implementing public private partnership projects; and set up such technical committees as it deems fit to assist it in the discharge of its functions. The BFA 2006 also strengthened the powers of BOI for stimulating and facilitating foreign and direct investment in the country, and gave it a greater role in policy advocacy.

Recent studies by the World Bank (Investment Climate Advisory and International Finance Corporation) note that Mauritius provides a rare example of efficient combination of investment promotion and regulation functions: BOI is one of only two "promoter-regulators" that feature among the

30 top-performing IPAs worldwide. The majority of successful IPAs instead keep the functions of investment promotion and investment regulation (such as approving investments, managing incentives, and issuing licenses and permits) separate in view of their widely different operational needs and strategic interests. This avoids conflicts of interest as well as different staffing requirements between functions of FDI attraction and functions ensuring that investment complies with legal requirements. In general there is a substantial performance gap between IPAs considered to be "dedicated promoters" of investment, and "promoter-regulators" which have a weaker track record on driving reform. The BOI stands out as an exception: it has remained efficient thanks to efforts for clearly separating promotion and regulation efforts internally, and for working together with government to streamline the regulatory procedures that it oversees – thereby creating an easier investment climate to promote.

The possibility of applying for investment licenses online, together with the move from screening and approving investments to the more *ad hoc* system of "silent approval" are other positive steps forward which render regulation processes lighter and more transparent, thereby allowing BOI to dedicate more of its resources towards investment promotion instead. This World Bank assessment is fully consistent with the attitude adopted by BOI in recent years, which has been striving to further free itself from "non-value-adding services" – that is, to re-direct resources away from the issuance of investment certificates alone, and towards a greater focus on increasing foreign and domestic investment flows. To this end, in 2014 and as announced by the 2014 Budget Speech, business facilitation will be further enhanced to support investors in the implementation of large projects in particular.

## 3.3. Investment incentives and their evaluation

### *Transparency and clarity of legal framework for incentives: Investment incentive schemes before and after 2006*

Prior to 2006, the provision of incentives (primarily fiscal) was a central foundation of investment promotion in Mauritius. The Development Incentives Act of 1974 was introduced to encourage import substitution enterprises in manufacturing, and to develop Mauritius's Export Processing Zones in the textile industry (for export under preferential trade arrangements to Europe). Alongside, the Industrial Expansion Act of 1993 offered tax incentives to manufacturing and industrial support industries catering to the local market. The 1993 reform also aimed to reduce the abuse of tax holidays. Such schemes were rapidly extended to services (especially hotels and tourism) and to companies in the Mauritius Freeport and the Global Business banking and business centre. In the 1990s, additional incentives were provided for companies to list on the stock exchange and for investors to buy listed securities, in order to promote domestic capital markets and financial services. Meanwhile, export-focused incentives included deductions for export marketing and promotion costs, as well as 15% tax credit for up to 40% of firms' export volumes.

This resulted in the co-existence of over a very wide range of incentive schemes by the late 1990s; these applied to 22 categories of investors, including: export and export service enterprises; global (offshore) businesses; pioneer enterprises; strategic local enterprises; modernisation and expansion enterprises; industrial building enterprises; small and medium enterprises; regional headquarters; as well as investments in agriculture, tourism, leisure, financial services, venture capital, fishing, health, and ICT. As put by UNCTAD in its 2000 review of the island's investment policies, the "investment incentives offered by Mauritius [were] so extensive as to defy comprehensive summary". Likewise in 2004, the SADC Tax Sub-Committee singled out Mauritius as having "the most extensive and complicated set of [investment incentive] programmes" of all SADC countries, together with "by far the most complicated list of targets for preferred tax status".

According to international best practice (see the OECD Principles set out in Box 3.1), tax incentives for investment should only be granted in accordance with a comprehensive policy, which lays down principles and policy objectives for the introduction or continuation of each incentive. Governments should provide a justification for tax incentives (such as regional or territorial development, employment creation, etc.) together with the expected costs and intended benefits. These objectives and their rationale should moreover be communicated publicly through regularly updated statements, so as to provide the basis for the assessment of tax incentives, to avoid overlap and duplication, and to allow governments to be held accountable for all tax incentives granted.

In Mauritius, several of the incentive schemes available prior to 2006 met with limited success: many incentives lacked a strategic rationale, were excessively costly for public finances, or lacked the necessary public support. This was for instance the case of incentives for IT development. Cognisant of the risks of this multiplication in incentive schemes, the Development Incentives Act was repealed in 2000, and in 2001 the government commissioned a "Review of Fiscal Incentives for Investment", comprised of three parts: a Comparative Taxation Survey; a report on greater harmonisation of the onshore and global services sectors; and a report on the impact of tax initiatives aimed at attracting and retaining talented Mauritians.

This review provided recommendations pertaining to: corporate tax and tax on dividends; capital allowances; changes in basis of taxation; FDI

**Box 3.1. OECD principles to enhance the transparency and governance of tax incentives for investment in developing countries**

Action is needed by governments to:

- make public a statement of all tax incentives for investment and their objectives within a governing framework;
- provide tax incentives for investment through tax laws only;
- consolidate all tax incentives for investment under the authority of one government body, where possible;
- ensure tax incentives for development are ratified through the law-making body or parliament;
- administer tax incentives for investment in a transparent manner;
- calculate the amount of revenue forgone attributable to tax incentives for investment and publicly release a statement of tax expenditures;
- carry out periodic review for the continuance of existing tax incentives by assessing the extent to which they meet the stated objectives;
- highlight the largest beneficiaries of tax incentives for investment by specific tax provision in a regular statement of tax expenditures, where possible;
- collect data systematically to underpin the statement of tax expenditures for investment and to monitor the overall effects and effectiveness of individual tax incentives;
- enhance regional co-operation to avoid harmful tax competition.

In addition to governments, stakeholders have responsibilities. Action is needed by development partners and donors to include tax incentives and revenues forgone in the dialogue with governments in developing countries and provide appropriate technical advice and assistance. Action is needed by business to:

- Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to taxation, financial incentives or other issues;

Action is needed by civil society to:

- Draw attention to, and publicise, revenues forgone from wasteful tax incentives that could free up resources for development.

*Source:* OECD Centre for Tax Policy and Administration.

incentives; capital gains tax; import duty regime; and budget revenue losses. The review notably found that fiscal revenue generated from indirect taxation contributed almost 55% of the government revenue over 2000-04, while revenues from direct individual and corporate taxes combined to only 14% of total revenue. Therefore, although in 2003 the total tax burden reached 21% of GDP, corporate tax only reached 1-2% of GDP. Given this low burden for direct taxation, it was notably recommended to rationalise existing incentives, including by reducing tariffs and raising corporate taxation.

The **BFA 2006** abolished the vast majority of these multiple investment schemes. The reform rather privileges simplification of doing business in Mauritius through fiscal consolidation, labour market reforms and accelerated business registration. EPZs no longer exist and the fiscal regime has been particularly simplified. Whereas previously the common tax benefit for incentivised enterprises stood at 15% in place of the standard 25% rate, a single taxation rate of 15% has been adopted for all corporate as well as personal tax. Registration duty has been reduced from 13.2% to 5%, and the Capital Gains Tax has been abolished. The process of paying taxes is also relatively smooth: although since 2006, the time taken and payments made per year has not changed, and the total tax rate has increased slightly (from 26.2% of profits in 2006 to 28.5% in 2012), Mauritius ranks 13th out of 189 economies on the ease of paying taxes according to the 2014 *Doing Business* Report. The remaining incentive schemes in Mauritius as of 2006 are outlined in Box 3.2.

Box 3.2. **Mauritius Incentive Schemes – Real Estate Development Scheme, Regional Headquarters Scheme and Permanent Residence Scheme**

In Mauritius, the Real Estate Development Scheme, the Regional Headquarters Scheme, and the Permanent Residence Scheme are all clearly targeted towards facilitating business establishment, right of residence or immigration, regional deployment, and access to immovable property for foreign investors (although domestic investors can qualify as well).

The **Real Estate Development Scheme** (outlined under the Investment Promotion (Real Estate Development Scheme) Regulations, last amended in July 2012) has three sub-components, listed below. As announced in the 2013 Budget, registration duty with respect to property acquisition under the RES and IRD schemes will be reviewed over 2013, and these schemes will be better rationalised.

- **Integrated Resort Scheme** (IRS, outlined in the 2002 Regulations of the Investment Promotion Act). This Scheme aims to attract mainly high net-worth non-citizens into Mauritius by allowing them to acquire luxury villas. Incentives include exemption from the Morcellement Act, and from the duties and taxes detailed under the Land (Duties and Taxes) and the Registration Duty Acts, during transfer of land to a company holding an IRS

**Box 3.2. Mauritius Incentive Schemes – Real Estate Development Scheme, Regional Headquarters Scheme and Permanent Residence Scheme** *(cont.)*

investment certificate. Moreover, foreign IRS investors are eligible for Immigrant Status.

- **Real Estate Scheme** (RES, introduced under the Investment Promotion Regulations 2007). Under this scheme, small landowners are allowed to develop and sell residences to non-citizens, as well as to local or foreign companies incorporated under the Companies Act. The development must include commercial and leisure facilities as well as security, maintenance, gardening, and household services. The RES must be developed on a parcel of freehold land covering at least 1 arpent, but not exceeding 10 hectares (23.69 arpents). Incentives to small land-owners include exemption from registration duty and land transfer tax during transfer of land, and exemption from the Morcellement Act. Meanwhile, the RES company which invests in the land is liable to 15% corporate tax, and dividends are tax-free.
- **Invest Hotel Scheme** (IHS, subject to the 2002, 2007 and 2009 Investment Promotion Regulations) allows hotel developers to finance hotel projects by allowing them to sell villas, rooms and other components of a hotel to individual buyers (including citizens and non-citizens, as well as foreign and local companies). This is applicable for both freehold and leasehold (State) land (for the latter the promoter must apply for approval to the Ministry of Housing and Lands prior to securing the IHS certificate). Both freehold and leasehold promoters must also obtain a Tourist Enterprise License, delivered by the Mauritius Tourism Authority, and must contribute MUR 25 million (USD 804 400) to the Mauritius Tourism Fund. The amount of tourism fund is calculated on the extent of land leased. Hotels in operation may also apply for the scheme, conditional on approval of the hotel owner's restructuring plan by the RWG Committee.

In addition, the **Global Headquarters Administration and Global Treasury Activities Scheme** is aimed at companies wishing to provide headquarters services and treasury management to related corporations in countries of the region. The Global Headquarters Administration Licence and a Global Treasury Licence have been introduced under the Financial Services Act 2007 and holding a GBC1 shall be deemed to conduct business outside Mauritius – thus availing the benefits of the Global Business regime. The main incentives provided under this scheme include a 10-year tax holiday and a 15% corporate tax thereafter, tax-free dividends, and certain duty-free imports for expatriate employees.

Under the **Permanent Residence Scheme**, foreigners investing a minimum of USD 500 000 in qualifying business activities (such as manufacturing, freeport, financial services, information technology, hotel, tourism and

Box 3.2. **Mauritius Incentive Schemes – Real Estate Development Scheme, Regional Headquarters Scheme and Permanent Residence Scheme** *(cont.)*

related services, operational headquarters of multinational companies, agro-based industry, fishing and marine resources, build-operate-transfer concession projects, and film production) are eligible for permanent resident status. This allows investors to purchase immovable property not exceeding one arpent (slightly more than one acre) for personal use. The investment in property can amount to 20% of the original investment made in a qualifying business activity.

In Mauritius, the Real Estate Development Scheme functions as an umbrella for the HIS, the RES and the IRS, and BOI provides online guidance manuals for each of these schemes. Each scheme is also set out in the various regulations of the amended 2000 Investment Promotion Act. Alongside these central investment schemes, enterprises operating Mauritius Freeport and in the Off-shore sector, as well as certain activities in the agricultural and manufacturing sectors and export-oriented enterprises (formerly EPZ companies) are all offered specific investment conditions, as detailed in the next two sections.

For transparency reasons, international best-practice suggests that all such tax incentives for investment should be provided through tax laws only – such as the income tax law, rather than dispersed across multiple laws governing investment (including procurement laws, as well as stand-alone decrees, agreements and regulations such as those contained within Budget Speeches). **Dispersion in the legal provision of tax incentives** creates grounds for duplication and can hide the true extent of the incentives. However, while the consolidated Investment Promotion Act also makes reference to the Permanent Residence Scheme (which is outlined in more detail in the Immigration Act) and to the Freeport certificate (governed more specifically by the Freeport Act 2004), incentives for the Off-shore sector and sector-specific schemes for SMEs and for the tourism, textiles and agricultural industries are not referred to. Indeed these exist only under separate legislation (such as the Industrial Expansion Act and the Financial Services Act, see below).

Although the various amendments of the Investment Promotion Act certainly do take important steps towards consolidation and transparency of all available investment incentives in Mauritius, there therefore remains scope for further unifying all remaining incentives (along with their eligibility criteria) under the same legal text or within the main body of tax law. This consolidation can ensure that all tax incentives are scrutinised by the law, and thus facilitate their ratification through law-making bodies or parliament.

### *Export-oriented enterprises*

**Export Processing Zones** in Mauritius have long been highlighted for the success of diversification into the textile manufacturing sector in the 1980s and 1990s. Although Mauritius as a whole retained a highly protectionist tariff structure over this time, the EPZ largely insulated the export sector from these effects. EPZ companies also benefited from a ten-year tax holiday as well as preferential interest rates on loans (conditions that were outlined first in the EPZ Act of 1970, and since replaced by the Industrial Expansion Act of 1993). This was combined with effective administration of EPZ privileges and tax incentives, and a consistent framework of other supportive policies and institutions. Until the enactment of the 2006 BFA, Mauritius EPZs provided 15% corporate tax, no tax on dividends, free repatriation of capital, profits, and dividends, and relief from customs duty and value added tax on raw materials, machinery and spare parts.

A quantitative assessment conducted by the University of Mauritius in 2008 concluded that although Mauritius had been able to attain its objective of reducing unemployment and raising foreign exchange through the creation of the Mauritius EPZ, overall the economic costs of the EPZ however exceeded the benefits – principally because of large and costly (fiscal as well as non-fiscal) incentives offered to producers working in the EPZ sector. Particular harmful incentives were found to be those for domestic borrowing (which enable foreign firms in the EPZ to borrow on the local capital market at a lower interest rate, and which create a net welfare loss that was not recuperated through principle and interest repayments) and for electricity usage (which was made available at preferential rates).

Today, the official EPZ regime has therefore been phased out, and replaced by a network of **export-oriented enterprises** (EOEs) located throughout the island and which operate on a level footing with all other enterprises. Following the dissolution of the Export Processing Zones Development Authority (EPZDA), since 2005 these enterprises have since been transferred to the oversight of Enterprise Mauritius (EM). In 2013, the bank guarantee required for expatriate work permits for work in EOEs is moreover being abolished and replaced with an annual fee, to simplify hiring procedures and release cash flow to the sector.

More recently, **Special Enterprise Zones** are also gradually being put into operation. Through providing tax benefits and an enabling infrastructure framework for investing companies, such zones will aim to become valuable platforms for value-addition and local capacity-building, allowing large and small enterprises to mutually benefit from each-other's presence. In Mauritius this includes the nascent Mauritius Jin Fei Economic and Trade Co-operation Zone (JFET). While the JFET was originally intended to provide a manufacturing and services platform for Chinese enterprises doing business in Africa, it is becoming increasingly directed towards real estate and commercial estate development. There are no tenants at the site as yet, but nine Chinese companies have expressed interest in various sectors (including construction materials, a business school, real estate, electronics, food processing, and chemicals). Incentives to the zone's developers include: concessionary land lease rate for 99 years (at a token rate of USD 3 per hectare, which will increase by 50% after 10 years and by a further 50% after every 10 years subsequently); establishment of JFET as a Freeport zone during the initial (eight year) construction phase, allowing for duty and tax-free entry of construction materials, equipment and machinery; and provision of offsite infrastructure. Commercial companies in the zone, in turn, will operate along the national framework for FDI (with the standard, flat 15% corporate tax, duty-free entry of materials and capital equipment, and 100% foreign ownership of investments).

However, the zone's future success remains uncertain for now, as despite the government investments in the zone (MUR 267 million, or USD 8.53 million), by end 2012 only four out of the 172 hectares allocated to Chinese investors since 2006 had been developed, with expressions of interest placed on only 84 others. Moreover, out of the 43 000 jobs which the zone was initially hoped to generate (including 34 000 directly), the use of expatriate labour for much of construction and operation has made it likely that only 10-15% of these jobs will in fact accrue to Mauritians. As Mauritius has been working on setting up additional Special Enterprise Zones (including with the DRC and the Seychelles), the causes of Jin Fei's stagnation and shortcomings, and means of avoiding similar situations in future, should carefully be explored. In addition, government should remain aware that while well-structured and well-managed SEZs can generate economies of agglomeration, by reducing transaction costs among firms and stimulating creativity and co-operative innovation, these benefits do not arise automatically and cannot be taken for granted. Indeed SEZs often run the risk of instead becoming micro-economies, with poor linkages and transfer of technology to other parts of the economy, and where practices such as transfer pricing and declaration of losses are facilitated.

### *Mauritius Freeport*

Meanwhile **Mauritius Freeport** (regulated by the Freeport Act 2001, and its 2004 amendment) was established in 1992 as a customs-free zone for goods destined to re-export. The Freeport provides logistical services as well as office and storage facilities for exporting companies; as such it hosts both operator and infrastructure developer companies. At a difference with Mauritius's former EPZs, minimal product transformation occurs in the Freeport and it mostly serves as a platform for import, transit and re-export; or for sea or airport-based export orientation. Initially covering 5 000 square metres, the Freeport sought to capitalise on existing preferential trade agreements – such as the Cotonou Agreement, the Generalised System of Preferences (GSP) and the Africa Growth and Opportunity Act (AGOA), as well as preferential access to Eastern and Southern African markets secured through membership of COMESA and SADC.

Freeport operations may be 100% foreign-owned and use Global Business banking facilities. The Customs and Excise Department, the Mauritius Ports Authority (MPA), the Cargo Handling Corporation, Ltd. (CHCL) and Airport of Mauritius, Ltd. (AML) all play important roles in the functioning of the Freeport. **Current Freeport incentives** include: exemption from company tax and tax on dividends; preferential rates for warehousing; reduced port handling (including 50% deduction on port landing charges for containers destined for re-export); and exemption from import duty and VAT on finished goods, machinery, equipment and materials. As of 2013, the sector's tax holiday has been extended indefinitely; this followed on a 2006 announcement that the Freeport would begin incurring tax as of 2009, and which had initially been delayed.

The Freeport sector stagnated somewhat over 2006-10, as the objective of making Mauritius a "duty-free island" (launched in 2006) ran into difficulties and competitiveness of Freeport operators *vis-à-vis* other countries declined. While the Freeport risked closure at that time, in 2009 the **BOI took over the functions of the Freeport Authority (FPA)** and licensing was rationalised: whereas customs authorities previously gave the operating license and the FPA granted the Freeport Certificate, the entire licensing process was merged under the responsibility of BOI. The Freeport has considerably grown since, reaching 180 000 square meters by 2012 and counting close to 280 active operators (mostly in re-export, trans-shipment, minor processing, and assembly) – thus representing 381 000 tonnes of trade volume, and contributing 0.5% of GDP (mainly in communication, warehousing and storage). Over the past ten years, the sector is estimated to have cumulatively fostered 4 500 direct jobs and 13 000 indirect jobs.

Starting in 2013 and in view of promoting Mauritius' "Africa Strategy" for investment promotion, **Freeport status has been extended to manufacturing companies** provided that at least 95% of annual enterprise turnover goes towards export of manufactured goods (of which at least 80% is exported to Africa); meanwhile the remaining percentage may, upon BOI approval, be put on the local market and subject to taxation. Introducing additional manufacturing activities into the Freeport should enable an increase in the volume of activities, and boost trade flows between Asia and Africa (especially in the sectors of electronics, agricultural light equipment, and household consumables among others). This is also expected to increase occupancy levels of Freeport infrastructure, to boost FDI into capital-intensive activities, and to facilitate technology transfer as well as job and business linkage creation – notably in derived service businesses such as freight forwarding, custom brokers, transport facilities, banking, and insurance. In addition, other Freeport zones are planned near the Mauritius port and airport (so as to encourage trade in goods that are perishable, or that have low volume but high value).

For these efforts to bear fruit and to be fully effective, it will nonetheless be necessary to **engage in greater promotion of the Freeport.** As noted by Freeport operators, there is almost no FDI in the Freeport to date, and although momentum for developing the zone has increased since the merger between FPA and BOI, there is still a lack of general strategy and insufficient awareness-raising among the international community concerning the opportunities offered by the Freeport. By contrast, other industries in Mauritius (particularly financial services and tourism, through the dedicate Mauritius Tourism Promotion Authority MTPA) benefit from a higher level of government attention and from large budgetary allocations. Nonetheless the Freeport itself could also benefit from greater investments, particularly as concerns the port capacity – which would need to double given current container volumes, and on which attractiveness of the Freeport area is predicated. As a result of this lack of political as well as international visibility of the Freeport, operational costs remain insufficiently competitive and the potential as a regional platform for re-export and investment is not fully exploited. Given the high promise of the "Africa Strategy", future promotional and infrastructure investments in the Freeport should be adapted to servicing African markets in particular.

### *The Mauritius Off-shore sector*

The Mauritius Offshore Business Activities Authority (MOBAA) was established in 1992 to develop Global Business banking and non-bank financial services in Mauritius. It has served promotional functions, with a focus on investment funds, investment holding and international trading, and has since 2001 been replaced by the **Financial Services Commission** (FSC, see Chapter 5). The off-shore sector today functions according to a clearly established set of legislations, under FSC supervision. The most important types of off-shore business activity carried out from Mauritius include: banking (since the 2004 Banking Act, banks are no longer required to have separate licenses for their "domestic" and "Global Business" activities); insurance; investment funds and collective investment schemes (also governed by FSC rules, and which have access to Mauritius' Double Tax Treaties); and ship management and maritime operation businesses.

Off-shore companies can be incorporated either as a **Category 1 or Category 2 Global Business Company** (GBC1 or GBC2, see Box 2.1 in Chapter 2). As of July 2003 and so as to ensure a level playing field for offshore and onshore companies, GBC1s are liable to the standard tax rate of 15%. GBC2s are exempt from tax in respect of all income, while GBC1s are exempt from inheritance taxes, customs duty, excise duty and VAT on essential imported office equipment and furniture. Interest, rent and royalties payable to a non-resident as well as dividends payable to their shareholders, whether resident or non-resident, by both types of companies are also exempt from income tax.

To benefit from tax relief under Mauritius' Double Taxation Avoidance Agreements (DTAAs), GBC1 companies must obtain a Tax Residence Certificate (TRC) from the Mauritius Revenue Authority. By contrast, as GBC2s are automatically tax exempt and are considered non-resident for treaty purposes, they cannot access the DTAA network. Obtaining a TRC requires demonstrating that the company's "effective management and control" is in Mauritius (including by: having at least two resident directors in Mauritius; chairing Board Meetings from within Mauritius; maintaining a registered office in Mauritius; and having a local company secretary, a local auditor, and an active local bank account). The 2013 Budget adds "compliance with enhanced commercial substance requirements" to this list of TRC eligibility criteria. As of 2013, the Stock Exchange of Mauritius (SEM) will be working with GBCs to help them address this requirement – including by sitting on the SEM and creating more "back-office" employment.

As of December 2011, the Mauritian Global Business sector counted 23 924 registered Global Business Companies, including 829 funds and 30 insurance intermediaries. It had also created 5 868 direct jobs as at end of December 2011. The island's total financial services sector thus accounted for 10.3% of GDP in 2012. Yet, global businesses make up only a **small share of the island's total financial services sector**, accounting for only 5% of the sector's 15% contribution to GDP in 2011. Among the 20 licensed commercial banks, Mauritius Commercial Bank and State Bank of Mauritius continue to dominate the banking sector in particular (with 45% and 25% of market share, respectively). To increase the performance of global business within the financial services sector, in 2013 a rule on the "Special Purpose Fund" regime has been adopted. This introduces tax exempt status for global funds, independently of their inclusion in a DTAA; as noted by BOI, this scheme should "allow the graduation of the Mauritian international financial centre from a purely treaty-based jurisdiction to a financial centre with a wider spectrum of activities and possibilities".

### *Double Taxation Avoidance Agreements to bolster the off-shore sector*

Concluding a number of strategic DTAAs, together with considerable simplification of the corporate tax system, have indeed made Mauritius a **low-tax gateway for channelling investments to and from third destinations**, in particular India and South Africa. Building on the DTAA between Mauritius and India, India is thus the source of approximately 70% of global financial business activity in Mauritius. India's new Direct Tax Code, tabled since 2010, includes adoption of General Anti-Avoidance Rules (GAAR) so as to curb "round-tripping" by Indian companies (a means of reducing the tax bill and possibly enhancing investor protection by investing in India by way of Mauritius). In January 2013, India's Finance Minister announced that GAAR implementation, originally planned for April 2013, would be deferred by three years to April 2016; moreover the Expert Committee established by the Ministry of Finance to look into grievances on GAAR provisions recommended that these provisions not apply "to examine genuineness of residency of Mauritius entities". As this tax reform will nonetheless affect Mauritius in other ways beyond 2016, and may challenge the commercial viability and relevance of the DTAA between the two countries, the DTAA with India has been under revision since 2012. The 2013 Budget announces the signature of a Tax Information Exchange Agreement (TIEA) with India, which will reinforce the existing co-operation between India's Tax Authorities and the Mauritius Revenue Authority. Since 2013, both countries are also collaborating on establishing an India-Mauritius-South Africa Textile Corridor, targeted to the South African market (see below).

As manifested by the "Africa Strategy" introduced in 2012, Mauritius is also eager to further enhance its role as a lynchpin for African investments. For the first half of 2012, 47% of all new global business vehicles structured in Mauritius indeed had an African investment mandate. Drawing on this momentum, government has announced the preparation of **five new DTAAs in Africa** over 2013 (including in Algeria, Angola, Burkina Faso, Tanzania, and South Sudan). This would add to the 14 DTAAs that Mauritius has concluded to date with African countries, and is one of several measures considered to encourage the setting up of regional headquarters and regional treasury management activities in Mauritius.

### *Incentives for SMEs in specific sectors*

The Small and Medium Enterprise Development Authority (SMEDA, see below) offers **fiscal and non-fiscal incentives to SMEs** in Mauritius, in addition to the different financing schemes proposed by the Development Bank of Mauritius (as expanded in Section 3.7). Fiscal incentives for SMEs registered with SMEDA include:

- exemption of Customs duty on various vehicles for SMEs with turnover of at least MUR 3 million (USD 97 000) that have been in operation for at least two years in furniture making, light engineering or footwear;
- exemption of land conversion tax for the relocation, expansion or the setting up of an industrial enterprise; and
- reduced road tax for owners of certain vehicles who are registered with SMEDA and employ at least five staff per year.

Meanwhile, **non-fiscal incentives** ensure that the holder of a SMEDA certificate can obtain a Building and Land Use Permit in three days following completion of application and notification procedures at any local authority, subject to payment of permit fees. The 2013 Budget moreover raises the threshold for SME VAT exemption: SMEs with a turnover of under MUR 4 million (USD 128 400, up from MUR 2 million previously) will be removed from the VAT net.

In addition to these incentives available to all SMEs, certain measures have been undertaken **outside of self-standing incentive schemes**, in order to boost specific economic sectors. For instance the Schedule of Annual Allowances in the Income Tax Act will provide for accelerated depreciation in respect of investments made during 2013 and 2014, in manufacturing and in "green" technology equipment. Meanwhile, a VAT Refund Scheme is available for the agro-industrial and fisheries sectors, and will be extended until end 2013. The 2013 Budget also announces that 50% accelerated depreciation will be offered on acquisition of plant, machinery and equipment for the textile industry; and maintains the payment of an 80% advance to sugar planters as soon as their crops are sent to the mill, to support the cane industry.

### *Administration and governance of tax incentives*

Where various Ministries are involved in the **administration and granting of tax incentives**, they may not co-ordinate their incentive measures (tax and non-tax) with each other or with the national revenue authority. As a result incentives may overlap, be inconsistent, or even work at cross-purposes. Administrative discretion in the management of incentives also seriously increases the risk of corruption and rent seeking. Moreover, once particular tax incentives are introduced this creates constituencies in their favour, which in turn can make it politically difficult to remove the incentive once it is no longer needed or has proven to be ineffective.

It is therefore considered good practice to **place all tax incentives under the authority of one government body**, ideally the ministry in charge of finance, rather than under the responsibility of several different ministries (such as trade or investment or other ministries). Consolidating administration of all incentives under a single body can: limit risks of corruption and rent seeking; increase transparency by limiting the discretionary power of policymakers; help to avoid unintended overlap and inconsistencies in incentive policies; and enable policymakers to coherently address problems that may arise with the governance of tax incentives.

Tax authorities should also periodically carry out **audits of cases where tax incentives have been claimed** to ensure that they are not misused Other recommendations for transparent and effective governance of tax incentives include calculating and regularly reporting on the amount of revenue forgone attributable to tax incentives for investment – ideally through an annual, publicly released statement of tax expenditures which covers all main tax incentives. This requires that data be collected systematically to underpin the statement of tax expenditures. Such calculations can shed light on the revenue cost of tax incentives, rather than scrutinising cash expenditure budgets alone. Embedding estimates of revenues forgone by tax incentives in the yearly budget process can provide policymakers with timely required inputs for informing policy decisions, and supports medium-term fiscal planning. Annual tax expenditure reports can also highlight the largest beneficiaries of tax incentives, thus enhancing the public legitimacy of governments and their revenue authorities, and improving tax compliance more broadly. Such taxpayer information could moreover contribute to data for determining the efficiency and equity of tax incentives (see below).

In Mauritius, prior to creation of the BOI, investment promotion and the facilitation of secondary permits was carried out on a sectoral ministry basis: the former Ministry of Industry, Commerce, Corporate Affairs and Financial Services or the MOBAA offered access to incentives in each sector falling under their oversight. The Investment Promotion Act of 2000 moreover provided government with additional powers to design and grant fiscal incentives on a case-by-case basis, applicable to a variety of business activities where new investments exceeded USD 400 000. This discretionary power has since been revoked, with the BFA 2006 and the Investment Promotion Act 2009 notably vesting the BOI with more decision-making authority. **The award of investment incentives is thus centralised within MOFED alone**. Alongside BOI and also in the case of more *ad hoc* incentives, MOFED is now invariably consulted for financial clearance of any commitment of public funds entailing the creation of a liability. MOFED is free to analyse the economic implications and value for money of prospective MOUs, taxes and exemptions, duties, levies and fees, before Cabinet approval is sought.

### *Impact evaluation of tax incentives*

Internationally, strong evidence increasingly **calls into question the effectiveness of some tax incentives** for investment – in particular tax free zones and tax holidays. Ineffective tax incentives are no compensation for, or alternatives to, a poor investment climate. They may be unsuccessful in attracting sustainable investment, and may damage a country's revenue base. Investment incentives can be wasteful for the following reasons: ineffectiveness (if the incentive fails to produce benefits to the host economy that exceeds the budgetary costs); inefficiency (where benefits outweigh the costs, but authorities fail to properly maximise the benefits and minimise the costs); opportunity costs (when the issue of alternative usage of funds arises, as incentive schemes are rarely a first-best option for attracting investment); deadweight loss (if the investments would, with the benefit of hindsight, have taken place in the absence of incentives); and triggering harmful competition or a "race-to-the-bottom" (if other jurisdictions put in place matching measures).

The above risks make it essential to **adequately analyse the costs and benefits of investment incentives in a national context**, to support government decision-making and allow frequent review of incentives provided. A system of evaluation at regular intervals is also indispensable because the wasteful effects of incentives can change over time and depending on the capacity of the implementing authority. Performance reviews of tax incentives for investment may be conducted once every few years. This requires that data be collected systematically by tax authorities and finance ministries. The results of such periodic reviews, publicly reported together with the review criteria, can inform decision-making around the continuation or removal of individual tax incentives. These assessments should involve open public consultation so as to accurately include social – and not only financial – costs and benefits in the analysis.

In order to ensure that incentives are **fulfilling their objectives**, i.e. attracting more investment with justified and limited impact on the national budget, both *ex ante* and *ex post* evaluations must be conducted. In Mauritius, the rationalisation of tax incentive schemes post-2006 was the consequence of such an extensive cost-benefit assessment (starting with the "Review of Fiscal Incentives for Investment" commissioned in 2001, as mentioned above). Meanwhile, tax revenue data suggests that Mauritius has so far managed to strike a positive balance with regards to the impact of tax incentives for off-shore companies on the national budget: over 2011-12, corporate tax from the financial sector, together with ICT, has contributed to nearly a quarter of the government's direct receipts. This notably contrasts with the situation prior to 2006 and the consolidation of incentive schemes: in 2004, although total tax revenue averaged about 20% of GDP, company income tax accounted for only 1-2%.

The **performance of EOEs**, in turn, is reported upon to a certain degree by Statistics Mauritius in quarterly reports. 2012 reports suggest that EOEs have had variable returns in terms of employment creation and value-addition. By December 2012, Mauritius counted 337 EOEs, which employed 54 187 workers in total (of which 35.4% were expatriates). The sector's value-addition levels have fluctuated over the past two decades: between 1998 and 2011, value-added by EOEs declined from 49.9% of total manufacturing to 37%, and from 12% to 6.3% of GDP. On a more positive count, the balance of visible trade by these enterprises (the ratio of exports *minus* imports to total exports) rose from 37.3% to 42.4% between 2011 and 2012. Visible trade for 2012 thus stood at MUR 19 573 million (USD 619 million). This trend was upheld in 2013: total exports for the period January to October 2013 recorded a 13.5% increase over the corresponding 2012 period, and exports of Export Oriented Enterprises (EOEs) for the first nine months of 2013 amounted to 35 billion Rupees (USD 1.15 billion), a 5% increase compared to the previous year.

Several of the investment incentive schemes available in Mauritius are moreover made **conditional on *ex ante* impact evaluations**; since 2009 for example, Integrated Resort Scheme project applications must include a social impact assessment, to identify the impact of the proposed IRS project on the local community, and a written undertaking by the promoters indicating the employment benefits and business opportunities that shall accrue to the local community and to small entrepreneurs generally. Meanwhile, RES applications do not require social impact assessments, but an Environmental Impact Assessment (EIA) licence and a Building and Land Use Permit must be secured. Finally, the IHS application requires a letter of intent from the Tourism Authority. In addition, the majority of approved IRS and RES projects have been established on land plots that did not serve any meaningful tourism or agricultural purpose (being mainly fallow, low-yield or wasted land, hunting grounds, or mangrove sites with little natural beaches) – with the aim of maximising the net benefit from land use.

However, the above examples only provide for **impact evaluation on a case-by-case basis**, for approval of specific projects, and not in view of assessing the effectiveness of investment incentives themselves. Even in the case of reporting on EOE performance by Statistics Mauritius, this has more of a disclosure objective and does not compare EOE benefits (in terms of value-addition or jobs created) to any fiscal costs incurred in supporting these enterprises. The wide-ranging evaluation which triggered the 2006 incentive rationalisation reforms thus does not appear to be conducted in a systematic manner in Mauritius. As the next section suggests, the reduced spill overs of the IRS (among other schemes) since the global financial crisis, as well as the risky concentration of remaining incentives schemes in the real estate sector, warrants more timely and frequent assessment.

*Ex ante* and *ex post* evaluation of SEZs will also become increasingly necessary given the government's objectives to put several SEZs into operation in coming years. For instance, independent analysis of the Jin Fei SEZ conducted by the African Economic Research Consortium (AERC) in 2010 suggests that the economic benefits to Mauritius may be small relative to the start-up costs borne by the government and its agencies. These costs include the obligation to provide offsite infrastructure for the zone – investments to extend the roads, water, telephone, sewerage and electricity networks to the site will cost an estimated USD 25 million in total, with zone developers shouldering only about USD 3.3 million while government and State-Owned utility providers (notably the Central Electricity Board, the Central Water Authority and the Waste Water Authority) sharing the rest of the cost. Meanwhile, the investments by zone operators (notwithstanding their scale) may have only a marginal multiplier effect on job creation and income in Mauritius. Likewise, there is the risk of such zones functioning as enclaves and thus depriving the country of the expected technology spill-overs in the longer term. In view of facilitating transparent and accurate impact assessments of these zones throughout their lifetime, the confidentiality clauses on the basis of which most of them are being established should notably be reconsidered.

Systematic evaluation of incentive schemes as well as SEZ programmes should cover not only their impact on fiscal sustainability and investment flows, but also socio-economic factors such as employment creation, business linkages, value-addition and technology transfer. It should be regularly verified that incentives are only maintained as a compensation for proven market imperfections that cannot be otherwise addressed. These assessments should also consider **alternative means of supporting investment** – for instance, whether the forgone fiscal resources would not be better employed in training, research and development, infrastructure investment, and other efforts that can mitigate some of the structural and supply-side shortfalls that are currently constraining export competitiveness in Mauritius.

The ability to systematically evaluate investment incentives may improve in the course of 2012-13, as Mauritius' national statistical capacity is currently being strengthened: as of February 2012, Mauritius subscribes to the **IMF's Special Data Dissemination Standard** (SSDS). The SDDS is intended to guide members in the provision of their economic and financial data to the public. Subscription is expected to enhance the availability of timely and comprehensive statistics, thereby contributing to the pursuit of sound macroeconomic policies and the improved functioning of financial markets. However, to date no entity has been given a specific mandate (and the required data collection and evaluation capacity) to regularly assess tax incentives.

## 3.4. Adequacy of government funding and monitoring of the IPA

### *Programme Based Budgeting and associated performance indicators within the BOI*

**BOI is fully funded by the Government of Mauritius** through its parent Ministry, MOFED. In 2011, BOI received MUR 158 000 (USD 5 000) in Current grants and MUR seven million (USD 226 500) in Capital grants. As is the case for all public entities receiving budgetary resources from the government, BOI's three-year strategic plans are monitored by MOFED through a performance-based budgeting (PBB) model that relates resources to proposed and achieved results. The PBB monitoring mechanism has clearly defined and measurable objectives, is reported upon quarterly, and includes consultations with all relevant stakeholders. The performance indicators established for BOI include:

inwards and outwards FDI levels; the number of jobs created; the identification and promotion of new markets and sectors of activity for investment; advice provided on investment policies; and the share of total FDI coming from non-traditional of emerging markets. For the latter, the 2012 target was set at 20%, while for 2014 it is at 24%.

In addition, the Mauritius Chamber of Commerce and Industry (MCCI) released an MCCI **Business Confidence Indicator** in June 2010 to measure sector-by-sector investment climate progress. This indicator is based on the 2003 *OECD Handbook on Business Tendency Surveys*. It is published on a trimester basis, based on surveys of businessmen operating in Mauritius (for which responses are weighted according to company size) and on sale prices and employment figures by sector. Such an indicator could also provide a useful cross-check to the BOI's internal performance measures, and can provide additional guidance and feedback *vis-à-vis* investment policy formulation. Likewise, the data collected by MOFED through Statistics Mauritius can contribute helpful inputs to monitoring the effects of investment projects on employment and other socio-economic objectives.

## 3.5. Streamlining IPAs and learning from investor feedback

Creation of the BOI in 2001 (by merging the Mauritius Industrial Development Agency with the Freeport Authority and the Financial Services Promotion Development Authority) was a very important step towards greater streamlining of investment promotion agencies and of the related administrative procedures. An additional step was taken in 2005 when the Export Processing Zones Development Authority (EPZDA), the Mauritius Industrial Development Authority (MIDA, formerly MEDIA) and the Sub-Contracting and Partnership Exchange (SUBEX-M) were combined within **Enterprise Mauritius** (EM). EM since functions as a one-stop service for promoting and developing exports and for assisting manufacturing firms with export facilitation. While the International Trade Division of MoFARIIT is responsible for advocating the position of Mauritius in international fora, EM together with other institutions and ministries also provides inputs and participates in the consultative and advocacy process.

EM carefully co-operates with other bodies in carrying out its functions: for example, it takes over from the Small and Medium Enterprises Development Authority (SMEDA, see Section 3.7) to assist SMEs once their products become exportable; and likewise EM can assist and advise foreign investors in marketing their products abroad once BOI has attracted these investors and facilitated the establishment of a production base in Mauritius. In view of further developing overseas markets, EM's annual budget has been expanded to MUR 135 million (USD 4.3 million) as per the 2013 Budget.

The **High Level Project Monitoring Committee**, set up in June 2011, also has potential for facilitating and streamlining investment procedures. This committee is assisted by the Office of Public Service Governance and operates under the chairmanship of the Head of Civil Service and Secretary to Cabinet. It aims to support and accelerate the implementation of major projects undertaken in partnership between the government and the private sector, to advise on policy clearance, and to ensure institutional co-ordination. The broader objective is to enhance the enabling regulatory framework, build up physical infrastructure and improve the management of national finances.

Indeed, key to fast implementation of projects by investors is the speed and cost of obtaining approval permits, licences and planning permissions from government ministries. All major stakeholders must share coherent objectives and a common agreement of the importance of receiving investment for improving the balance of payments and bolstering economic growth. The **High Level Project Monitoring Committee** has so far been able to mobilise the relevant ministries to expedite their processes and to ensure a co-ordinated and professional approach to project handling, from conception to implementation. In view of bringing in foreign capital and stimulating domestic investment, the committee thus aims to rapidly identify and resolve investment policy issues through a co-ordination of its meetings with those of BOI. Questions currently under discussion within the committee include operationalisation and implications of the nascent Jinfei SEZ (see above). Investor and private sector feedback to BOI and other investment promotion agencies is also provided by the **Joint Economic Council** (JEC), which submits memoranda to government on issues of major concern to private investors (as well as propositions for inclusion in the annual Budget – see Section 3.6).

In future, it will remain important to match these high-level mechanisms with sufficient attention to execution of the corresponding economic policies within individual economic sectors, including **effective co-ordination among implementing agencies**. Indeed, as pointed out by the policy research team of Japan's GRIPS Development Forum in 2012, while the division of labour among EM, SMEDA and BOI is theoretically clear, ground-level co-ordination among these implementing agencies appears to be suboptimal in reality. Progress is being considered on this front: the respective responsibilities of BOI and EM were further distinguished in the 2012 Budget Speech, which announced that BOI would be empowered to actively promote Mauritius and further develop the financial sector, ICT/BPO and the education and medical hubs, while Enterprise Mauritius would take care of promotion for manufactured goods and agricultural products. Meanwhile, the Mauritius Tourism Promotion Authority (MTPA, established in 1996 by the MTPA Act and which operates under the Ministry of Tourism and Leisure) will continue to co-ordinate investment promotion, organisation, information and government advocacy functions for the tourism sector. In 2012, assistance from Singapore has been used to review the organisation and functioning of the MTPA.

## 3.6. Consultative framework among government, the IPA and investors

### *Voices of the private sector: the Joint Economic Council and the MCCI*

Mauritius has a long-standing tradition of **dialogue between the government and the private sector**, which allows the private sector to voice its views on the development strategy of the country. In their 2012 investigation of industrial policy formulation mechanisms across different African countries, researchers of the GRIPS Development Forum highlight that, "Mauritius has a very strong and highly productive state-business relationship", which enables "one of the most productive public-private dialogues seen in any country". This dialogue takes place in a structured manner and can also occur on an *ad hoc* basis. BOI organises regular workshops and discussion sessions with investors so as to inform and propose business facilitation measures to government. BOI has also conducted surveys on potential export and investment markets, including Tanzania, Kenya, Zambia and Senegal. It interacts with the main platforms for voicing private sector concerns in Mauritius – namely the Joint Economic Council (JEC) and one of its component bodies, the Mauritius Chamber of Commerce and Industry (MCCI).

Founded in 1970, **JEC** is the peak private sector organisation and the co-ordinating body of the private sector of Mauritius. According to observers including the World Trade Organisation, JEC "has evolved over time into an ideal forum for sharing new ideas as well as developing shared views of problems and how best to pursue the country's economic development". Likewise, a 2009 UNDP Country Report notes that the policies advocated by the private and public sectors have become increasingly aligned over the years thanks to JEC co-ordination. The government holds regular meetings (usually twice a year) on broad economic policies with JEC. Especially during budget preparation, the private sector – through JEC and its constituent bodies, listed below – has structured meetings with the government (especially MOFED) to discuss policy changes.

JEC has provided regular policy advocacy on critical issues such as competitiveness – for instance, a JEC Task Force released a comprehensive report on the economic transition of Mauritius in 2001, followed by a roadmap for achieving meaningful competitiveness in 2005. The Task Force notably recommended that Mauritius diversify away from its narrow product base by converting its traditional niche production of sugar, textiles, and tourism into dynamic clusters, and by fully exploiting its comparative advantages in four emerging areas (knowledge, logistics and services, environment, and pharmacology). JEC thus provided the initial platform for turning Port Louis into a regional seafood hub in 2004 (whereby other countries in the region with greater fish stocks but with insufficient technology or infrastructure can rely on Mauritius to facilitate the regional transformation and value-added processing of fisheries products, before exportation to European and American markets). Jointly with BOI, JEC also prepared the programme for business facilitation reforms of 2006.

JEC co-operates with the National Productivity and Competitiveness Council (NPCC) in some of its activities, and **regroups the main business organisations of the country**, as follows:

- Mauritius Chamber of Commerce and Industry (MCCI).
- Mauritius Chamber of Agriculture (MCA).
- Mauritius Employers' Federation (MEF).
- Mauritius Sugar Producers' Association (MSPA).
- Mauritius Export Association (MEXA – see Chapter 5).
- Mauritius Bankers Association Limited (MBA).
- Mauritius Insurers' Association (MIA).
- Association des Hôteliers et Restaurateurs de l'Île Maurice (AHRIM).
- Association of Mauritian Manufacturers (AMM).

Several of these bodies provide their own memoranda for the formulation of the annual Budget by MOFED, alongside JEC. Among the above bodies, **MCCI** is the oldest non-profit making institution representing the private sector. The Chamber took on its present name in 1965, when Mauritius was moving towards independence and was contemplating the diversification of its economy through appropriate forms of industrial activities. MCCI has always maintained close links with government and increasingly contributed to the development process of the country. It provides its members (over 400 firms, covering about 90% of larger business establishments in Mauritius) with two types of legal services: advice and information regarding the legal and administrative aspects of business undertakings in Mauritius (in particular company law, intellectual property rights, laws related to business environment, fair competition and trading practices); and a mechanism for efficient settlement of trade disputes (the Permanent Court of Arbitration).

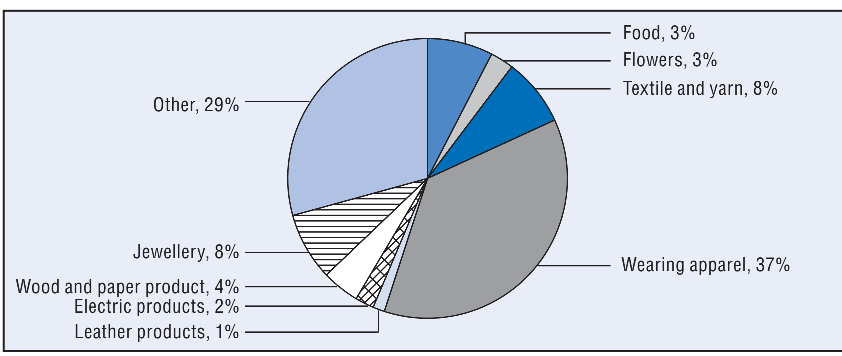
MCCI has also taken on a growing role in policy advocacy. It is regularly solicited concerning the development of commercial and industrial activities, and makes submissions directly to representatives of the government ministries and departments concerned. It also sits in all international trade negotiations alongside the Ministry of Industry. Finally, it has set up links and affiliations at international level with inter-governmental and private organisations aimed at widening its scope of activities.

## 3.7. Promoting investment linkages

### *Business linkages within EOEs and SEZs*

As of June 2012, the bulk of EOE enterprises operate in wearing apparel, textile and yarn, and jewellery (Figure 3.2). Yet, this focus on manufacturing activities stands in contrast to the majority of investment schemes that persist in Mauritius. For instance the forthcoming Jin Fei Economic and Trade Co-operation Zone (which was initially destined to house various cutting-edge technology industries that Mauritius actively seeks to promote) seems to be evolving away from this focus on high-value manufacturing and services, and towards real estate and commercial estate development. EOEs aside, the majority of incentive schemes in Mauritius (especially those under the Real Estate Development Scheme) are indeed concentrated on relatively low-risk, high-return investments in real estate and property development. The RES/IRS schemes are intended to allow foreigners to acquire residential property in Mauritius not only in the aim of inducing greater FDI and foreign exchange inflows, but also of creating more employment and business opportunities (by stimulating the construction sector and by introducing wealthy non-citizen buyers within the domestic market). However it is not clear to what extent these spin-off effects have materialised in practice.

Figure 3.2. **Number of export-oriented enterprises by sector, June 2012**




*Note:* Export-oriented enterprises include all those enterprises previously operating with an EPZ certificate, and those enterprises manufacturing goods for exports and holding a registration certificate issued by the Board of Investment.
*Source:* Statistics Mauritius, September 2012.

Meanwhile, the majority of incentives provided to firms in other sectors (such as agriculture and textiles) are mostly geared towards small-scale companies only and made available in an *ad hoc* manner to overcome provisional sector-specific challenges. These sectors have not attracted FDI on a sustainable basis, and over 2007-12, the real estate and construction sectors have thus accounted for more than 40% of total FDI into Mauritius. This growing **bias in investment incentives towards the real estate sector** could be a cause for concern, as such investments considerably depend on availability of land – as this production factor is particularly scarce, it may expose Mauritius to speculative risks.

Moreover, the **global financial crisis has limited the benefits of some of these schemes**, such as the IRS: many high-end luxury resorts established by promoters through the scheme are largely vacant, or remain at the planning stage to date. In 2012, the construction sector registered a slowdown, and the tourism sector, which benefits from the Invest Hotel Scheme, has been flagging for several years already: partially due to the drop in demand from European markets, Mauritius' share of the Indian Ocean market plunged from 41% to 33% over 2009-11, and hotel occupancy is low. This sector concentration of FDI may moreover generate employment risks: while some of these leading sectors may be labour-intensive (such as construction), it is worth questioning whether or not they open as many avenues for business linkages, value-addition or international trade as other labour-based industries (such as tourism and agriculture, which in 2011 attracted only 6% and 2% of FDI flows into Mauritius, respectively).

Government has nonetheless attempted to **encourage business linkage development** through various mechanisms. Award of investment incentives is in many cases made conditional on investor contributions to the local community: for example IRS companies must set up an IRS Social Contribution Fund, destined for implementing an approved programme, financing an approved NGO, or supporting the National Empowerment Foundation (established in 2008 to pilot roll-out of the government's Empowerment Programme). Plans for increasing business linkages were also made in the report on "Facing the Euro-zone Crisis and Restructuring for Long-Term Resilience", elaborated in 2010, in particular as concerns the sugar industry. This includes levying an Environmental Fee on molasses exports to encourage local value addition in the form of fuel ethanol and potable alcohol. Government also committed to ensuring that the production of ethanol and of Concentrated Molasses Stillage (CMS, a useful fertilizer) incorporated a maximum of small and medium planters and employees (these were to hold 35% of equity of the entity undertaking the production of ethanol).

### *The Small and Medium Enterprise Development Authority (SMEDA) Act*

Based on a CSO Census of small establishments, the SME sector comprised about 92 000 establishments, employed some 209 000 workers and accounted for some 20.8% of GDP in 2007; by 2012, this had risen to 37% of GDP. In December 2003, the government created a new Ministry of SMEs to cater for the promotion of the SME sector, and in 2005, the **Small Enterprises and Handicraft Development Authority** (SEHDA) was created following the merger of the Small and Medium Industries Development Organisation (SMIDO) with the National Handicraft Promotion Agency (NHPA). Companies eligible for SEHDA services had to have no more than 10 employees, and have an annual turnover of less than MUR 10 million (USD 321 000). All provisions of support were retracted if supported businesses expanded beyond these criteria. The aim was therefore to assist in the "incubation" of very small businesses in the country, before these "graduate" into larger enterprises.

In 2009, the **Small and Medium Enterprises Development Authority** (SMEDA) Act repealed the SEHDA Act. Since 2010, SMEDA replaces SEHDA, and operates under the Ministry of Business, Enterprise and Co-operatives (MBEC). SMEDA advises the Minister of Business, Enterprise and Co-operatives on policy issues regarding the development of SMEs, alongside the following functions: promoting a conducive business environment and empower SMEs to emerge and grow (including by implementing and operating a registration scheme for SMEs, which entitles them to specific incentives detailed earlier); promoting a service delivery network to increase the contribution of SMEs in the national economy; devising and implement SME support programmes (including facilitated access to industrial space, finance and other productive resources); and facilitating national and international market access and business opportunities for SMEs.

The SME definition within the SMEDA Act includes enterprises in all economic sectors (rather than adopting the more limited scoped of SEHDA, which only covered SMEs engaged in ICT, financial services, cultivation of land, and charity). No differentiation between services and manufacturing sectors has been made for small enterprises in terms of turnover thresholds. Needs of medium-sized enterprises (with annual turnover MUR 10-50 million – between USD 320 200 and 1.6 million) are defined separately from small-sized enterprises (annual turnover of not more than MUR 10 million) in light of the different support measures and objectives required.

SMEDA operates an online SME portal together with MBEC, which aims to be a One-Stop-Shop for all SME matters. The Portal regroups all SME-relevant legislation, as well as guidance for buyers and suppliers, and for potential as well as existing entrepreneurs (with specific advice for business planning, registering, financing, training, marketing, expanding, importing, exporting, and incentives). The portal hosts an SME directory which groups SMEs by industry as well as district and contains guidance for buyers and sellers, including strategies for using web-based tools and retaining customers. Guidance is also provided for supplier access to raw materials and machinery, as well as tendering processes. SMEDA has also undertaken some reports of export potential in different industries and towards different countries in the region; while useful, the bulk of these studies however date back to 2006 and have not been updated since.

### *Capacity building provided for small local enterprises*

In addition to the above functions, SMEDA organises training programmes and seminars, workshops and conferences of short duration in regional centres across the country. These programmes are aimed at improving knowledge, skills and competencies in the technical, marketing, financial, compliance, policy, regulatory, legal, commercial and other important functions. SMEDA provides two training streams – management (entrepreneurship and small business management programmes) and handicraft (skill-based programmes, in view of manufacturing high quality handicraft items that are export-oriented. SMEDA conducts a training needs assessment every year, in order to identify the existing training needs of industry and businesses, particularly SMEs, so as to incorporate results into the SMEDA training plan.

Alongside SMEDA and the co-operatives division, MBEC also has a third arm: the **Mauritius Business Growth Scheme** (MBGS, operational since March 2011). This has grown out of the 2010 Mauritius Manufacturing and Services Development and Competitiveness (MMSDC) Project, undertaken in collaboration with World Bank to support enterprise growth, innovation, competitiveness, and employment creation in the manufacturing and services sectors. The MBGS Unit provides assistance to all commercial activities in the country, especially on the capacity building side (through technical assistance, business development services, marketing and branding, and verification of quality and standards). The unit falls under the purview of MBEC but operates much as a private organisation, with some autonomy and independence from the ministry.

As of October 2012, MBGS has received almost 650 applications for its support scheme, and 149 projects (for a total value of MUR 165 million, or USD 5.3 million) have already been approved. The rest is currently being assessed, or finalised through further mentoring. 86% of total beneficiaries had a "medium or small" annual turnover (below MUR 50 million, or USD 1.6 million), including 48% with a "small" turnover (less than MUR 10 million, or USD 321 000). Manufacturing SMEs are the primary beneficiaries (with 66% of schemes, including in wood, apparel, food and beverages, paint, and jewellery), distantly followed by services (22%, including education, healthcare and transport), ICT (7%), and tourism and other sectors (5%).

### *The Industrial and SME Strategic Plan 2010-13*

In 2010, the Ministry of Industry, Science and Research together with MBEC released the **Industrial and SME Strategic Plan 2010-13**, which sets out five strategic priorities: an innovative approach to investment promotion; re-dynamising exports; supply-side capabilities development, including addressing Non Tariff Barriers to Trade (NTBs); sustainable industrial development; and dynamic trade negotiations. The Plan provides for institutional upgrading, including setting up an Industrial Advisory Council, reviewing the role of the National Productivity and Competitiveness Council (NPCC), setting up an "Observatoire de l'industrie", and establishing a Competence Centre for the development of an Innovation System. Strategies specific to SMEs include: improving access to finance through support schemes, new financial products, and reform of the financial and institutional setup; expanding the entrepreneurial base through mentoring, capacity-building, and forging international linkages; improving access to markets by better connecting suppliers to buyers, better branding, and new marketing infrastructure for SMEs; strengthening the institutional framework for SMEs; improving the technology base for SMEs, including through an industrial linkage programme; and developing new growth poles for SMEs.

The **Restructuring Working Group** (RWG, which replaces the Economic Restructuring and Competitiveness Programme that was created following the 2008-09 crisis, and which now runs from August 2010 to December 2014) likewise places a strong emphasis on reducing import dependence, promoting SME development, and facilitating technology transfer. In order to create more industrial space at lower cost for SMEs, in 2012 government had also begun constructing an additional 175 units in industrial estates at five sites. These will be available to a wide array of SMEs, including mechanics, carpenters, metal workers, manufacturers and furniture makers, with a 50% discount on the rental during the first three years.

Implementation of this plan has been partial so far, and should be carefully followed up on by the Ministries responsible. It could also be more closely aligned with the work of SMEDA and of the MBGS. Given that the strategic plan does not exclusively address SME needs however, there is a risk that its many other priorities overtake the SME considerations. Implementation and re-prioritisation of the SME-specific facets of the plan could therefore be undertaken by MBEC. This could perhaps be facilitated by rationalising the three arms of the Ministry (namely SMEDA, the Co-operatives Division, and the MBGS), under the leadership of a single SME task-force which could consider means of further mainstreaming SME concerns and developing SME opportunities across all areas of investment policy and export promotion.

### *Enhancing SME awareness of opportunities in niche sectors of investment, export and public procurement*

Indeed beyond addressing challenges of capacity-building and of creditworthiness (though the measures detailed previously as well as further below), a stronger strategy might be needed to increase **SME awareness of investment opportunities and to channel their investments towards sectors of priority** (as determined by national investment, infrastructure and competitiveness strategies). SME access to market intelligence, especially for export-oriented production, could for instance be improved. The elaboration of an overarching national investment strategy (mentioned in Section 3.1) could therefore be co-ordinated with a streamlined strategy for SME support, along the lines of the Industrial and SME Strategic Plan 2010-13. This could notably draw on substantive inputs from the private sector and exporting businesses (for example through JEC and the Mauritius Export Association, MEXA). A committee within Enterprise Mauritius, the export promotion agency, is already empowered to call on SMEDA in order to collaborate on **export-oriented marketing support for SMEs** and on SME Export Development Plans; such efforts are highly necessary and would need to be considerably enhanced, including in terms of their visibility.

Concrete efforts are also being made in order to **increase SME participation in public procurement**, notably by revising elements of the Public Procurement Act of 2006. As of 2013, SMEs bidding for contracts of under MUR 5 million (USD 160 000) no longer need to submit Performance Bonds and Advance Payment Guarantees. An amendment to the act may also provide for at least two SMEs in the shortlists of restricted bidding (for procurement of up to USD 160 000), and for at least one SME in the restricted bid shortlists for low-value procurement (of up to 500 000 rupees, or USD 16 000). In 2013, the act has also been amended to grant a 15% preference margin to companies employing at least 80% local manpower, when competing for public works contracts. The Procurement Policy Office website has moreover elaborated a list of registered SME suppliers, including location, contact details and nature of business; it has also been conducting capacity-building workshops together with SMEDA and the Construction and Industry Development Board (CIDB) for SMEs interested in procurement projects. These efforts have contributed to raising the SME share in total government procurement from 6% over 2012 to 11% by the end of 2013.

Measures announced in the 2014 Budget likewise aim to make public procurement more "SME friendly", so as to reach a target of 20% SME participation in government procurement over the next three years. The Ministry of Public Infrastructure (National Development Unit and Land Transport and Shipping) is to henceforth unbundle contracts given on a district-wise basis, to ensure that a larger number of SMEs are appointed. In addition standard bidding documents for procurement will be simplified for SMEs, from 15 pages to only one page for goods and services, and to two pages for small works contracts. Finally, the Public Procurement Office is to hold a series of courses targeted to SMEs, and all SMEs will be provided with a free basic website in 2014 to grant them an online presence. These initiatives are essential and should again be co-ordinated with awareness-raising among SMEs so as to ensure that the available opportunities are utilised to their best advantage.

### *SME financial support is high on the government agenda*

Access to finance and high cost of credit remain central challenges for SMEs in Mauritius, as in many developing and emerging economies. SME support has taken on particular importance since the 2008-09 and 2011 economic crises. To support all enterprises in facing the crisis (especially at micro and SME levels), government put in place the **National Resilience Fund** (NRF). The latter includes restructuring and finance for enterprises, access to markets (including investment promotion), and access to innovation and technology. Part of NRF funding is also to be used for SME industrial parks, the SME financing guarantee scheme, the MBGS, and the transformation of Development Bank of Mauritius (DBM) into an "MSME bank" (Table 3.1 lists the loan schemes for SMEs that are available at the commercial window of DBM; these are also listed in more detail on the SMEDA SME Portal).

In 2012, government doubled the size of the NRF – to more than USD 200 million – in reaction to the Euro-zone financial crisis. Moreover, in 2013 government announced the complete waiver of loans made by DBM for which capital outstanding did not exceed MUR 20 000 and which had remained unpaid for three years. To reduce confusion among these different financing schemes, the 2013 Budget also announced the rationalisation of these schemes and the establishment of an SME Help Desk which would centralise applications for all of the schemes. In addition, a Researcher Working Group has been established under the State Investment Committee to investigate the high cost of borrowing for SMEs (which currently stands at above 7%) and to explore more structural means of reducing it.

Alongside this framework, the RWG places a strong emphasis on reducing import dependence, promoting SME development, and facilitating technology transfer. Relevant measures include: an Import Loan Guarantee Scheme; injection of 5% Cumulative Preferential shares (to be replaced by an Equity Fund); access to the Export Credit Insurance Scheme (ECIS) and the ERCP Credit Financing Scheme (ECFS); and a Leasing for Equipment Modernisation Schemes (LEMS, for purchase of new equipment and machinery for enterprises with less than 50 million rupees in turnover). Over 300 enterprises – of which 56% are SMEs – have benefited from LEMS so far, which is currently in its fourth phase (addressing the refinancing of existing equipment). Since 2012, LEMS facilities have been extended to all industries, including traders, as long as their turnover does not exceed 50 million rupees. LEMS has also been prolonged until December 2014 in light of its successful record.

The 2012 Government Budget acknowledged that SMEs are the most vulnerable in times of crisis, and vouched that "on SME financing, [Mauritius] will break the mould". The Government Programme 2012-15 states that an Action Plan will be formulated for the monitoring and evaluation of all SME

Table 3.1. **Loan schemes for SMEs available at Development Bank of Mauritius**

| Title of scheme | Purpose of scheme | Loan size | Interest rate and repayment period |
|---|---|---|---|
| **Business development loan scheme** | To finance start-up, expansion or modernisation of projects in manufacturing, transport, tourism, publishing, ICT and art. | Loan of up to 75% of project cost, capped at 2 million rupees. | Interest rate: 11.5 %.<br>Repayment period: 8 years. |
| **Booster (micro credit) loan scheme** | To finance small-scale projects with value addition including: manufacturing, agricultural, agri-business, handicraft; tourism; plant nurseries, vegetable and flower cultivation; kindergartens; livestock breeding; ICT. | Maximum loan of 150 000 rupees (covering up to 100% of cost of project). | Interest rate : 9% p.a.<br>Repayment period: 5 years. |
| **Small business development-related scheme** | To finance: the purchase of land for industrial or commercial purpose; the construction of industrial, commercial or office building; or any other business-related projects. | Loan of up to 75% of project cost, capped at 2 million rupees. | Interest rate: 12.5% p.a.<br>Repayment period: 8 years. |
| **Micro credit financing scheme (through trust fund for the social integration of vulnerable groups)** | Providing finance to micro entrepreneurs in vulnerable groups involved in income-generating activities (family income below 6 000 rupees monthly). | Maximum 50 000 rupees. | Interest rate: 5%.<br>Repayment period: 4 years, 6 months moratorium. |
| **Quasi equity financing scheme** | Providing equity and quasi-equity to SMEs. | 75% of project cost up to a ceiling of 500 000 rupees as follows: 49% in the form of quasi-equity, namely redeemable preference shares or debentures with an appropriate coupon rate; 26% in the form of an equity loan to enable the promoter/s to buy shares in the company. | Quasi-equity: Coupon rate ranging from 9.0% to 13.0%; exit at the end of 5 years with a conversion clause.<br>Equity loan: 9% p.a; loan and unpaid interests accrued thereon at the rate of 9% p.a are repayable after 5 years; interest payable yearly with a moratorium of one year. |
| **Normal scheme for the agricultural sector** | To finance projects in the following sectors: sugarcane; vegetable, fruit and flower; tobacco; livestock; transport (utility vehicles); fishing; agro-processing; and seafood hub. | 80% of project cost up to a ceiling of 2 million rupees. | Loans up to 100 000 rupees – 10% p.a.<br>Loans above 100 000 rupees – 11.5% p.a.<br>Repayment period: 7 years. |
| **Special loan scheme for the agricultural sector** | To finance projects in the following sectors: Sugar cane; fine de-rocking and irrigation; potato or onion cultivation; fruit and flower, biotechnology; off-lagoon fishing (purchase of fishing vessel and engine/s); storage of agricultural produce; and production of agricultural seedlings. | 80% of project cost up to a ceiling of 1 million rupees. | Interest rate: 9% p.a.<br>Repayment period: 7 years. |

Table 3.1. **Loan schemes for SMEs available at Development Bank of Mauritius** *(cont.)*

| Title of scheme | Purpose of scheme | Loan size | Interest rate and repayment period |
|---|---|---|---|
| **Transitional support scheme to finance small companies in difficulty or which are preparing for the recovery** | To provide additional financial support: for the purchase of equipment for modernisation of the unit; to meet working capital requirements, on a revolving basis; or to restructure existing debts. | Purchase of equipment and debt restructuring: 75% of project cost up to a ceiling of 1 million rupees.<br>Revolving working capital: 75% of project cost up to a ceiling of 500 000 rupees. | Interest rate: repo rate.<br>Repayment period: 3-5 years for purchase of equipment.<br>Up to 5 years for debt restructuring.<br>Based on one production cycle for revolving working capital. |
| **New micro enterprises scheme for women** | Financial assistance is provided to existing and potential women entrepreneurs. | A loan of 40 000 rupees is provided to individual women or up to a maximum of 400 000 rupees grouped into societés/associations/co-operatives | Interest rate: 8.5% p.a.<br>Moratorium on capital repayment for the first year, and thereafter repayment in 60 monthly equal instalments. |

*Note:* Each of the above schemes has specific eligibility criteria – most often registration with National Empowerment Foundation (NEF), SMEDA, Agricultural Research and Extension Unit (AREU), Industrial and Vocational Training Board (IVTB), Tourism Authority, National Computer Board (NCB), etc.; or workers having been laid-off or retrenched in the EPZ or other sectors, such as sugar. Local ownership is also a requirement for most loans.
*Source:* SMEDA, *Financing Schemes for SMEs*, Development Bank of Mauritius Ltd., available at: *www.gov.mu/portal/sites/smeportal/financemain.htm*.

programmes and Business Development Schemes. The legal framework will also be reviewed to modernise the co-operative sector and enable co-operatives to adapt to the new economy, particularly in the case of women and youth. The 2012 Budget also launched an **SME Financing Scheme**, which made 3 billion rupees of bank loans (USD 96 million) available to SMEs over 2012-15 at a preferential rate of 8.5%, rather than 14% previously. As of 2013, this rate has been cut further to 7.5%, and the total volume of loans has been increased by an additional MUR 250 million (USD 7.9 million). The 2014 Budget announces that this scheme, in view of its success to date, will be further expanded in 2014. The main features of the scheme are as follows:

- new overdrafts and bank loans as well as renewal of existing facilities made at the rate of 7.5%;
- all processing costs and related charges are waived for SMEs with a turnover of under MUR 10 million;
- an Equity Fund provides a guarantee instrument to offer risk cover amounting to 35% of every loan and overdraft; and
- banks can claim the deduction from tax, in respect of SME bad debts without the need to have recourse to the courts; government will also exceptionally guarantee 50% of any losses incurred by the banks.

This scheme follows lengthy negotiations with the banking sector, with strong co-operation from the Governor of the Bank of Mauritius as well as commercial banks. As concerns DBM, there is quite substantial flexibility in terms of the security and collateral accepted: this can be a General Floating Charge or Fixed Charge on immovable property, but pledge of sugar proceeds or bad weather allowance, a mortgage on a fishing vessel, or pledge of rights to the lease, are among others also accepted where applicable. By April 2012, in the three months since the start of the SME Financing Scheme, 248 applications had been received from SMEs and 192 million rupees of credit facilities already approved. In addition, the inscription fee levied on registered loans is removed for SMEs, as well as the registration duty for loans below MUR 1 million (USD 32 000).

The 2012-15 Government Programme moreover plans to introduce a **new legislation pertaining to hire purchase and credit sale**, to strike the right balance between promoting business and protecting consumer rights and interests. More specifically for small companies, government will propose legal amendments to improve bank resolution for the benefit of small borrowers. It will additionally review the whole area of personal loans granted by financial institutions, to make it easier for small borrowers to apply for, receive, and service their loans and to create effective dispute resolution mechanisms. Box 3.3 highlights additional reforms of the banking sector which have aimed both to facilitate SME access to finance, and to better position Mauritius as a hub for financial services in the Southern African region.

**JEC** also works to place SME needs high on the government agenda. A considerable portion of the JEC Memorandum in advance of the 2012 Budget was dedicated to SMEs, and noted that in spite of a wide range of support instruments for SMEs, the rate of utilisation of these instruments has been rather low. In light of JEC consultations with stakeholders, the Memorandum concluded that the two major issues facing SMEs were creditworthiness *vis-à-vis* financial institutions, and the absence of "one to one" support mechanism to enable them to utilise existing instruments. Accordingly, the JEC has made proposals for rendering the Credit Information Bureau more effective, so as to have not only a broader coverage of the population but also provide a wider cross section of the population with a credit rating profile. JEC thus encourages the urgent and time-bound implementation of the provisions of the Finance Act of 2008, relative to extending the activities of the Credit Information Bureau to include non-bank institutions and public utilities. It also proposes establishment of a mechanism to enable independent financial analysts to support SMEs, as a decentralised support mechanism which would: prepare up-to-date management accounts of the SMEs; set up accounting systems; prepare business plans; and identify financial instruments for the SME.

While the above schemes can definitely be of assistance to SMEs, they would nonetheless benefit from some rationalisation – as their multiplicity may at present be counter-productive, especially for certain companies

Box 3.3. **Enhancing the legal framework for financial services and rights of creditors and borrowers**

The **Bank of Mauritius** (BOM) is the Central Bank of the country. It regulates and supervises the activities of banks to make sure that the banking system functions properly. The Bank also plays a major role in creating a more conducive environment to enhance economic expansion. Alongside, the **Financial Services Commission** (FSC) is an integrated regulator for the financial services sector other than banking, and global business. The banking and financial services sector is well capitalised, comprising 20 banks (with total banking assets of MUR 855 billion as of April 2011), and 11 non-bank deposit-taking institutions (total assets of MUR 46 billion), 53 nonbanking financial institutions, and 21 insurance companies. In addition, the Stock Exchange of Mauritius Ltd., and the Global Board of Trade Ltd., make up the securities market.*

The following reforms have recently been underway to enhance the legal framework for financial services and rights of borrowers and creditors in the country. These reforms have potential both for facilitating SME access to finance, and for better positioning Mauritius as a hub for financial services in the Southern African region:

- Government has established an appropriate **legal framework to promote Foundations and Private Pension Schemes**. Both the Foundations Act and the Private Pension Schemes Act were proclaimed in July 2012. This is viewed to further consolidate the product offerings of the Mauritius International Financial Centre (MIFC) and enhance confidence of investors using the MIFC as a wealth and asset management jurisdiction.
- The **Borrower Protection Act 2007** regulates credit agreements for a sums up to MUR 2 million (USD 64 200) and establishes the Office of the Commissioner for the Protection of Borrowers. Among other functions, the act ensures that proper and adequate information is given to borrowers concerning the proper ways and means of obtaining a credit facility; promotes public understanding of credit facilities, including awareness of the associated benefits and risks; ensures that the terms and conditions of credit agreements are not extortionate; strives to strike a fair balance between the rights and obligations of borrowers and of lenders; deals with borrower complaints; and causes investigations to be conducted and, where appropriate, convenes hearings.
- The **Insolvency Act 2009 caters for the protection of creditors**. It consolidated and modernised the legal framework which was hitherto scattered among various pieces of legislations, and aims at providing a regime that effectively balances the interests of debtors and creditors. Notwithstanding the provisions of the Insolvency Act, there are specific

Box 3.3. **Enhancing the legal framework for financial services and rights of creditors and borrowers** *(cont.)*

provisions in the Banking Act 2004 dealing with conservatorship of financial institutions where the central banks deems it necessary in order to protect the assets of the financial institution for the benefit of its depositors and other creditors. The Banking Act 2004 also lays down: procedures for voluntary liquidation of financial institutions as well as provisions regarding the rights of depositors and creditors in such cases and the manner in which assets are to be distributed; and provisions regarding priority of claims, among others, in the event of a compulsory liquidation.

- The **Data Protection Act 2004** established a Data Protection Office under the Prime Minister's Office, headed by a Data Protection Commissioner. The act covers obligations on data controllers, the rights and exemptions of data subjects, and establishes data protection register.
- Section 52 of the **Bank of Mauritius Act** provides for the establishment of a **Credit Information Bureau** (MCIB, a unit of BOM) for the purpose of ensuring the operation of a sound credit information system in Mauritius. MCIB assists in providing information on over-indebtedness, principally of households. Through MCIB, BOM may require any institution offering credit (including leasing facilities and hire purchase or utility bodies) to furnish credit information for the purpose of: maintaining a database on recipients of credit facilities and guarantors; collecting, consolidating and collating trade, credit and financial information on recipients of credit facilities, whether fund-based or non-fund-based; storing the collected information; and disclosing, or allowing access to, this information in a confidential and regulated manner. To date, there are 38 participants to MCIB, including banks, non-bank deposit taking institutions, leasing companies, the Development Bank of Mauritius, the National Housing Development Company, BOM, and insurance companies. MCIB operation is exempt from the general provisions of the Data Protection Act. Sections 14A and 14B of the Banking Act also provide for the licensing of private credit information bureaus by the Bank of Mauritius.
- A registry has been set up under the Registrar General's Department (within MOFED) to **support the use of property as collateral and to expand business access to external sources of credit** – namely CH Live and the TBE Register.

* World Bank Group (2011), *Report on the Observance of Standards and Codes (ROSC): Mauritius, Accounting And Auditing*, June, available at: *www.worldbank.org/ifa/rosc_aa_mauritius2011.pdf*.

wishing to avail themselves of more than one scheme at a time; and their different eligibility requirements impose information processing costs for SMEs. As noted by MCCI in its memorandum for the 2013 Budget, the different schemes available could instead "be managed by one single entity to make the process simpler for enterprises to get information on schemes that will suit them better". This "one-stop" arrangement would nonetheless not preclude that actual processing and disbursement of funds transit through specialised "channels". It would moreover provide more clarity on the available range of support schemes and investment incentives, and potentially help identify schemes that may not be meeting the desired objectives or where the financing structure may need to be re-thought.

## 3.8. International and regional initiatives for strengthening investment promotion expertise

BOI is a member of WAIPA, the **World Association of Investment Promotion Agencies** and AfrIPAnet. BOI also works in very close collaboration with international organisations like UNCTAD, OECD and the World Bank to build investment promotion expertise, formulate appropriate investment policies and adopt latest practices in terms of improving the investment climate. Mauritius is also a member of the AFRASIA Business Council (AABC), a consultative mechanism in support of building sustainable business partnerships between Africa and Asia launched in Mauritius in March 2005.

On a **bilateral basis**, Mauritius participates in missions to, and hosts visits from, neighbouring countries. As of May 2013, BOI had signed MOUs with 23 IPAs worldwide. Most recent MOUs, signed over end 2012 and early 2013, have been concluded with the Investment Support and Promotion Agency of Turkey (ISPAT), the General Authority for Investment and Free Zones (GAFI) of Egypt, and the Malawi Investment and Trade Centre. This collaboration allows sharing of best-practices and reform experience. In Botswana for instance, the merger of the Botswana Export Development and Investment Authority (BEDIA) and the International Financial Services Centre (IFSC) into an over-arching investment promotion agency the Botswana Investment and Trade Centre (BITC) was inspired by an equivalent experience in Mauritius – where BOI and Enterprise Mauritius evolved out of similar mergers. Botswana's benchmarking exercise also looked into Mauritian financial sector laws, and into the "silent consent" approach to business licensing procedures (see Section 3.1). Also on a bilateral basis, Mauritius is increasing its co-operation with Kenya (see Chapter 5), notably through an MOU between BOI and the Kenya Investment Authority.

On a **regional level**, over 2012 a series of COMESA workshops was held with IPAs from member countries (including BOI, which hosted the first workshop in Mauritius) to identify the main needs of IPAs in terms of capacity strengthening, and to investigate appropriate mechanisms for overcoming the lack of data on Cross Border Investments (CBIs) and investment opportunities in the COMESA region. As mentioned in Chapter 2, the end-goal of this co-operation is to establish a Regional Investment Observatory with the following role: setting up a database for CBI statistics; strengthening the IPAs' capacity and fostering networking between the IPAs; monitoring and benchmarking performance of COMESA economies against the World Bank Doing Business criteria; and showcasing investment opportunities in the region. In addition, in 2012, two roving Ambassadors for Africa and one non-resident Ambassador to the Seychelles were appointed to assist Mauritius in achieving greater integration with the African continent. The Ambassadors avail of their networks to accelerate the development of relevant agreements (notably Framework Agreements, DTA/IPPAs, and Tax Information Exchange Agreements) that aim to help consolidate political, investment and trade relations between Mauritius and other African countries.

Also within this regional framework, Mauritius has been actively engaged in moving forward with the COMESA Accelerated Programme on Economic Integration – in particular by co-ordinating reform and accelerating policy discussions with other reform-oriented countries including Zambia, Seychelles and Malawi. In early 2013, the Vice-Prime Minister of Mauritius (and Minister of Finance and Economic Development) also discussed with the Secretary General of COMESA the possibility of softening COMESA rules of origin, so as to boost cross-border movement of trade and investment.

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# *Chapter 4*

# Infrastructure investment policy in Mauritius

*The strategic importance of infrastructure development for the country's economic competitiveness is well-understood in Mauritius. The crucial role that private investment (and especially FDI) can play in expanding and upgrading infrastructure networks is also emphasised. Nonetheless, it remains necessary to create a more level playing field between public and private providers of infrastructure services. The Mauritian framework for corporate governance of State-Owned Enterprises is well advanced, which can help in this regard by improving service quality and network coverage, and making more space for private investment alongside public operators. The public procurement framework is transparent and effective, but the legislation for Public Private Partnerships in infrastructure could be further clarified. Meanwhile, the role of the competition authority in monitoring infrastructure markets is well-established; on the downside however, the absence of an independent regulator in the energy and water sectors risks reducing the predictability of pricing and cost-recovery structures for investors.*

## 4.1. National strategy for infrastructure development

Sound infrastructure development policies ensure that scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. The **strategic importance of infrastructure development for the country's economic competitiveness** is well-understood in Mauritius. The government has invested a total of MUR 62 billion (USD 2 billion) in public infrastructure over 2005-12, a very high amount given the size of the economy. In December 2008, the Additional Stimulus Package provided by government (which complemented the prior package aimed at boosting Mauritius's resilience to the economic crisis) had a primary focus on infrastructure and was destined to: fast-track and front-load public infrastructure, by selecting target projects in roads, in mini-hydro and in local infrastructure; facilitate new investments in public infrastructure, with an emphasis on the road network; support infrastructure development in local authorities; accelerate private sector investment; and further improve business facilitation. Increased government spending on infrastructure also features as one of the four pillars of the Mauritius National Resilience plan 2012-15, aimed at assisting enterprises in facing the recent economic crises. To finance its infrastructure priorities over 2014-18, an amount of MUR 155 billion (USD 5 billion) is earmarked for infrastructure developments, including USD 1.3 billion in the road sector, 0.8 billion in water and 0.5 billion in the power sector.

The **National Development Strategy**, a twenty-year vision embarked upon in 2005 as per the Planning and Development Act, provides a framework for all public sector investment programmes – including for transport, water and energy utilities. Established since 2008 and merged with this long-term vision (as well as with the forthcoming Economic and Social Transformation Plan, ESTP), the **Public Sector Investment Programme** (PSIP) is intended to provide a useful guide to policymakers, development partners, line ministries and public enterprises, and private partners for informed decisions on those investment projects that can be funded partly or wholly through public funds, foreign loans or grants, and private capital. The PSIP serves as a basis for the preparation of the three-year rolling Performance Based Budgeting (PBB) for government agencies. In addition, to identifying possible areas for private domestic and international investment, it can identify policy changes required for encouraging inflows into these areas. Beyond keeping track of public spending, the PSIP therefore ensures the coherence of long-term infrastructure development plans in Mauritius.

Today, government maintains ambitious plans for infrastructure investment; nonetheless, it recognises in the government Programme 2012-15 **it will be necessary to aggressively seek FDI inflows to finance these projects** if Mauritius is to meet these objectives while maintaining control of public debt. By 2015, 10% of the financing of major public infrastructure in the PSIP will be through FDI flows. This highlights the crucial necessity of ensuring that the enabling environment for private participation in infrastructure is soundly established in the country.

In order to attract the desired investment to the country, it will be necessary to make infrastructure markets more attractive for private actors. In particular, it is imperative to **create a more level playing field between public and private providers of infrastructure services** – that is, to make more room for the private sector to participate on an equal footing with state-owned enterprises (SOEs). Indeed, SOEs dominate most infrastructure markets in Mauritius (including in electricity, water, waste water, postal services, and television broadcasting), and the government also has controlling shares in the State Bank of Mauritius, Air Mauritius, and Mauritius Telecom – for which the Chairperson of the Board of Directors is generally nominated by the government, and several Board seats are allocated to senior government officials. As addressed below, levelling the playing field will require actions to: improve the corporate governance and efficiency of SOEs (Section 4.3); unbundle infrastructure networks; and regulate utility markets (especially through sound competition and pricing policies – Sections 4.7 and 4.8).

In addition, to levelling the playing field for infrastructure investment, **main infrastructure challenges for Mauritius** today include: increasing traffic congestion in Mauritius; a strong need for water supply investments (for which Mauritius is seeking advice from Singapore); developing the potential of Port Louis as a key shipping hub, which will notably be important for positioning the Mauritius Freeport as an attractive hub for investment and re-export; and tackling over 80% external energy reliance. The percentage of the country's total import bill taken up by import of energy sources has indeed risen from just under 10% to over 20% between 2002 and 2011 – resulting in energy import dependency of about 83.8% in 2011. The latter imperative is combined with the recognised need to invest in "green" – rather than cheaper "brown" – energy infrastructure, and is reflected by the emphasis on green growth embodied in the Mauritius Ile Durable (MID) initiative and by recent efforts to improve energy management on both demand and supply side (notably through the elaboration of a Long Term Energy Strategy and the establishment in 2011 of the Energy Efficiency Management Office, EEMO, under the aegis of the Ministry of Energy and Public Utilities).

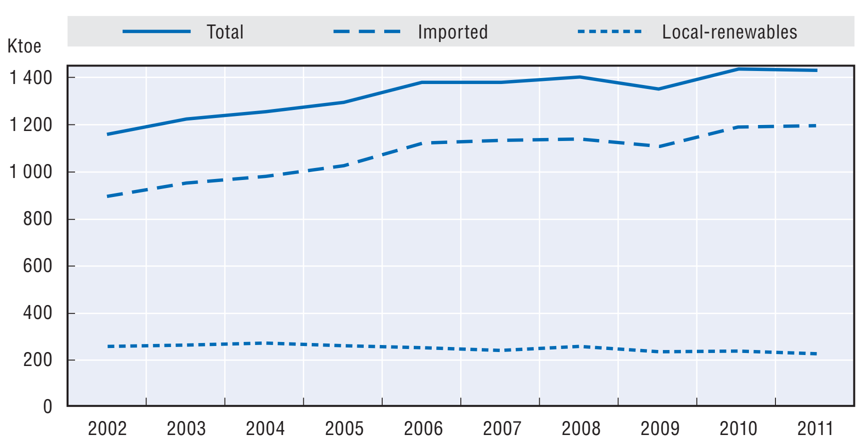
## 4.2. Overview of status and development strategies for key infrastructure sectors

The Public Infrastructure Division of the Ministry of Public Infrastructure, National Development Unit, Land Transport and Shipping is responsible for the implementation of road, bridge and government building infrastructural projects in the country. Meanwhile energy and water utilities are overseen by the Ministry of Energy and Public Utilities (MEPU), which is responsible for formulating policies in the energy, water and waste water sectors and for establishing a responsive legal framework to govern the development of these sectors. MEPU has under its responsibility the Central Water Authority (CWA), the Central Electricity Board (CEB, the regulator and monopoly provider for the electricity sector), the Wastewater Management Authority, the Water Resources Unit, EEMO, and the Radiation Protection Authority. This section considers the energy, water, ICT and transport sectors in turn, in terms of the reach and access of their networks, as well as the scope for private sector participation in utility provision.

### *Status of network and of private sector participation in the energy sector*

Mauritius has no known oil, natural gas or coal reserves, and therefore depends on **imported petroleum products** to meet most of its energy requirements (Figure 4.1). Local and renewable energy sources are biomass (consisting mainly of bagasse, a by-product of the sugar industry), solar (with a potential average annual solar radiation value of some 6 kWh/m$^2$/day) and wind energy (with annual average speed of 8.1 m/s at 30 m above ground level in some areas). Meanwhile, hydropower plants have a combined installed

Figure 4.1. **Imports vs. local energy sources in Mauritius, 2002-11**




*Source:* "Energy and Water Statistics 2011", *Statistics Mauritius.*

capacity of 59 MW, virtually the island's entire hydro-potential. Hydropower production thus stands at 103 GWh, one of the lowest capacities of Southern African countries. Since December 2011, the government is additionally investigating geothermal potential in the country, through a consultancy contract for a preliminary study with the Italian company ELC Electroconsult S.p.A. As of 2010, entire installed thermal capacity reached 679 MW, and related production stood at 2 586 GWh. These statistics compare to a total energy consumption of 2 555 million kWh, and therefore fall far short of domestic demand. Overall, final energy consumption has increased by over 195% over 1990-2011.

Nevertheless, thanks to imported energy sources, Mauritius has the highest **electricity access rate** in Africa (at 99.4% in 2010). While the system does have occasional outages, these are rare and power supply is far more reliable than in most African countries. Widespread energy access is a government priority, as is reflected in stepped tariff-setting (see below) and also in schemes intended to facilitate connections for remote or vulnerable households. For instance, as of 2011 CEB provides network extension and electric pole displacement grants to low-income households wishing to connect to the network, but which either live in remote areas or need to move electricity poles which obstruct construction of their homes. These grants are available for three different monthly income ranges (from under MUR 8 500, which receive an MUR 65 000 connection grant, to MUR 12 501-17 500, which receive an MUR 35 000 grant).

By 2009, Mauritius produced about 22% of its electricity from **renewable resources** (mainly hydro and bagasse), and thus features among one of the world leaders in renewable energy use. In 2009, Mauritius accordingly became the 137th member of the International Renewable Energy Agency (IRENA). Despite this rise in renewable energy use, Mauritius nonetheless has to face considerable challenges in energy management, including on the demand side: intensity of energy use in Mauritius in 2008 was 0.54 toe per USD 1000 of GDP, compared to 0.19 toe in OECD countries or 0.17 toe in the EU15. Outside of transport, the highest energy consumption comes from the manufacturing sector (especially the textile industry, with over 40% of total energy consumption in 2010) and from the food industry (over 20% in 2010). Moreover, the share of bagasse and hydro in the primary energy supply has been dropping, from about 30% in 1996 to roughly 22% today; by contrast the share of coal in electricity production has strongly risen, and stands at over 50% in 2012. Cognisant of this dangerous trend, government has developed a **wide range of initiatives to increase renewable energy investment** as well as better manage energy on the demand side (see Box 4.1); it has most recently set up a National Energy Commission and embarked on an initiative for sustainable public procurement.

Box 4.1. **The drive towards renewable energy and energy efficiency in Mauritius**

There are many initiatives for improving energy management on both supply and demand-sides in Mauritius. At the forefront of these is the **Maurice Ile Durable (MID)** endeavour, announced by following a spike in petrol prices in 2008 and the resulting surge in the share of petroleum in the total import bill (from 12 to 18%).

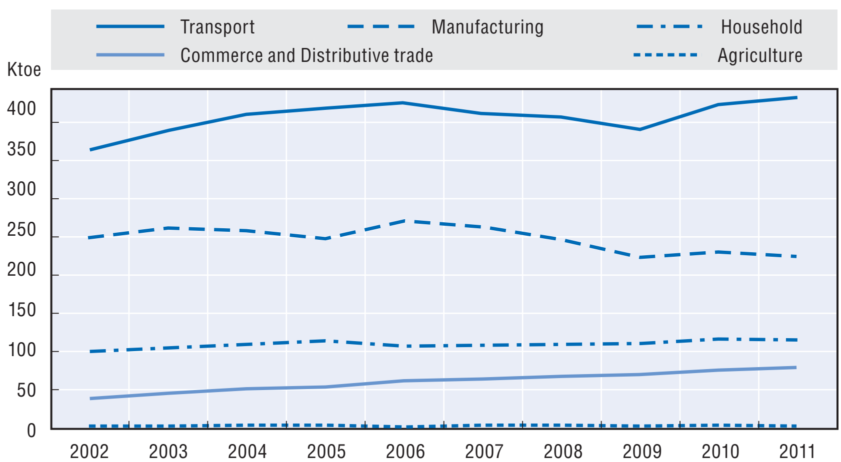
- The main thrust of the **MID vision** is to make Mauritius less dependent on fossil fuels and to improve energy security, through increased utilisation of renewable energy and a more efficient use of energy in general. A ten-year policy, Action Plan and Strategy for the MID were endorsed by government in June 2013, to accelerate roll-out of the Vision.[1]
- Alongside, the **Maurice Ile Durable Fund** was created in 2008 and initially placed under the aegis of the Ministry of Public Utilities, MEPU. Its finances are derived from an MID levy of MUR 15 cents all petroleum products, LPG and coal. The Fund supports programmes for reducing fossil fuel consumption, exploring potential sources of natural energy, preserving the environment and encouraging energy efficiency innovation. It has also provided several infrastructure-related grants, including for feasibility studies of wind and hydro power projects and for waste-to-energy projects. In view of granting the MID endeavour further prominence, since its creation the management of the MID Fund has first been moved to the Ministry of Environment and next, in 2013, to the Prime Minister's Office.

Meanwhile, on the demand-side, the **Energy Efficiency Act of 2011** established the **Energy Efficiency Management Office** (EEMO). EEMO sets targets for reduction of energy consumption across transport, buildings, and manufacturing and industry by 2020.[2] EEMO has been tasked with: developing pilot projects for efficient energy use; monitoring and collecting data on energy efficiency and consumption; and setting standards for energy efficiency and conservation. EEMO is also expected to develop and implement an **Energy Efficiency Action Plan**, which will serve as a roadmap for EEMO in charting out its activities for the initial period of two years. The thrust areas identified for implementation of the act include establishment and strengthening of EEMO, standards and labelling, demand side management, building energy efficiency, and awareness creation. The strategy for promoting energy efficiency in the initial years will rely on self-regulation mechanisms and the use of market forces.

1. Dinally, E. (2012), *Plans stratégiques – Nouvelle impulsion à Maurice, île durable*, DefiMediaGroup, 28 July, available at : *www.defimedia.info/defi-plus/dp-enquete/item/16318-plans-strat%C3%A9giques-%E2%80%93-nouvelle-impulsion-%C3%A0-maurice-%C3%AEle-durable.html*.
2. Elahee, K. (2011), "Long Term Vision: Energy – Proposals for the 2012 Budget", *Le Mauricien*, 6 October, available at: *www.lemauricien.com/article/long-term-vision-energy-%E2%80%93-proposals-2012-budget*.

As part of its **Long Term Energy Strategy**, government also has a well-defined electricity generation expansion plan for the next decade, with clear indicators for commissioning the necessary power plants. The strategy, first developed in 2007, revised in 2009 and most recently approved for the 2012-25, provides a blueprint for the development of the energy sector. It also recognises that further development of the country's key economic pillars, in particular the ICT and tourism sectors, will require a constant and high quality supply of electricity. The strategy thus lays emphasis on: the development of renewable energy (with an aim to reach 35% renewable in the national energy mix by 2025, especially through acceleration of wind-power development and bolstering the bagasse sector); reduction of the country's dependence on imported fossil fuel; and the promotion of energy efficiency in line with the Maurice Île Durable vision (detailed in Box 4.1).

Figure 4.2. **Energy consumption by sector, 2002-11**



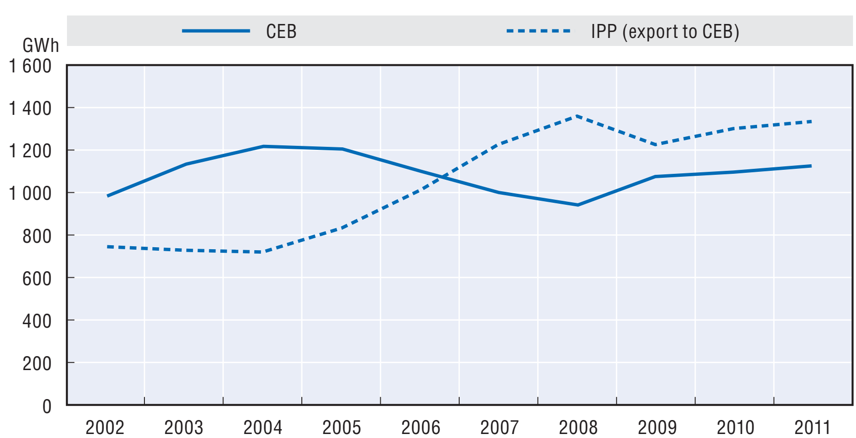

*Source:* "Energy and Water Statistics 2011", *Statistics Mauritius.*

The **legislative framework for the electricity sector** in Mauritius is provided by: the Electricity Act of 1939 (amended in 1991); the Electricity Regulations of 1939; and the Central Electricity Board (CEB) Act of 1964. More recent legislation has included the Environment Protection Act of 2002 and the Energy Efficiency Act of 2011. As of 1964, the CEB, wholly government-owned and reporting to MEPU, is the primary body responsible for regulation and pricing of the electricity sector. It also holds a monopoly in distribution and transmission of electricity, under the "single-buyer model" of electricity provision.

Despite the market dominance of the CEB, the above legislation has permitted progressive opening of the production segment of the energy market to private operators. **Independent power production** has indeed long been a feature of the power sector in Mauritius. As early as 1991, the Bagasse Energy Development Programme enabled sugar factories to obtain the steam and electricity required for its operation from power plants, in exchange for free access to the bagasse produced after the milling of canes and condensed water from the sugar factory. Under the current single-buyer model, CEB continues to purchase 60% of the country's total power requirements from Independent Power Providers (IPPs). CEB has long-term power purchase agreements (PPAs) with five main IPPs which provide electricity year-round using a combination of coal during the intercrop season, and bagasse during the crop season. This is complemented by power purchase agreements with three continuous power producers (CPPs) which produce electricity from bagasse during the crop season only. CEB produces the remaining 40% of electricity itself, from its four thermal power stations and eight hydroelectric plants.

As Figure 4.3 illustrates, the share of IPP generation in total CEB electricity has therefore surpassed CEB generation since 2006. There are no production subsidies for IPPs, and electricity is purchased from them on a competitive basis. However **no standard PPA** is defined within the 2005 Electricity Act. As there are no common rules for interconnection with generation (whether renewable or not) by investors, all projects must be approved one by one. This may become increasingly problematic given the need for the existing electricity network to rapidly increase capacity (indeed the power system was stretched to a maximum in 2012 during peak days). Mauritius could therefore benefit from developing some standard rules for interconnection and for planning/environmental approval of IPP connections.

Figure 4.3. **Shares of electricity generation by CEB and IPPs in Mauritius, 2011**




*Source: Energy and Water Statistics 2011*, p. 14.

Standard PPAs can moreover **increase the predictability of pricing** and cost-recovery structures for investors. In their absence, IPPs may be wary of entering the production segment, as contracts which are negotiated on a case-by-case basis may not provide enough information and guarantees regarding key elements of market structure. Alongside, standard PPAs can also **protect consumer interests**. In the absence of competition in the transmission and distribution stages, there is indeed a risk that the monopoly distributor might excessively influence the supply price and thus modify the risk-return profile of energy infrastructure investment, or otherwise pass an excessive fraction of the energy purchase costs through to its customers. This is particularly the case when electricity markets do not have independent regulators – as in Mauritius, where CEB assumes the regulatory role to date (although a separate regulator, the URA, may be established in the course of 2013 – see Section 4.4).

The Long-Term Energy Strategy reaffirms the framework of a single buyer model, arguing that, "given the small size of the electricity market, complete unbundling of the power system is not envisaged at this stage". Under the strategy and within this framework, government is also to design appropriate schemes to allow for the **progressive market penetration of photovoltaic systems** (especially given the dropping price of PV modules). These schemes could include investment subsidies, whereby part of the cost of installation of PV systems could be refunded, as well as Feed-in Tariffs/net metering, whereby the CEB would purchase PV electricity from the producer at a guaranteed rate.

Government has also launched the **Small Scale Distributed Generation programme**, which since 2010 allows small-scale private power producers to produce electricity from renewable sources (mostly solar, wind and water) for their own needs, for a total capacity of 4.7 MW and with possible re-sale of excess supply to the CEB. This scheme may however need to be better regulated: while there were about 130 of such IPPs in Mauritius by April 2013 (cumulating in a generation capacity of over 1 000 kWh), several of these producers had connected to the CEB grid without going through the procedures specifically put in place for that type of producer – an illegal practice which is liable to prosecution under the Electricity Act.

### *Status of network and of private sector participation in the water sector*

The water sector in Mauritius is **overseen by three bodies operating under MEPU**: the Central Water Authority (CWA, established under the provisions of the Central Water Authority Act No. 20 of 1971 – last amended in 2000); the Wastewater Management Authority (WMA); and the Water Resources Unit (WRU, which since 1993 has been responsible for the assessment, development, management and conservation of water resources, including the allocation of water rights). Since the creation of WRU, the CWA is now mainly responsible for the treatment and distribution of potable water for domestic, commercial and industrial usage.

The proportion of total water production reliant on ground-water abstraction versus surface water varies widely by region in Mauritius (for instance the East District Supply system relies on 72% groundwater, and the upper Mare aux Vacoas system relying on 70% surface water). By 2011, 99.8% of the population had **access to improved water**; meanwhile, in 2012, 89% of the total population had access to improved sanitation. Domestic households consume the majority of water sold (77% in 2012), distantly followed by commercial activities (13%), government, agricultural and industrial sectors, and religious and charitable institutions (10%). In 2012, in total across all sectors, 220 litres of potable water were consumed per capita per day.

Although efforts have been made to encourage more **private participation in the water sector**, response has been limited so far. Following an unsuccessful attempt to establish a management contract with a consortium Vivendi/Suez Lyonnaise des Eaux in 2000, the Government of Mauritius decided to conduct a wide-ranging analysis of the various options for water and wastewater services, together with PPIAF, to identify the best long-term option for private sector participation (see Section 4.5). Although private or PPP water provision is yet to come, in 2008 a seven-year management contract for the operations and maintenance of a 70 000 $m^3$/d wastewater treatment plant was awarded to Germany's leading service provider for wastewater disposal systems.

Currently, major reforms are being undertaken in the water sector: a **Master Plan on Water Resources**, sponsored by the WRU, was elaborated over 2010-12 and finalised at the end of March 2013. The plan provides a roadmap for the integration and management of water resources for the time horizons 2025 and 2050, covering all water usages. The latter calls for the expansion of existing dams, water extraction from rivers, construction of 52 additional drilling and reuse of wastewater for irrigation. After implementation, these projects are expected mobilise an additional volume of 232 $mm^3$ of water, at a cost of MUR 14 billion (half a billion USD).

An assessment of water needs for the coming years has been carried out in preparation for this plan, identifying the various options (including demand and supply management) for satisfying the growing water demand. It also provides some adaptation measures in the wake of climate change, so as to build up resilience in terms of water requirements and meet the future challenges in the sector. The legal framework governing the water sector is also reviewed and new legislation is recommended, together with a programme for reform of water rights. A timeframe has been identified for all of these strategic measures, coupled with their related investment requirements. As announced in the 2012 Budget, experts from Singapore are also currently reviewing the functioning of the parastatals in the water and waste water sectors to improve delivery of services. It is therefore expected that substantial reforms and investment will follow in the water sector.

### *Status of network and of private sector participation in the transport sector*

While there is no railway network in Mauritius, the **road network** is well-developed. Total classified road network length stood at 2 028 kilometres by 2009, of which 98% was paved. These are very high rates, and expansion of the network is therefore not a central challenge for the country. Rather road congestion (especially in Port Louis) is frequently cited as one of the main road infrastructure challenges for the island. Beginning in 2007-08 government has embarked on a comprehensive **Road Decongestion Programme** which is already delivering time and cost savings; several major projects to ease road traffic are currently being implemented. For 2012-13, government has almost doubled its budgetary allocation to the road sector, planning for an allocation of some MUR 4.3 billion (USD 138 million); this is set to rise yet further to MUR 11 billion (USD 354 million) in 2014.

While this decongestion programme has occasioned a noticeable increase in loans to State-Owned Enterprises over 2012, as stated in the Government Programme 2012-15 financing the programme will also require taking advantage of substantial private sector financing and expertise. Over 2012-15, investment in the road sector will therefore be boosted by the **introduction of PPP schemes**, the first of which cover the construction of the Harbour Bridge, the Port Louis Ring Road (Phase 2) and the A1-M1 bridge. These projects will involve private investments to a tune of above MUR 20 billion. Another transport infrastructure project with significant potential for people and business is the creation of a major nationwide Mass Transit System. Construction work on the Light Rail Transit is expected to start in late 2014 and the aim is to eventually connect the whole island.

Besides the decongestion programme, major improvements are continuously being brought to existing road infrastructure while new roads are being constructed to reduce travelling time and provide comfort to users. The safety dimension is also taken on board by the provision of footpaths, drains, footbridges and parking facilities in other regions of the country. The objective of the Roads Section of the Ministry of Public Infrastructure is to consistently improve the design, construction and maintenance of roads and bridges, with the aim to reduce traffic congestion, vehicle operating costs, ensure road safety and provide for better and more efficient communication and access. Roads have benefited from targeted government efforts, having been the focus of the infrastructure spending within the December 2008 Additional Stimulus Package for shoring up economic performance: out of an additional MUR 2.6 billion (USD 82 million) provided for public infrastructure, 1.8 billion (USD 57 million) were destined to the road network, in addition to what had already been provided for in the 2008-09 budget.

The 2009-25 Long-Term Energy Strategy moreover commits to setting up a new **Land Transport Authority** with the mandate to plan, implement and manage the nation's land transport with improved co-ordination and efficiency. The Mauritius Land Transport Authority was set up in 2009 to take over the activities of the Road Development Authority, the National Transport Authority and the Traffic Management and Road Safety Unit so as to reduce duplication and bureaucracy. The Authority is called upon to improve cost efficiency, through capacity building, especially transport management and professional skills and competencies. With World Bank institutional and financial support, operations of the Land Transport Authority are notably gaining speed in the implementation of an extensive road maintenance programme.

As for **marine and air transport**, as an island state at a nodal point between Africa and Asia depends heavily on its port and airport to facilitate the movement of people, goods, and services. Air access is particularly crucial for the tourism economy, and the Port Louis harbour could become a regional maritime hub if its capacity were significantly enhanced – with significant benefits in terms of export competitiveness and of the attractiveness and growth of Mauritius Freeport. Annual air traffic in Mauritius has risen from 1.8 million passengers to 2.5 million in 2010; this exceeds rates for most African countries, but remains under the traffic of other high-tourism and business destinations (such as Kenya, with 7.5 million commercial air passengers in 2010). Meanwhile cargo traffic has shown no consistent increase: after a rise from 45 000 to 57 000 tonnes over 2002-08, by 2010, commercial air freight traffic had dropped back to 48 000 tonnes. Port cargo traffic is by contrast much higher, having risen from 5.6 million tonnes to 6.23 million tonnes over 2002-10.

Under the Government Programme 2012-15, government will continue to invest in the **expansion and modernisation of the port and the airport** with a view to extending their regional span. It will notably accelerate the implementation of the Master Plan for modernisation and development of the port, and the extension and strengthening of the MCT Quay at Port Louis Harbour will be completed in 2015. Government is also in the process of securing a strategic partner for the Cargo Handling Corporation Ltd., in order to increasing the port's container traffic capacity. In the air traffic sector, over 2012-15 Air Mauritius will continue efforts to expand its capacity towards growth economies and will finalise its proposals for a strategic partner to help achieve greater global connectivity and efficiency. Upgrading of air transport links will be especially important for the realisation of the Africa Strategy, as convenient and rapid air connections between Mauritius and the rest of the continent are particularly limited to date.

### *Status of network and of private sector participation in the ICT sector*

Mauritius is the first country in Africa to introduce **Public Key Infrastructure** (PKI) through its ICT Authority; this security architecture provides an increased level of confidence for exchanging information, and will enable secure electronic transactions both within Ministries and Departments, and by citizens and businesses. This is a strategic step forward for enhancing the comparative advantage of Mauritius as a regional hub for BPO and financial services, and builds on a **modern telecommunications infrastructure**.

Since 2005, Mauritius is thus connected to the SAFE/SAT3/WASC **submarine fibre optic cable** system which provides high bandwidth international connectivity. The South Africa Far East (SAFE) cable network links Mauritius to Europe via South Africa and to Asia via India and Malaysia. Due to this enhanced connectivity, connectivity costs between Mauritius and Europe decreased by up to 52% over 2005-06, and the costs of local calls dropped by up to 27%. In 2006, Mauritius also became part of the Eastern Africa Submarine System (EASSy) project, and is leading an inter-island connectivity project within the Indian Ocean Commission (IOC) which may connect to the EASSy cable. A new submarine fibre optic cable, LION 2, is also operational since January 2012. Over 2002-10, the number of internet users more than doubled, from 141 800 to 316 800. By 2010, there were thus 305 internet users per every 1 000 persons in Mauritius, the second-highest rate in the COMESA region after the Seychelles.

As for **telecommunications**, there are currently two fixed-line operators in Mauritius – Mauritius Telecom (about 95% of the market share, with around 360 000 lines) and Mahanagar Telephone – and three mobile operators, Emtel, Orange Mauritius and MTML. The number of mobile phone subscriptions has risen from 347 500 to 1.2 million over 2002-10, a 243% increase which puts Mauritius in third place among COMESA countries for the number of subscriptions for every thousand persons (at 928 in 2010). Meanwhile unlike several African countries where fixed line subscriptions have dropped in recent years (having been overtaken by the booming mobile sector), there were still 405 200 fixed line subscriptions in Mauritius by 2010 (up by 24% since 2002).

According to the 2013 Global Information Technology Report of the World Economic Forum, Mauritius is by far a regional leader in terms of: the strength of its policy and regulatory framework for ICT investment (36th place worldwide); and the **strong government vision to build and deploy ICT as a strategic priority area for economic development** (48th position). Indeed ICT is very high on the government agenda, as a strategic sector for employment creation and regional export of services. By end 2011, the entire ICT sector contribution to GDP stood at 6%. Government also holds that the ICT/BPO sector has enormous potential for investment and higher quality FDI and most importantly for creating higher paid jobs for youths. In this context it will support the establishment of an ICT academy over 2012-15, and initiatives targeted at better aligning labour supply with labour demand in ICT are currently underway (see Chapter 5).

The **Ministry of Information and Communication Technology** is responsible for the elaboration of policies to circumvent challenges facing ICT businesses as a whole. The Telecommunications Sector has been fully liberalised for more than a decade in Mauritius. The ICT Act of 2001 began the **liberalisation process for the telecommunications subsector** by removing exclusivity rights of Mauritius Telecom over fixed telecom services. Mauritius Telecom was privatised after selling 40% of its shares to France Telecom in 2000; Government of Mauritius, the State Bank of Mauritius, the National Pensions Fund and employees of Mauritius Telecom hold the remaining 60% of shares. This was followed by a new ICT Act in 2011, which further liberalises the sector (as detailed in Section 4.7).

In 2007, government adopted the **National ICT Strategic Plan** (NICTSP 2007-11) which set several ambitious targets to be jointly achieved by public and private sectors, including: increasing the contribution of Global Business ICT export services from 1% of GDP to 7%; increasing employment in the sector from about 10 000 to at least 29 000 by 2011; and doubling the number of foreign investors in the sector. The latter objective was obtained, as foreign investors in the sector rose from 150 in end 2006 to 300 by 2010. These objectives are prolonged in the NICTSP 2011-14, which attempts to tackle of some of the mismatch between objectives of the previous NICTSP and available resources.

ICT sector development has thus largely focused on **export-based services** to date, and several foreign ICT companies (such as Microsoft and Accenture) have development centres in the island. However it is important to balance this strategic orientation with a policy of easy and affordable ICT access for the domestic population as well. Indeed internet costs remain rather high in Mauritius (as has notably been highlighted by private investors in Mauritius Freeport), and can be particularly prohibitive for households and smaller companies. The WEF Global Information Technology Report downgraded the international ranking of Mauritius by two notches (to 55th place) in 2013, for poor progress in the **quality and accessibility of its ICT infrastructure**. The deterioration in particular concerns the impact of technology on the economy and society: although ICT is used extensively for business transactions (where Mauritius ranks 48th), the accessibility and usage for individuals remains far behind (at 92nd place). The social "spill-over" impacts of ICT are thus judged to be modest compared to other countries. Moreover, although Mauritius is the African leader in terms of ICT connectivity, at the global level it still performs below the levels of connectivity found in Southeast Asia or Latin

America – accordingly the 2013 Global Enabling Trade Report, which on this measure ranks Mauritius only 79th out of 132 countries covered.

These challenges are taken on board by the **National Broadband Policy** 2012-20 (NBP 2012) and by the **"Connectivity" chapter of the Government Programme 2012-15**. In the latter, the government commits to achieving broadband connectivity island-wide and providing every household with at least 1 MB per second by 2015. In the interest of wider affordability and in view of strengthening the competitiveness of the ICT/BPO sector, government is also attempting to reduce internet user costs: as of January 2013, it has lowered to price of entry-level broadband from MUR 349 to 200 per month (that is, from approximately USD 11 to 6); and the cost of International Private Leased Circuits has dropped by 30% over the past two years. Government is also undertaking several initiatives (such as incubator schemes) to promote development of the local ICT industry.

## 4.3. Levelling the playing field between SOEs and private investors in infrastructure

Mauritius has a high number of parastatal enterprises, especially in the infrastructure and utility sectors. This includes: Central Electricity Board (CEB); Central Water Authority (CWA); Construction Industry Development Board (CIDB); Information and Communication Technologies Authority (ICTA); Mauritius Broadcasting Corporation (MBC); Road Development Authority; and the Wastewater Management Authority (WMA).

Both as investors in new infrastructure capacity and as actors of liberalisation processes that aim at attracting private investors, SOEs are a critical component of infrastructure development in most African countries. In Mauritius and elsewhere in the region, utility markets are characterised by an **interdependency of SOEs and the private sector**, as they are both mutual partners and competitors. While the existence of "natural monopolies" in itself is not necessarily problematic or unusual in infrastructure sub-sectors (as the extremely high fixed costs for operation and maintenance of infrastructure networks are difficult to shoulder for all but large enterprises), these monopolistic state-owned firms frequently pose risks of inefficient management and under-investment. Increasing private participation in infrastructure requires both: improving SOE efficiency, which eventually paves the way for successful private participation (addressed in this section); and opening infrastructure sub-sectors to private participation actors on a competitive basis *vis-à-vis* SOEs (addressed in Sections 4.4 to 4.6).

### *Reducing the fiscal burden of SOEs in Mauritius*

**Inefficiently-run SOEs can impose a drain on public finances**, especially when these enterprises depend on production subsidies from government rather than operating on a cost recovery basis (see Section 4.7 on pricing). SOEs should rather have flexibility in adjusting their capital structure, and should face competitive conditions regarding access to finance. Although in many developing and emerging countries subsidies are provided to state-owned utility providers in the interest of end-user affordability, there are moreover several alternatives means of broadening the access of poorer citizens to basic services such as water and electricity. In fact artificially low tariffs and production subsidies do not automatically generate the expected socially desirable effects, especially when water or electricity access remain geographically constrained to areas inhabited by richer segments of the population (in which case the low tariffs, backed with extensive public funding, can rather act mostly as a regressive subsidy for the rich). In view of these various risks and fiscal costs, production subsidies can potentially be replaced by consumption subsidies while allowing SOEs to operate on a more commercial basis. In addition to helping level the playing field for private operators, such a move can also allow public utilities to better mobilise adequate resources to sustain existing supply systems or invest in the rehabilitation and expansion of infrastructure.

Mauritius is fully aware of the fiscal risk potentially posed by SOEs, as is reflected in national development plans. The ministerial report on Facing the Eurozone Crisis, elaborated in 2010, had noted the importance of parastatals operating on a commercial basis, and required that SOEs finance their own operating costs rather than depending on budgetary transfers. Moreover, the 2010 report noted that government funding for parastatal investment programmes would in coming years be conditioned on parastatals providing a **real return of at least 5% on capital invested**. This requirement is since being put into action under the leadership of the Office of Public Sector Governance (OPSG, see below) which has agreed with the European Union to restructure 11 parastatals over 2012-14. In this light, OPSG will have to propose restructuring plans for SOEs and parastatals, and demonstrate that they can generate this 5% return on capital investment in order to secure Cabinet approval. OPSG has already completed the reforms for three SOEs on this basis: Business Parks of Mauritius Ltd. (BPML); Cyber Properties Investment Ltd. (CPIL); and the National Transport Corporation (NTC).

As part of the Government Programme 2012-15, Government has announced that it will “continue to examine the level of parastatal efficiency and bring expenditure under control”, as well as “undertake a major rationalisation of parastatal bodies and SOEs with a view to improving cost-effectiveness, quality of services and optimal use of human resources”. This government stance has already begun to bear fruit, and **government transfers to SOEs** (in the form of subsidies) for 2012 undercut the 2011 levels by 1% of GDP. This has improved the government’s fiscal stance, and the overall budget deficit stood at only 2.3% of GDP for 2012. In the place of outright transfers, loans to SOEs (a more fiscally sustainable means of financing, and which exerts more pressures for commercial corporate conduct by SOEs) significantly increased in 2013 – in particular in the context of the road decongestion programme. As announced in the 2013 Budget, these loans are to be accompanied by stronger mechanisms for performance monitoring of SOEs. Indeed, in its 2013 country report the IMF recommends that these loans be tied to strict conditions for improving efficiency and ensuring repayment.

### *Standards for corporate governance of SOEs*

Financial balance aside, ineffective SOE management can also result in poor infrastructure maintenance, service quality and network coverage – which can in turn deter private operators from entering infrastructure markets. For governments seeking to privatise an infrastructure SOE, improving the latter's corporate governance and thus efficiency can indeed reduce the need for large-scale restructuring and therefore make the prospect of taking the SOE over more attractive for potential private investors. Besides performance-tied loans, the functioning and efficiency of SOEs in infrastructure can be enhanced through **more stringent reporting and corporate governance requirements.** The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy. As a result, the cost of capital is lower and firms are encouraged to use resources more efficiently, thereby underpinning growth.

As highlighted by the OECD Guidelines on Corporate Governance of State-Owned Enterprises, **SOEs face distinct governance challenges from the private sector**. One is that SOEs may suffer just as much from undue hands-on and politically motivated ownership interference, as from totally passive or distant ownership by the state. There may also be a dilution of accountability, since SOEs are often protected from two major pressures for sound management in private sector corporations: takeover and bankruptcy. More fundamentally, corporate governance difficulties derive from the fact that the accountability for the performance of SOEs involves a complex chain of agents (management, board, ownership entities, ministries, the government), without clearly and easily identifiable principals.

This complex web of accountabilities must be clearly structured in order to ensure efficient decisions and good corporate governance. For instance, state ownership of enterprises is exercised in two ways in Mauritius: a number of enterprises (such as the CWA and CEB) are parastatal bodies that are regulated by their own acts of parliament; while other enterprises are owned through public limited liability companies. In certain of these companies, apart from government, there are other SOEs as shareholders and also some minority non-governmental shareholders. Some SOEs, such as Air Mauritius, are moreover listed on the Stock Exchange of Mauritius. These complex and variable ownership structures make it very necessary to establish a clear corporate governance framework specific to SOEs.

SOEs should not be exempt from the application of general laws and regulations, including **high quality accounting and auditing standards**. Disclosure should include, but not be limited to, material information on: the financial and operating results of the company; company objectives; major share ownership and voting rights; remuneration policy for members of the board and key executives, and information about board members, including their qualifications and the selection process; related party transactions; foreseeable risk factors; issues regarding employees and other stakeholders; and the content of any corporate governance code or policy and the process by which it is implemented. In addition an annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance of the fairness and accuracy of the company's financial statements.

In Mauritius, the national framework for corporate governance and financial accountability is set out under the **Financial Reporting Act** of 2005, which formalised the institutional relationships among three related authorities: the Financial Reporting Council (FRC, created by the act and tasked with promoting high-quality reporting of financial and non-financial information by public interest entities; as well as with enhancing the credibility of financial reporting and improving the quality of accountancy and audit services); the Mauritius Institute of Professional Accountants (MIPA); and the National Committee on Corporate Governance (NCCG). SOEs, under the **First Schedule of the Financial Reporting Act 2005 and the Statutory Bodies Act 2009**, must comply with the same accounting and reporting standards as private companies: full International Financial Reporting Standards (IFRS), with financial reporting monitored by the FRC. Likewise, Section 1.1 of the **Code of Corporate Governance for Mauritius** (CCGM, elaborated by the NCCG in 2003) states that the code's obligations apply to all designated institutions, which include SOEs, statutory corporations and parastatal bodies. A consolidated version of the Statutory Bodies Act requires SOEs to publish Annual Reports which include audited financial statements and other relevant information as required by the Section 8.4 of the CCGM.

In addition, **Section 2.3.2 of the CCGM defines responsibilities of the board that explicitly apply to SOEs**. It is recommended that the board of each SOE prepare a Corporate Objectives Statement (COS) for the approval of the Minister. A publicly available document, the COS must be expressed in clear terms, with output, financial performance expectations, and time frames which can be measured and monitored. Meanwhile, some very small SOEs (under Schedule II of the Statutory Bodies Act) benefit from more lax requirements: full IFRS is not required (only adherence to International Public Sector Accounting Standards, IPSAS, or to national, simplified standards issued by the Financial Reporting Council, is necessary), and they have no regulator. Whereas financial statements for private companies are filed with the Financial Services Commission and Registrar of Companies, SOE financial statements and annual reports are presented to the National Assembly by the Minister of the SOE's parent ministry. These reports are then audited by the National Audit Office, and the Public Accounts Committee (PAC) of the National Assembly provides another level of oversight.

Designed as a tool to complement the above Code of corporate governance, in December 2006 a set of "**Guidance Notes for State-Owned Enterprises**" was additionally released by the National Committee on Corporate Governance (NCCG, which operates under MOFED). On a "comply or explain" basis, the Notes attempt to provide solutions to a number of key issues – including accountability, monitoring of board performance, risk management, internal control and internal audit, and communication with stakeholders – so as to create an environment that will empower SOEs to operate in a way that maximises economic value and financial performance. In addition to adapting the main items covered by the CCGM to the SOE case (compliance and enforcement; boards and directors; board committees; risk management, internal control and internal audit; auditing and accounting; relationship with shareholders; and communication and disclosure), Section 7 of the Guidance Notes also introduces requirements for Integrated Sustainability Reporting for SOEs. In a further step towards enhance corporate governance of SOEs, the 2014 Budget moreover announces that statutory requirements will be set for SOEs and Statutory Bodies in the course of the year, to improve the accountability and performance management of these enterprises.

### *Monitoring SOE compliance with corporate governance standards*

SOE compliance with corporate governance standards is being improved, through extension of the mandate of the **Office of Public Sector Governance** (OPSG). Established within the Prime Minister's Office, this office has the responsibility to ensure that SOEs become more cost-effective and outcome-orientated, in line with best practices of governance – in particular those relating to transparency and accountability. Since 2012, the OPSG mandate has been extended to improve governance in SOEs, notably through monitoring the overall performance of public sector enterprises. As such, OPSG assists the work of the Registrar of Companies, which is empowered to prosecute both public and private companies that do not comply with reporting standards. Since 2012, the OPSG is thus responsible for: supporting parastatal bodies, in collaboration with line Ministries, in the preparation of their Performance Improvement

Plans; providing support to public sector enterprises in implementing performance enhancing reforms; and monitoring the pace of the reforms and recommending corrective measures, as appropriate.

In addition, OPSG is empowered to carry out qualitative analysis based on data provided through the **Parastatal Information Management System** (PIMS), launched in March 2012 with World Bank support. While to date, data on parastatal performance has been collected on an *ad hoc* and fragmented basis by sector ministries, PIMS will provide a central and regularly updated information system for: analysing parastatal performance in Mauritius; identifying poor performers; diagnosing causal factors behind poor performance; determining appropriate remedial actions; and monitoring reform progress. Such an information management system can help address an important prerequisite of effective parastatal reform.

The work of OPSG is already reaping rewards. From a survey of 17 SOEs conducted in early 2011, which assesses compliance with the ten key topics addressed in the CCGM, OPSG concludes that the degree of compliance is satisfactory (above 50% for most categories). This marks an improvement on 2009 results, gathered by the NCCG, where SOE compliance with the code stood at only 44% (versus 83% for companies listed on the Stock Exchange of Mauritius, SEM). The disappointing results of the NCCG survey had triggered a request by the government to the World Bank, for a review of the **Reports on Observance of Standards and Codes** (ROSC) on Corporate Governance in 2010-11. Box 4.2 outlines the key findings of the ROSC, together with the plans for reform of the national corporate governance framework that resulted from it.

Box 4.2. **Results of the 2010-11 Report on Observance of Standards and Codes of Mauritius**

The 2010-11 ROSC was conducted by the World Bank at the request of MOFED (following on previous ROSC reports in 2003 and 2009). Preliminary findings indicated that Mauritius has a **strong legal and institutional framework for corporate governance** (including the code, Companies Act, Financial Reporting Act, Bank of Mauritius Guidelines, Listing Rules of Stock Exchange of Mauritius), and that the Code of Corporate Governance has made a significant impact on behaviour. The report concludes that "**Mauritius is an international leader in many respects, especially in the area of board practices and disclosure**. Across most of the aspects of good corporate governance as defined by the OECD Principles, Mauritius is now on par with many market leaders in Asia (such as India, Thailand, and Malaysia)".

As highlighted by the 2011 ROSC report, **certain inconsistencies in the Corporate Governance Code nonetheless still need to be addressed**. This is

Box 4.2. **Results of the 2010-11 Report on Observance of Standards and Codes of Mauritius** *(cont.)*

also in line with survey commissioned by the NCCG in 2009 on the state of compliance with the Code of Corporate Governance (see above), which found that compliance was particularly low for companies listed on the SEM's Development & Enterprise Market (DEM, at 36%), and in SOE's (at 44%).* While in 86% of the companies, information disclosed on financial and company issues were claimed to be accurate, NCCG noted that such disclosures of compliance to the code "were often limited to a box ticking exercise".

In addition, although financial reporting has generally improved in quality over 2003-10, the ROSC report concludes that Mauritius would benefit from a stronger regulatory regime combined with effective monitoring and enforcement mechanisms. Related recommendations included the following:

- Clarifying the "comply or explain" provision within the Code of Corporate Governance, and better anchoring the code in the legal and regulatory framework.
- Revising the Companies Act 2001 and Statutory Bodies Act (1972, last amended in 2011) in view of adopting a three-tier system for reporting, thus allowing for more flexible reporting by small and medium enterprises. Indeed, up until 2011 the Companies Act exempted only micro-enterprises (with turn-over below MUR 50 million) from full-scale international financial reporting standards – thus imposing an unnecessarily heavy reporting burden on the majority of small and medium firms.
- Formalising the FRC collaboration with other regulators, and establishing an enforcement panel as provided for in the Financial Reporting Act.
- Improving disclosure of ownership and control, as well as disclosure of compliance with the code in general.
- Working to continue to align the code with the OECD Principles of Corporate Governance.
- Considering new approaches to improve minority shareholder representation on boards. And
- Reforming the ownership framework and governance of state-owned enterprises.

* Taylor, T. (2011), "Mauritius Modernizing: Corporate Governance – Yesterday, Today and Tomorrow", *Le Mauricien*, 13 September, available at: *www.lemauricien.com/article/mauritius-modernizing-corporate-governance-%E2%80%93-yesterday-today-and-tomorrow*.

*Source:* NCCG and DCDM Marketing Research (2009), "Survey on the State of Compliance with the Code of Corporate Governance in Mauritius Report", October; and World Bank (2011), *Report on Observance of Standards and Codes for Mauritius*.

A further step toward greater SOE efficiency can be undertaken through **enhanced functional separation of infrastructure sub-sectors**. This can help to identify in which areas profits or losses are made, and can therefore shed light on what operations the SOE is best-suited to shoulder, as opposed to the functions that would be best left to private actors. This separation can help SOEs to better focus their staff and resources on delivering higher value-for-money and quality infrastructure services to the general population. Functional separation and the associated efficiency gains can also better prepare SOEs for potential competition once infrastructure sectors are liberalised, and can pave the way for privatisation in functions deemed better-suited for private sector provision.

## 4.4. Legal and institutional framework for public procurement in infrastructure

### *Legal and institutional framework for public procurement*

The first attempt to reform the public procurement system in Mauritius was made in 1994, following an allegation of corruption in a major procurement exercise in a parastatal body. Mauritius was among the first countries to adopt the UNCITRAL Model Law on Public Procurement, which prompted the introduction of the Public Procurement Transparency and Equity Act in 1999. Following implementation constraints with this act, the Mauritius **Public Procurement Act 2006-07** was enacted in 2008; this one-year gap before enactment was deliberately designed to allow sufficient time to sensitise all stakeholders on the forthcoming changes.

The Procurement Act (last updated in April 2012) is a hybrid product between the UNCITRAL Model Law and the World Bank Procurement Guidelines, and is compliant with the Government Procurement Agreement of the WTO. It also enshrines the COMESA Procurement Directives developed under the COMESA Procurement Reform Project, launched in 2004. Together with the Public Procurement Regulations of 2008, the Suspension and Debarment Regulations of 2008, and the Disqualification Regulations of 2009, it provides the current framework for public procurement in the country – including for private participation in infrastructure development.

The 2006 Act led to the restructuring of the Central Tender Board (previously established to oversee the bidding process and approve award of major contracts) into the **Central Procurement Board** (CPB). In addition, to bring more clarity, transparency and procedural fairness to the public procurement process, the **Public Procurement Office** (PPO) was set up as a policymaking and oversight institution which can provide suppliers and bidders with legal guidance and clarifications and which monitors the performance and progress of the procurement system. The **Independent Review Panel** (IRP, which hears appeals from aggrieved bidders) was established alongside. Under the PPA 2006, any bidder or potential bidder can challenge the procurement proceedings of a public body at any stage and request the CEO of the public body to consider his complaint and, where appropriate, take remedial action. Appeals may be brought before the IRP, providing a two-tier system of dispute resolution.

### *Resolution of procurement disputes*

In terms of **procurement disputes**, CPB conducts the bidding process and also approves the award of the contract, while challenge or application for review of CPB decisions is referred to the IRP. However, several reviews of the legal framework for public procurement in Mauritius (by COMESA in 2008 and 2009, and by the World Bank in the context of the Piloting Use of Country Systems) found that in the case of such applications for review, procurement entities could not adequately support the evaluation by the CPB. Moreover, as IRP decisions are not binding on the Public Body (or procuring entity), in several cases IRP decisions were not implemented: over 2008-11, in five cases the initial bidding and award decisions were maintained despite the fact that the IRP had found merit in the applications for review, and in eight cases the public bodies concerned chose not implement the IRP recommendations and proceeded with re-bid exercises.

Due to its limited resources, in a few cases the IRP was moreover unable to come to a decision within the statutory period of 30 days. This was in part caused by the high number of abusive appeals, facilitated by the fact that appealing bidders incurred no liability as appeal fees (of MUR 75 000, or USD 2 300) were entirely refundable. Indeed, up until 2012 almost one-third of awarded contracts above MUR 1 million (USD 32 000) were challenged by unsuccessful bidders. To improve on this situation, since 2013 a time limit has been set on IRP resolution of disputes, and the **fee for appealing** to the IRP has been raised and made non-refundable; this will give the IRP more resources to focus on remaining cases.

In the ICT sector, the 2011-14 NICTSP likewise points to weaknesses of the IRP. Specifically, insufficiently clear procurement rules are identified as a factor contributing to delays in the completion of ICT projects. Although the new procurement process was intended to increase transparency and fairness, and despite the legal requirement that the IRP reach a decision within 30 days, in practice the process has often taken several months. The Ministry of Information and Communication Technology notes that this may have been due to a lack of ICT technical expertise in the composition of the IRP, making case assessment difficult. IRP processes are thus complemented, in the ICT sector, by an ICT Appeals Tribunal (set up under the 2002 ICT Act, in addition to the regulatory authority ICTA). This Tribunal is to hear and dispose of any appeal against a decision of the ICT Authority; any party who is dissatisfied with the decision or findings of the Tribunal may subsequently appeal to the Supreme Court within a delay of 21 days. Rules of Procedure and Cost Regulations for the Appeal Tribunal were released in 2004.

### *Legislation for Public Private Partnerships (PPPs)*

In May 2003, MOFED issued a Public Private Partnership Policy Statement, which outlined government interest in pursuing the PPP route and announced that in the early stages of PPP government would focus on the following key areas of development: transport; public utilities (energy and water); solid and liquid waste management; health; education and vocational training; and ICT. Following this, the **2004 PPP Act** was elaborated by a taskforce chaired by MOFED and set up jointly with the private sector. Members of this taskforce included, on the public sector side, the Ministry of Public Infrastructure, MEPU, and BOI among others; and private sector representatives such as JEC, the Building and Civil Engineering Contractors Association, the Institution of Engineers, and Mauritius Bankers Association. Such close public-private co-operation in the preparation of the country's PPP framework is highly commendable.

The PPP Act of 2004 makes provisions for soliciting and awarding PPP bids (including feasibility studies, responsibilities of contracting authorities and referral to the Central Tender Board or requests for proposal), and also sets up a **PPP unit** within MOFED. In 2006, this PPP Unit released a **PPP Guidance Manual**, which usefully complements the PPP Act by clearly laying out the operational sequence for PPP projects throughout their lifespan (that is, from pre-feasibility studies through bid evaluation and selection, to project implementation, monitoring and termination). It also notifies policymakers of crucial considerations in making the choice of pursuing the PPP route for infrastructure provision (see below).

The **Finance Act 2008** brought two major amendments to the PPP Act 2004. Firstly, it clarifies the process for managing **unsolicited proposals for PPP projects**. Once a private promoter submits a project concept and the proposed cost of a detailed feasibility study to the contracting authority, and if this technical proposal is accepted, the contracting authority must prepare Request for Proposal (RFP) documents which must be approved by the CPB before bids are invited. Mention will be made in the RFP documents to the effect that: the PPP project has emanated from an original proponent; the original proponent will be awarded the project if his price is within 10% of the price of the preferred bidder; and if the original proponent is not awarded the contract, the contracting authority will compensate the proponent for the approved cost of the feasibility study. This is an important move, as dealing with unsolicited bids are a challenge regularly faced across African countries seeking to expand infrastructure networks using the PPP route.

The second amendment to the PPP Act brought by the Finance Act sets up a **PPP committee** which is responsible for all matters relating to PPP. The committee is tasked with: assessing feasibility studies and giving its recommendations to the relevant contracting authorities; developing best practice guidelines in relation to all aspects of PPPs; formulating policy in relation to PPP projects; and developing PPP awareness in the country. The committee is assisted by the PPP Unit. Alongside these bodies and as states in the Investment Promotion Act, the BOI may also act as a co-ordinator and facilitator between the PPP unit and the private sector for the assessment of a PPP project, its implementation, development and monitoring.

### *Weaknesses of the existing procurement and PPP legislation: A lack of coherence*

In order to further strengthen the existing legal framework for PPPs as well as the project pipeline, government commissioned the Institute for Public-Private Partnerships (IP3) to analyse and review the existing legal framework. The 2010 report of the IP3 concluded that in spite of considerable efforts, the level and pace of PPP project construction and operation had been less than expected and remained below the level required to fulfil the need in Mauritius for improved, expanded, and more competitive infrastructure. Private sector leaders in Mauritius' financial institutions, property development, industrial, and sugar industries for instance reported that they lacked confidence in the government's framework for PPPs and were therefore unwilling to propose new PPPs.

IP3 particularly pointed to a need to address a list of specific differences in understanding what PPP is, how quickly projects can be delivered, and why PPPs can play a beneficial role. The Institute recommends a strengthened PPP Policy Statement which would eliminate confusion and misunderstandings that existing between government bodies (including the PPP Unit, the PPO, the PPP Committee, MOFEE, PPC, line ministries, and contracting authorities – see next section) over the definition of PPPs. Moreover an updated and strengthened PPP policy statement would provide a common understanding between both government and the private sector in Mauritius on the purpose of PPPs, and the principles for their preparation and implementation. The current lack of clarity across relevant legislation, and blurred responsibilities in the PPP institutional framework, have reportedly blocked progress on major PPP projects in the past (such as the Bigara Wind Farm).

Similar conclusions were reached by the Public-Private Infrastructure Advisory Facility (PPIAF) in a separate assessment of the institutional and legal framework for PPPs in Mauritius (conducted in view of assessing the financial and commercial viability of a list of potential PPP projects, and of supporting the PPP unit in the development and management of PPP transactions). The study found significant **confusion within government entities and local**

**private sector** about the goals, roles, and overall process for the development of PPPs, which led to major constraints to the implementation of PPP projects in the island. Two options were recommended to improve the PPP framework: designing and passing a new PPP act, or issuing ministerial amendments to the 2004 PPP Act. The report also recommended the development of a general legal framework including clear and consolidated regulations, procedures, and guidelines for implementing PPP projects.

**Coherence of the PPP legal framework** could be usefully enhanced. The PPP Act and its amendments overlap with legislation on public financial management and public procurement (notably the Public Procurement Act 2006 and Public Procurement Regulations 2008). IP3 suggests that reformulation of PPP primary legislation could: clarify this framework; increase certainty on behalf of both investors and contracting authorities in the public sector; and better address the roles and responsibilities of different parts of government in PPP matters. Likewise, alignment of the PPP Act with the broader procurement framework could also be improved: a 2011 PPO study finds that public procurement procedures in Mauritius satisfy only 14 out of 17 mandatory requirements against the OECD/DAC Assessment Methodology Tool, in part due to a confusion of accountability (whereby bid evaluation for major contracts fall under the responsibility of the CPB rather than the procuring entities themselves). As a result, public bodies are answerable for awards not made by them in the implementation stage.

### *Recent revisions of the public procurement framework*

By 2012, public procurement in Mauritius accounted for about MUR 29 billion (USD 1 016 billion) annually, or approximately 10% of GDP. As noted in the Government Programme 2012-15, given that the country's public infrastructure plan will require fast and efficient implementation, the public procurement process is being reviewed in order to accelerate decision-making while ensuring accountability. This builds on the recommendations (and ensuing white paper) made by a review committee on the legal framework for procurement, appointed by Government in 2011 in reaction to unsatisfactory assessments of the framework by COMESA, the PPPO and the World Bank.

Besides legislative reforms, actions are also underway to implement an **E-Procurement** system. As a first step towards this, as of 2010 Mauritius has launched a public procurement portal, a dedicated website for public procurement on which all public bodies can post information such as: invitation for bids along with their closing dates (thus making bidding accessible and transparent for the public); latest annual procurement plans (by ministry, department, local authority and parastatal of choice); summaries of bid evaluation reports; and notices of procurement awards. Suppliers, contractors and consultants are thus able to view current and future bidding opportunities, evaluation reports and awards recently made, and download bidding documents where permitted.

Government is also developing a **Framework Agreement and Framework Contract** for standardising both work and utility contracting. According to the PPO, framework arrangements can allow for public bodies to procure from one or more suppliers on a fixed rate basis, or from many suppliers through mini-competition. This should enable public bodies to choose from different models of framework arrangements that provide the possibility for longer contract periods, but without necessarily locking the procurement entity into a long-term arrangement with one or a pre-selected number of suppliers. Standard bidding documents to serve as templates for the framework agreement and contract will be issued as pilots in this regard, and the PPO will accompany the lead public bodies in the preparation of the pilot projects so as to fine-tune the procedures and documents required for the implementation of framework arrangements. Once a central procuring body is in place, it is expected that some 40-50% of public procurement processes would be undertaken under framework arrangements within a three-year period. This is an important step forward which deserves strong political momentum – as such standard procurement frameworks can not only simplify the administrative process and reduce the resource intensity of bid and contract preparation, but also improve the efficiency of SOE management and service provision.

To ensure the timely and effective implementation of the government programme and of major projects, government has also committed to setting up a Project Management and Delivery Unit under the Prime Minister's Office. This unit, appointed in April 2012, will monitor and supervise the implementation of all public sector projects within agreed deadlines and in accordance with best international practices.

In addition to increasing the accountability and speed of procurement processes, ongoing reforms to the public procurement framework also include expanding opportunities for citizen contracting – and especially creating more space for SMEs to bid in procurement projects. As of 2013, SMEs bidding for contracts of under MUR 5 million (USD 160 000) no longer need to submit performance bonds and advance payment guarantees. An amendment to the act may also provide for at least two SMEs in the shortlists of restricted bidding (for procurement of up to USD 160 000), and for at least one SME in the restricted bid shortlists for low-value procurement (of up to USD 16 000).

In addition, although open advertised bidding is the default procurement method, a 2009 amendment of the PPA states that "the PPO may, in the case of procurement through open international bidding, issue instructions relating to the criteria and the applicable percentage preference for domestic or regional goods, services or contractors" [Section 5(1)] Likewise, a 2008 amendment of the

PPA states that "where applicable, the financial evaluation stage shall involve the application of price preference in favour of domestically manufactured goods and domestic and foreign contractors, and a regional price preference where the regional preference is applicable". The conditions of applicability are not made clear in the document; however under 35(2) "any applicable preference shall be stated in the bidding document and shall be in accordance with directives issued by the PPO". In 2013, the PPA has been amended once more, to grant a 15% **preference margin** to companies employing at least 80% local manpower when competing for public works contracts.

## 4.5. Managing the choice between public and private forms of infrastructure provision

There is a **full spectrum of options** available to governments wishing to develop infrastructure projects, with different levels of involvement by the private sector: from full SOE provision, through traditional procurement (where the government acquires infrastructure assets which are constructed by private companies, to whom the construction is awarded through tender and where the asset is operated by the government once the construction is finished), through PPPs (where both the construction and the operation of the asset are transferred to the private actor, with different levels of risk-sharing between public and private parties), and finally to full divestiture and privatisation of SOEs. Private sector participation in infrastructure thus takes various forms, including public procurement, which itself encompasses PPPs (see Figure 4.4).

Figure 4.4. **Spectrum of private sector participation in infrastructure provision**

<table>
<tr><td colspan="5">Low → Extent of private sector participation → High<br>→ Increasing share of risk shouldered by private partner →</td></tr>
<tr><td>Work and service contract</td><td>Management and maintenance contracts</td><td>Operation and maintenance concessions</td><td>Build operate transfer concessions</td><td>Full privatisation</td></tr>
<tr><td>Traditional public procurement and SOE provision</td><td colspan="3">Public private partnerships</td><td>Open competition by private operators across infrastructure market</td></tr>
</table>

*Source:* Author calculations, adapted from: Straub, S. (2009), "Governance in Water Supply", *Thematic paper* for the Global Development Network project.

Compared to more traditional forms of procurement, PPPs imply greater participation of the private sector as they transfer both the construction and the operation of the asset and involve private contractors over lengthier periods of time. Therefore, the main distinction between PPPs and more traditional forms of public procurement is the allocation of risk. As these various options and risk-sharing arrangements all have their own costs and benefits, it is crucial to ensure that the choice among them will arrive at **the most cost-effective option** of infrastructure provisions that provides the most value-for-money for end-users. This choice can be facilitated by transparent public procurement frameworks, and should be based on assessing the comparative advantage of each potential actor in providing the service. In countries such as Mauritius, where parastatals dominate infrastructure markets, this will notably require careful evaluation of SOE effectiveness and efficiency – for which the financial and corporate reporting standards mentioned above provide valuable inputs.

### *Clear guidelines for the financial management and procurement of infrastructure projects*

Mauritius has a clear **framework for planning public infrastructure spending**, accompanied by a structured body of legislations for public procurement. Each ministry or department in the Mauritian government must elaborate a strategic plan in the context of the country's ten-year Economic and Social Transformation Plan (ESTP), so as to provide an overview of the major infrastructure projects that are forthcoming. All projects having a project value of more than MUR 25 million need to be submitted to the Project Plan Committee for approval. The committee brings together several ministries (public infrastructure, finance, public utilities, environment protection and management, local administration and land use planning) under the aegis of the ministry responsible for public infrastructure. Only approved projects are recommended for inclusion in the Public Sector Investment Programme (PSIP). In this way the committee aims to ensure that projects recommended for inclusion in the public sector investment plan fit with the infrastructure development strategy of government.

Once included in the PSIP, these infrastructure projects are planned and implemented as per the guidelines set in the **Investment Project Process Manual** (IPPM). The latter is issued in accordance with Section 22A of the Finance and Audit Act 2008 and is aimed at:

- organising the investment project process;
- developing a single window system for project approval;
- establishing best practices in budget expenditure in respect of investment projects based on programme-based-budgeting principles; and
- developing a well-defined long-term pipeline of projects.

Every public officer is to comply with the instructions specified in the IPPM, and can otherwise be referred to the appropriate service commission for disciplinary action by the responsible. Provisions have also been made in the Financial Management Manual for disbursement of public monies on infrastructure, and disciplinary actions may likewise be taken against responsible officers in non-compliance of the manual's guidelines and instructions.

For the forthcoming PBB exercise (2013-15, which reached parliamentary stage in November 2012), **performance requirements on public spending** are moreover made more stringent in view of risks posed on government revenues by the economic situation in Europe. Accounting Officers are now required to ensure that all ministries and departments input forecasts of monthly expenditures and investment projects in the Treasury Accounting System (TAS). Meanwhile, the Budget Strategy and Management Directorate (BSMD) of MOFED monitors actual flows and current budget execution through the TAS. Every quarter ministries and departments must also submit a completed PBB Monitoring Template, covering: service standards; yearly targets, achieved and projected performance and milestones; main bottlenecks encountered; corrective measures taken; and per cent achievement of performance indicators. Accounting officers within each government agency are requested to put in place appropriate monitoring mechanisms to back these performance indicators. This strong framework for guiding and monitoring public investment projects, including in infrastructure sub-sectors, are complemented by a body of public procurement and PPP legislation which is currently being revised and improved (see below).

The 2006 Public Procurement Act also provides for **evaluation of procurement**, notably by the Procurement Policy Office. In 2009, the Public Procurement Office (PPO, see below) together with ICAC (the Independent Commission against Corruption) developed a Code of Conduct for Public Officials involved in Procurement, which notably attempts to tackle the new avenues for corruption potentially opened by recent trends in procurement processes (including decentralisation and e-procurement). The code covers accountability, transparency in decision-making, equitable and fair treatment, conflict of interest, and confidential use of proprietary information. The code notably commits public officials to "ensure that process, qualification and evaluation criteria are determined in such a way as to enable firms to enable firms of all sizes to compete fairly and equitably", and to encourage competitive bidding in the interest of value for money. The PPO also reviews decisions taken by the Independent Review Panel (IRP) as related to public procurement appeals.

### *Guidance for public versus private provision is available in the 2006 PPP Guidance Manual*

Choosing between private and public provision of an infrastructure service is a topic that has considerably gained in significance since the enactment of the 2004 PPP Act. While the act itself does not provide any concrete advice for making this choice (focusing more on the technical requirements of open and transparent bidding by contracting authorities), the **2006 PPP Guidance Manual** released by the PPP unit provides very comprehensive guidelines in this regard. In particular the Manual lists several crucial considerations in PPP projects, including value-for-money, appropriate risk allocation, market sounding, and calculation of affordability.

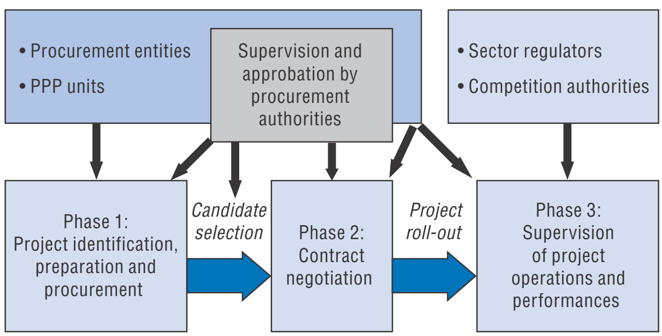
Going one step further, the manual provides specific and reader-friendly calculation guidance for each of these considerations; for instance how to compute a **Public Sector Comparator** (PSC), which estimates the hypothetical risk-adjusted cost if a project were to be financed, owned and implemented by government. An **affordability test**, which assesses the impact of such a project on public finances, can be computed by adjusting the PSC for risks and cost of capital. Similarly, the manual illustrates how to calculate market capacity for private provision (market sounding, which includes the strength of the private sector market for the project, the private sector's scope for achieving economies of scale, and its relevant expertise), as well as potential for risk transfer within the PPP. All of these calculations are crucial in order to make an informed choice between public and private provision, and to maximise the chances that the selected model of infrastructure provision will provide the most value-for-money for end-users.

The choice between mode of provision, and the review of alternative modes of delivery and of the impact across the full system of infrastructure provision, also requires a strong **data-collection capacity** in order to assess the infrastructure needs and shortfalls of the country. Mauritius has a sound and regularly updated framework for this, co-ordinated by Statistics Mauritius which gathers all economic and social indicators for the country on an annual basis. The Economic and Social Indicators on Energy and Water Statistics, last released in 2011, are thus compiled in close collaboration with CEB, CWA, the petroleum companies, IPPs and the meteorological services – these statistics include not only energy generation, requirements and imports, but also energy consumption by industrial sector. Water storage and production figures are also included in these reports. Meanwhile, data pertaining to the telecommunications sector is compiled by the ICTA and can also be accessed on the ICT Indicators Portal managed by the NCB.

## 4.6. Public sector capacity for facilitating private participation in infrastructure projects

Traditional public procurement involves the **responsibilities of a multiplicity of bodies**, a situation which is rendered even more complex once a country aims to shift towards greater private sector participation in procurement contracts. This places new demands on government agencies, from the finance ministry (which should play a key role as a gatekeeper, ensuring that public procurement projects are affordable and that the overall investment envelope is sustainable), through central procurement and privatisation authorities, to procurement entities and dedicated PPP units. Line ministries charged with various infrastructure sectors and public works, along with sectoral regulators of utility markets, also come into play (see Figure 4.5). Co-ordination and coherence, as well as clear lines of accountability, across all of these actors are essential. The institutional roles and responsibilities of these agencies must be well defined and delineated. They must be given clear mandates and sufficient resources in order to ensure a prudent and coherent procurement process.

Figure 4.5. **Implication of public agencies in the roll-out of public procurement infrastructure projects**




*Source:* Author calculations.

## *Capacity building for procurement, including PPPs*

Project preparation, negotiation and implementation are thus resource-intensive undertakings, especially in the case of PPP arrangements, which are more complex than conventional public procurement; as such the public sector requires specialised skills. While procurement entities retain overall responsibility for identifying, developing, implementing and monitoring non-traditional procurement and PPP projects, PPP units therefore bring the technical advice and assistance necessary to support this process and ensure the quality and consistency of projects with the PPP policy. Both **procurement entities and PPP units** are involved from the outset of project preparation (developing the project plan and timetable, carrying out feasibility studies, preparing detailed design of responsibilities, risk allocation, and payment mechanisms within the PPP contract, defining bid evaluation criteria, and selecting the procurement method).

Following this initial stage, public authorities together with PPP units must proceed with the bidding process and negotiate the contract details. Finally, at stages when the project is being implemented, several authorities (from sector regulators to competition authorities and to the concerned procuring entity – see Sections 4.7 and 4.8) must regularly monitor the project performance and take appropriate actions in accordance with the terms of the PPP contract.

The 2010 report on Facing the Eurozone Crisis points to an "**acute problem of capacity in the implementation of public infrastructure**", which can severely delay the island's preparedness to face new challenges and seize the opportunities. This capacity problem has indeed repeatedly surfaced both in the realms of public procurement and PPPs, and is also highlighted in a 2011 study conducted by the PPO on the causes behind appeals placed on CPB decisions (see below). It is of crucial importance that public authorities are well-equipped to assess infrastructure needs, and to negotiate sound and equitable infrastructure contracts on an equal basis with their private counterparts. Contracting authorities must also be well-equipped to assess which types of infrastructure are more or less well-suited to different formats of PPP contracting. Sound management and upstream project preparation is necessary in order to mitigate the risks that come with PPP projects.

The PPO attributes the majority of procurement cases referred to the IRP over 2008-11 (and for which appeal was successful) to **faulty evaluation on behalf of bid evaluators** appointed by the public body. Over the period, 37 contracts were incorrectly evaluated. 51% of these cases pertained to the goods sector, followed by 24% in procurement of services; works and consultancy were less prone to evaluative error. Most common faults included bidding documents not spelling out the bid evaluation criteria (or non-application of full award criteria), as well awards made to "non-responsive bidders" that were not eligible under the qualification criteria. In all these cases, where incorrect evaluation was identified, the IRP therefore ruled in favour of the applicant. Only a minority of appeal cases were justified based on legal or institutional impediments which led to the procurement decision not being implemented.

This points to insufficient capacity on behalf of public officials, and especially for evaluating bids according to qualification and award criteria. PPO suggests that the number of appeals brought before the IRP since it has been operational (21 cases in 2008, 30 cases in 2009, and a drop to only nine cases in 2011) is nonetheless an encouraging indication of a fall in dissatisfaction among bidders and of **improving bidder awareness of correct procurement and bidding procedures**. Of these cases, 11 were resolved in favour of the applicant in 2008, ten in 2009, and five in 2011. These trends also denote better understanding by bidders of the tender process – bidders are more knowledgeable and henceforth challenge awards with more certainty, displaying enhanced bidder confidence in the public procurement system. The small percentage of the total value of contract awards that were subject to applications for review in 2011 thus suggests that both bidders and public officials are adapting to the new procurement system in place since 2008. This follows capacity-building activities undertaken by the PPO since 2010 among public bodies.

The 2006 guidance manual released by the PPP unit recognises that, "since PPP represents a new paradigm for government, capacity building will be imperative for all stakeholders in the PPP process", and that the success of the PPP programme will depend largely on the development of appropriate skills within the public and private sector. The unit recommends that this be achieved through the dissemination of PPP information via newsletters and the PPP website, and the organisation of regular workshops. The manual itself also aims to cater to this capacity need, by providing guiding information designed to assist government to identify and implement PPP projects and to structure sound deals with private partners for improved public service delivery. Preparation of the manual built on PPP best practices in other countries (including South Africa, Ireland and Australia). As noted by IP3, further PPP training in Mauritius will need to be focused on supporting the preparation and completion of specific PPP projects, rather than on increasing general awareness of PPP concepts.

## 4.7. Regulation and pricing of infrastructure markets to meet end-user needs

**Infrastructure sector regulators** play an important role in keeping utility markets competitive (when they have been liberalised), as well as in tariff-setting. The extent to which these regulators can make their decisions independently of direct ministerial or SOE control can strongly influence the quality of SOE operations, and has a considerable impact on the ability and likelihood of private investors to participate in utility markets. To ensure competitive neutrality, government-linked companies should operate, to the largest extent feasible, in the same regulatory environment as private enterprises. The independence of infrastructure regulators is therefore crucial for improving the efficiency of infrastructure sub-sectors.

### *Regulation and pricing of the ICT sector*

The telecommunications sector has been fully liberalised for more than a decade in Mauritius, a process supported by a comprehensive legal framework. **Sections 28 and 29 of the ICT Act 2001** provide for interconnection and access agreements, and Section 30 empowers the regulator ICTA to hold public consultations and carry out market analysis, in order to: identify information and communication service markets or market segments; designate every ICT service market and market segment for which tariffs must be approved by ICTA before the service is offered to the public; and determine whether any public operator has significant market power in those information and communication service markets or market segments. In addition prior to the commercial launch of its services, every public operator is to disclose to the Authority the relevant market or market segment in which it intends to operate. Market power in both the primary market and in secondary/related market segments which may further strengthen the market power of the public operator are considered.

Nonetheless, the **National ICT Strategic Plan** (NICTSP 2011-14) notes that competition remained sub-optimal in Mauritius's ICT sector over 2007-11: despite the horizontal licensing structure, the market remained structured around vertically integrated operators. Although the licensing framework was intended to be technologically neutral in order to encourage innovative technology and services, the NICTSP notes, operators were confined to rigid categories in terms of service provision. Moreover, although ICTA had proposed a more flexible horizontal licensing structure – to take advantage of the trends towards convergence of technologies and the introduction of innovative services like triple play and mobile television – by 2011, this had yet to be put into practice.

Partially in response to this analysis, **the ICT Act has been amended in November 2011**. The amendment gives greater power to ICTA to proactively intervene in prices – particularly as regards operators holding significant market power. ICTA is henceforth tasked with the following objectives: creating a level playing field for all operators in the interest of consumers; licensing and regulating ICT services; regulating the cost-affordability and accessibility of ICT services (including telecommunication) nationwide, and ensuring that services are supplied as efficiently and economically as practicable and at performance standards; encouraging the optimum use of ICT in business, industry and infrastructure; and promoting the efficiency and international competitiveness of Mauritius in the ICT sector.

While previously ICTA had no responsive powers in the event of detecting market power, Section 30A of the 2011 amendment allows the authority **may impose specific conditions on the public operator** in such a case. Meanwhile, Section 31 of the act (also added in 2011) sets out provisions for electricity tariffs: proposed tariffs must be submitted to ICTA by every public operator (including a breakdown of costs), and must follow ICTA calculation guidelines. ICTA has 15 days in which to approve proposed tariff alternations for regular providers, and 30 days for providers detaining significant market power. The recent amendments to the ICT Act thus enable ICTA to intervene more effectively to ensure competition and competitive pricing of services. Mauritius is also further opening connectivity to give long distance telecom operators the right of access to connect to international gateways via the country's two landing stations. This will enhance competition, allowing businesses to connect to multiple service providers.

The ICT sector is now also subject to the operations of the **Competition Commission of Mauritius**, CCM. In fact the state-owned Mauritius Telecom is since February 2011 engaged in a CCM investigation over the "Bundled Internet Access" that it offers clients in its MyT package (see below). JEC notes that the 2012 empowerment of ICTA has given more predictability to ICT players and led to unprecedented growth (of almost 15% annually) in the sector. ICTA is moreover very transparent on its procedures: its website for instance makes available all public consultation papers which are produced in advance of any procurement or private participation in ICT provision. Since 2004 and as of August 2012, over 15 such consultations are accessible, most recently having been carried out on the issues of tariff applications for ICT. These papers, once posted on the website, invite comments by other stakeholders, and final reports include ICTA recommendations as well as the specific views of several respondents from the wider investor community. This open and interactive process of stakeholder consultation and communication is an excellent mechanism for ensuring that all infrastructure policy changes adequately take into account the needs and views of the general public, including end-users. It also further guarantees the independence of the regulator.

### *Regulation and pricing of electricity and water*

As per the **Electricity Act**, any company wishing to establish an undertaking for the supply of electricity (whether for public or private purposes) must apply to the CEB to act as an undertaker. There is no prescribed application form for such applications, but it must include a description of the area where the supply of electricity will be provided along with any other information that the CEB may require. If the application is considered favourably the applicant must publish it in the *Government Gazette*, on the basis of which any objections must be transmitted to the CEB in writing. Under the Environmental Protection Act of 2002, applicants for independent power provision are also required to submit an environmental impact assessment, to be reviewed by the Minister of Environment and National Development Unit. Issued permits do not exceed 20 years. However CEB may, where it thinks fit and without assigning any reason, refuse to consider any application.

CEB is therefore the regulator for the power sector, at the risk of creating some conflict of interest since it is not independent (reporting to its Ministry), and is also the monopoly actor in transmission and distribution. This situation has generated increasing calls for amending the Electricity Act, and for enacting the Utility Regulatory Agency Act of 2005 (which notably provided for the creation of a **Utility Regulatory Agency** to take over the role of the CEB

– including responsibility for issuing licenses and regulating operations of the licensees). JEC views that an effective Utility Regulatory Agency (URA) would unlock major investment in the renewable energy sector.

The URA would also have regulatory power over the water sector, which also lacks independent regulation to date. In addition Mauritius has recently exchanged experiences with Singapore, regarding the need for a regulatory framework and the need to review the institutions in the water sector. Steps towards setting up this regulatory agency have been taken as of late 2012, but although the government was considering the establishment of the URA's Board by March 2013, as of Spring 2014, the URA still does not exist. Moreover the 2014 Budget Speech makes no mention of its future establishment. Momentum would deserve to be renewed on this front, and likewise as concerns the regulation of transport provision. In its memorandum for the 2012 budget, the JEC urges for creating an independent regulatory body in the air transport sector and addressing the air access policy, which is viewed as an essential step if Mauritius is to develop a real hospitality cluster and become a business platform in the Indian Ocean. Unfortunately however this is also an area on which the 2014 national budget provides no specific policy direction.

### *Stepped tariffs to ensure wider accessibility in both energy and water*

If established in the coming years, the URA would have to assess – and possibly revise – the **existing tariff and price-setting guidelines** for the water and electricity sectors. In both sectors tariffs are currently stepped according to volume of consumption. For water, tariffs are defined as per new Regulations passed in 2011 for both the WMA and the CWA. The CWA regulations clarify modalities for water supply, metering and billing, and sets a new schedule for water charges by – this is based on a stepped tariff, whereby the monthly rate paid by cubic metre of water increases by thresholds of water consumed (from six Rupees for the first ten cubic metres, to 32 Rupees for every additional cubic metre consumed beyond 50 cubic metres). The amended CWA regulations also include Ground Water Regulations which give the CWA regulatory powers, as approved by MEPU, over Section 16 of the Ground Water Act – the CWA is thus mandated to issue ground water licenses.

Over 2003-04, a **willingness-to-pay study for water and sanitation services** was conducted with PPIAF assistance, in view of future private sector participation in the water sector. The study aimed to assess the potential impact of adjustments in tariff levels and structures on consumer demand, which would have implications for cost recovery for private actors and for the design of potential subsidy schemes. This activity therefore sought to inform the design of an optimum tariff structure that would be widely accepted by the population and meet end-user needs. It was concluded that the best option for the wastewater sector was a management (enhanced affermage or concession) contract between the Government of Mauritius and a private sector operator; however no PPP arrangement had been implemented in the water sector based on these recommendations to date.

Meanwhile, in the electricity sector, the cost of electricity amounts to 27.4% of per capita income for 2013 – substantially more affordable than in the majority of Sub-Saharan African countries (such as Kenya, at 191.3%), but proportionally more expensive than in Botswana (17.6%) and only slightly cheaper than in Namibia (30.6% of per capita income). As from December 2010, and in a bid to secure better affordability, tariffs vary by three thresholds of declared connected load (300 Watts or less; 301-5 000 Watts; and loads exceeding 5 000 Watts). These different groups face different minimum charges and security deposits, with the lowest minimum charge being at 44 Rupees per month. Meanwhile for each consumer bracket, the price per kWh increases by approximately 1 Rupee for every additional 25 kWh consumed. Yet, although this pricing structure is mindful of social needs and endeavours to ensure wide and affordable access to electricity, it has not been optimal in the past. In its 2013 review of the Mauritian economy, the IMF warns that **electricity tariff adjustments are made mainly on an *ad hoc* basis and do not reflect full cost-recovery**. Under-pricing costs are estimated to have reached close to 0.4% of GDP in 2006; moreover since tariff adjustments are mostly backward-looking, they do not cover planned investment costs and could therefore result in under-investment, poor maintenance of the network, and future capacity bottlenecks.

The IMF therefore recommends that the electricity sector adopt an automatic pricing mechanism, based on a formula reflecting not only long-run marginal costs but also monthly adjustments for swings in international fuel prices, inflation, and exchange rate movements. This possibility would deserve careful consideration by the URA once it is operational. Currently however, the only price-related measure considered by the 2014 Budget appears to be the launch of a pre-paid meter system by the CEB and with the help of Mauritius Telecom to facilitate payment of electricity. More structural changes, including renewing consideration of creating an independent regulator in the sector, would be necessary if Mauritius is to resolve its electricity pricing challenges.

## 4.8. Role of competition authorities in regulating infrastructure sub-sectors

The Competition Act 2007 was passed on 20 December 2007, and Parts I and II came into force on 24 October 2008 to allow the establishment of the **Competition Commission of Mauritius** (CCM). CCM is required to call hearings and investigate enterprises if the need arises so as to determine whether or not a business is engaging restrictive business practices. Penalties or remedial steps to ensure compliance with the act can be imposed by CCM. The act also makes provisions for ways of appeal, and establishes a list of what are considered as restrictive business practices. CCM also operates on the basis of Procedural Rules and Guidelines developed in 2009 to provide businesses and consumers with greater certainty as to how assessments are made and through what processes. The comprehensive guidelines benefited from consultation with representatives from business, law, consumer associations and academia. As per these guidelines CCM must notably ensure that fair competitive market conditions prevail and that both private enterprises and SOEs are on the same level playing field.

### *Regulating anti-competitive behaviour in the public procurement process*

CCM also has powers to **investigate anti-competitive behaviour in public procurement**. It can compel the production of documents and other information from bidders, and can impose financial penalties (of up to 10% of enterprise turnover during the period of the breach) if businesses have been found to participate intentionally or negligently in bid rigging. The Competition Act prohibits bid rigging and renders any bid rigging agreement void; and Section 53 of the act provides for suspension and debarment of bidders and suppliers involved in collusion.

These competition clauses are paralleled by **existing public procurement legislation:** Section 7(1) of the 2008 Public Procurement Regulations states that the PPO "may request from any source, information or evidence concerning possible grounds for suspension or debarment of a potential bidder or supplier"; and Sections 52 and 53 of the Public Procurement Act specify that bidders shall not engage in collusion, price-fixing, or in other manners deprive the procurement process from "the benefit of free and open competition". As of July 2012, however, no cases had yet been brought to the CCM or to the courts, respectively, for collusion-related violations of the Competition Act or of the Public Procurement Act. Likewise although the PPO website provides for a list of suppliers which are barred from future procurement contracts, this list is empty to date.

All of the above clauses and arrangements apply to private sector as well as public bidders, including SOEs – with the exception of the **State Trading Corporation** (STC). The latter is exempted from the provisions of the Public Procurement Act since June 2009 in respect of procurement of goods destined for resale (that is, the strategic goods controlled and priced by STC – wheat flour, sugar, rice, petroleum and LPG – see Chapter 5). Nevertheless STC states that it is fully committed, in the conduct of its mandate, to the exercise of sound procurement policies and practices based on open and competitive procedures. STC bids are now available online, and STC complies with the provisions of the Public Procurement Act 2006 for procurement of goods and services for its own use.

CMM, therefore, has some **overlapping powers with the PPO**, and for this reason both bodies entered an MoU on 24 August 2011, clarifying the responsibilities and day-to-day co-operation in the case of public procurement, and as regards overlap between the Public Procurement Act (particularly Sections 52 and 53) and the Competition Act. The bodies have since conducted joint awareness-raising workshops with public entities and business, including a bid rigging workshop in 2010, workshops with the construction industry and with the Association of Building and Civil Engineering Contractors (2010 and 2011), and speaking to the Pan-Commonwealth Public Procurement Conference (2011). Since 2012, CCM and PPO are also developing joint guidelines for enhancing competition in public procurement, and for raising awareness on procurement malpractice and bid rigging among public and private sectors – with an emphasis on the legal prohibitions of bid rigging.

### *Powers of the CCM in relation to regulatory authorities and SOEs*

Competition authorities require adequate resources, political support and independence to exercise effectively, in particular when they must challenge vested interests – such as monopolistic private firms, or state-owned firms that fall under the regulatory authority of other parts of government. In this view, Section 66 of the Competition Act provides for the commission to establish **MoUs with sectoral regulators**, governing their respective responsibilities and practical co-operation and providing for use of specific regulator expertise in CCM investigations. So far, in the infrastructure field, CCM has signed MoUs with the Independent Commission against Corruption (ICAC), the Information and Communications Technologies Authority (ICTA), the PPO, the Bank of Mauritius, the Financial Services Commission and the Mauritius Revenue Authority. Negotiation for MoUs with additional bodies is underway. Yet, the CCM Guidelines on General Provisions (CCM 7) make clear that the Competition Act does not over-ride other legislation or policy decisions, as a sectoral regulator's decisions cannot be in breach of the Competition Act in the way that the behaviour of an enterprise might be (unless the regulator itself is buying or selling). The CCM thus has limited powers over policy (including use of regulatory powers by regulatory bodies) which might restrict, prevent or distort competition.

CCM nevertheless serves an **advisory role on government policy**. Section 19 of the Competition Act 2007 states that "the commission may advise the Minister on any action taken or proposed to be taken by the State or any public body that may adversely affect competition in the supply of goods and services". CCM, thus, has the capacity to evaluate the impact of other government agencies' policies from a competition policy perspective when it is made aware of these. This advisory role for competition authorities should notably play an active role during privatisation, including in the upstream and preparation phases. One of the key concerns of privatisation endeavours has indeed been the risk of replacing public monopolies with private ones, rather than increasing competition. Critical issues include potential exceptions and exclusions granted to the new (private) firm, such as exclusivity contracts, as well as monitoring the behaviour of formerly state-owned firms, which may still exert considerable market influence. Dominant incumbents have for instance complicated market access for new entrants in industries such as electricity, railroads, and communications in several countries.

In **cases of privatisation**, an active *ex ante* and *ex post* role for competition authorities can therefore: help balance the need to create a more efficient and competitive industry with possible political pressures to sell state-owned assets at the highest possible price (for which exclusivity and other such clauses may come in); and help ensure that anticompetitive practices do not arise *ex post*. However, while CCM has the power to investigate any business transactions including privatisations, to date it has not been active in case of privatisations, which remain a policy decision taken by the government. Across all fields of infrastructure regulation, CCM could participate more actively in government policy. As CCM currently operates only when it is made aware of the policy to be implemented by the relevant Ministries or regulatory authorities, there are instances in which the CCM is not involved when it could usefully have been. While CCM can conduct inquiries into policy matters and can make recommendations to government on the competition effects of policy, this is only an advisory role and the CCM is not viewed as competent for deciding how to weigh competition considerations against other effects of suggested policy – such as social or environmental objectives.

As concerns enterprises that are subject to sectoral regulations (mostly in the infrastructure sectors, where most enterprises are state-owned in Mauritius as shown above), the CCM Guidelines 7 nonetheless emphasise that the **role of CCM *vis-à-vis* sector regulators** "should not be taken to imply that all actions taken by regulated enterprises that are consistent with regulators' directions or other policy decisions are exempt [from competition considerations]". It notes that if enterprises comply with regulatory decisions in a manner that distorts competition while there were more competitive alternatives, CCM could find the behaviour to constitute a restrictive practice and could impose remedies or (for intentional or negligent breaches of the collusive agreements provisions) fines.

### *Investigation of anti-competitive practices*

The CCM Guidelines 7 therefore encourage enterprises to "comply with price controls or other mandatory policies in a manner which minimises distortions to competition", and to consider the least-distortion means of attaining regulatory objectives. Outside of the LPG and petroleum sectors, the

CCM thus has powers to investigate any enterprise that is in breach of the act. The CCM Guidelines 7 state that CCM's power to carry out investigations "includes SOEs, or the State itself when the State is engaged in business activity". The Competition Act does not provide for explicit exemption of any national champions or dominant firms. According to the CCM, it therefore enforces the Competition Act in a way that is **fair to enterprises and blind to ownership** – as evidenced by the varied ownership structure of the enterprises against which investigations have been launched, which includes both government and private individuals. The exception is where the service delivered by SOEs is free to the public, in which case the concept of competition and independent regulations does not arise.

The **21 cases investigated** by CCM since its inception in November 2009 (and up to August 2012) are listed in Table 4.1; two of these cases have thus included as the main parties Air Mauritius and Mauritius Telecom. In the latter case, the cellular subsidiary of Mauritius Telecom (Cellplus, now called Orange) and the former Telecommunications Authority have been engaged in a case with an entity (formed through a joint venture between a local company and a US investor) since 2005. The case remains in the courts and concerns allegations of unfair competitive practices by Mauritius Telecom and Orange. CCM also launched an investigation in the cement industry in which the STC was a party, concerning its cement importing activities. STC has withdrawn from the cement market as of July 2011, based on CCM's conclusions. These are encouraging indications of independence of the CCM from state-owned interests, in infrastructure sectors as well as in other markets.

### *Addressing competitiveness impacts on consumers: The Mauritius Price Observatory*

Officially launched since March 2011 and now fully operational, the **Mauritius Price Observatory** aims to provide information on prices to consumers, while simultaneously encouraging competition in the retail sector, and increasing transparency in price setting. The Price Observatory is managed by a ten-member committee including an independent Chairperson and representatives of: consumers; supermarkets and shop-owners; the Mauritius Chamber of Commerce and Industry; the Mauritius Revenue Authority; Statistics Mauritius; as well as ministries responsible for Consumer Protection, Commerce, and Finance and Economic Development. The Price Observatory publishes regular monthly reports comparing prices of nearly 60 products (mostly food and beverage) across 22 supermarkets around the island – reporting the price of the cheapest item irrespective of brand, within a quality range, collected each month in selected outlets. The Observatory website also provides an interactive price comparator tool, which allows the comparison of the price of products across all major retailers on the island. The Observatory's

Table 4.1. **Competition cases investigated by CCM, 2009-13**

| Case investigated by CCM | Status (as of August 2013) |
|---|---|
| Kraft cheese and general rebates | Commencement: December 2009; completed: September 2010. |
| Importation of slaughter cattle in Mauritius | Commencement: December 2009; completed: December 2011. |
| Travel agent service fees (state-owned bodies involved: Air Mauritius) | Commencement: December 2009; completed: October 2010. |
| Cement market study (state-owned bodies involved: State Trading Corp.) | Commencement: July 2010; new study launched in April 2012. |
| Possible collusion in the market for secondary school books | Commencement: July 2010; renewed in January 2012 with case of alleged abuse of monopoly power in the supply of secondary school books. |
| Merger review of Event Strategy Ltd. and Lc. Events Co. Ltd. | Commencement: October 2010; completed: July 2011. |
| Commingling of Pools Automatic Systems Ltd. and Globalsports Ltd. | Commencement: May 2011; completed: September 2011 |
| Proposed merger of the insurance businesses of Swan Group and Rogers Group | Commencement: November 2011; completed: February 2012. |
| Bundling of insurance products and credit in the banking sector | Commencement: August 2010; completed: August 2012. |
| Myt and bundled internet access (state-owned bodies involved: Mauritius Telecom) | Commencement: February 2011; completed: September 2012. |
| Market for Telecommunications Manhole Covers | Commencement: November 2011; completed: October 2012. |
| Supply of replacement automatic electronic ignition keys | Commencement: January 2012; ongoing. |
| Private medical/health insurance schemes | Commencement: January 2012; completed: February 2013. |
| Alleged abuse of monopoly power in the supply of secondary school books | Commencement: January 2012; ongoing. |
| Professional architects council rules | Commencement: April 2012; ongoing. |
| Investigation into supply of coolers to retailers by Phoenix Beverages Ltd. and Quality Beverages Ltd. | Commencement: May 2012; ongoing. |
| Payment cards | Commencement: May 2012; ongoing. |
| Investigation into possible restrictive business practices in the chicken industry in Mauritius | Commencement: June 2012; ongoing. |
| Investigation into merger between Toyota Tsusho Corp. (TTC) and CFAO Automotive | Commencement: December 2012; ongoing. |
| Investigation into image-based clearing solutions provided to commercial banks | Commencement: March 2013; ongoing. |

*Source:* Competition Commission of Mauritius, completed and current investigations (*www.gov.mu/portal/sites/ccm/Current_Investigations.htm*).

analysis for October 2011 to May 2012 for instance indicates that the average price differential between the cheapest and highest-priced outlets was 32%; price differentials and ranks by geographical district are also shown.

A brainstorming session was organised in February 2012 by the Ministry of Industry, Commerce and Consumer Protection to assess the work carried out and also discuss the future orientations of the Price Observatory. This stressed the need for the Price Observatory to have an independent legal structure as well as the adequate human, financial and technical resources for its proper functioning. This form of data collection is very useful as it provides valuable information for consumers and policymakers and can also put positive pressure for competition on retailers themselves. A similar observatory structure could be desirable outside of basic consumable goods – such as basic utilities and services. As of 2013, the coverage of the Price Observatory is being extended to the services sector (banking and finance) to stimulate further competition; in future a similar initiative could be usefully **extended to infrastructure services** as well.

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# *Chapter 5*

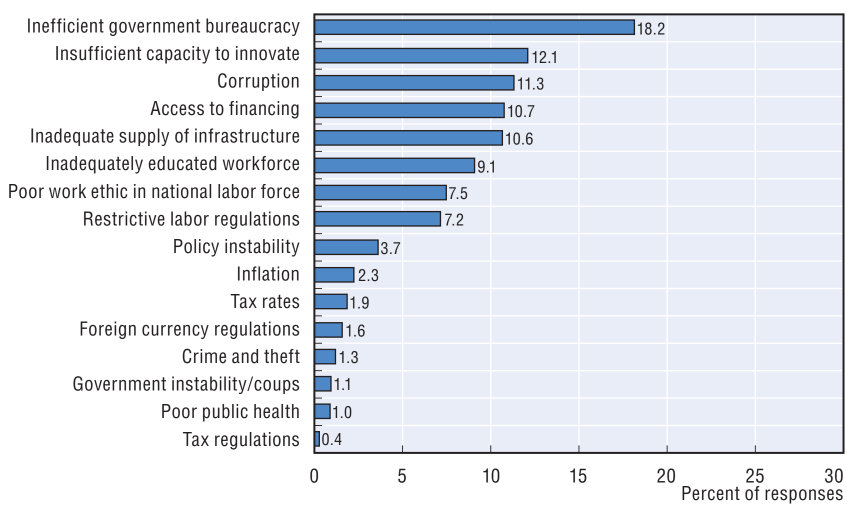
# Strenghtening supply-side capacity for attracting investment to Mauritius

*Systemic constraints to investment and export competitiveness in Mauritius include small market size, geographical isolation, and high labour costs. More fundamentally, the skill base is not tailored to the requirements of sectors promoted by government: a mismatch in labour market skills constrains competitiveness and prevents the population from making the most of business linkage opportunities. Mauritius has yet to take the step towards a coherent global economic strategy, which would put foreign trade in perspective with enabling human resources, infrastructure and investment strategies. Ensuring greater policy coherence between trade and investment strategies – including at industry and sector-specific level – would be essential. In addition to diversifying export partners, trade policy will need to balance exports with growth of the domestic market, reduce the gap between trade policy formulation and implementation, and upgrade the links of Mauritian industry with international value chains – notably through targeted human resource mobilisation.*

In order to safeguard the competitiveness of Mauritian exports and the attractiveness of the island as an investment destination, the Government Programme for 2012-15 commits to rebalancing exports and capturing new opportunities in existing and emerging markets. Yet, this demand-side approach will provide mostly short-term solutions if **more structural strategies** are not developed alongside. It will be important for investment and trade promotion strategies to be coherently aligned with efforts geared at enhancing the competitiveness of domestic factors of production. In addition to gaps in enabling infrastructure and excess regulatory red tape, such supply-side bottlenecks include a human resource base that is insufficiently aligned with the needs of niche export and investment sectors.

This is reflected in the responses of global enterprises surveyed by the World Economic Forum's Global Competitiveness Report (GCR) over 2013-14 (Figure 5.1), which identify the following six most problematic factors for doing business in Mauritius: inefficient government bureaucracy; insufficient capacity to innovate; corruption; difficult access to financing; inadequate supply of infrastructure; and an inadequately educated workforce. Government efforts to tackle the bulk of these challenges are addressed in Chapters 3 and 4.

Figure 5.1. **The most problematic factors for doing business in Mauritius, 2013-14**




*Source: Global Competitiveness Report 2013-14*, World Economic Forum, Switzerland, 2013.

Meanwhile, the first part of the current chapter (Sections 5.1 to 5.6) explores the sixth challenge – human resource development. Given the particularly strong links between the latter and long-term trade opportunities, the investment dimension of trade policy is also investigated in the second half of the chapter (Sections 5.7 to 5.11).

## HUMAN RESOURCE DEVELOPMENT

### 5.1. Strengthening human resource development to facilitate investment linkages

To move to higher plane of development, Mauritius recognises the need for a competent and skilled labour force. The first **National Human Resource Development Plan** (NHRDP 2007-10) was prepared by the Human Resource Development Council (HRDC) of Mauritius, in view of moving away from a labour force consisting of a majority of semi-skilled and unskilled employees with few professionals and highly skilled persons. The NHRDP provides a policy framework for education, training programmes and career progression to meet the country's skills and competence needs. Its core objectives are to: estimate the demand for manpower in key sectors in terms of different skills/ knowledge; decrease the mismatch between the demand for and supply of manpower; and develop proactive human resource development policies.

The first NHRDP forecasted the likely employment opportunities that would be generated in the economy over 2007-10 by sector (Agriculture, Financial Services, ICT, Manufacturing, Tourism, Education, Seafood Hub, Rodrigues, and Public Service) by occupations and by educational skill categories. It provided a basis for training and educational planning, counselling and guidance. The second NHRDP, launched in 2010, places a greater focus on economic resilience and addressing vulnerability following the 2008 economic crisis. Alongside these Plans, the **Education and Human Resources Strategy Plan** (EHRSP) has been formulated along a longer timeframe (2008-20) with the vision of providing a quality education for all and developing a human resource base to transform Mauritius into "an intelligent nation at the vanguard of global progress and innovation". The main strategic goals of the EHRSP include improving access to education, ensuring high quality of instruction and enhancing the efficiency of the education system.

However, according to the Mauritius Employers' Federation, the **NHRDP approach lacks a holistic approach to education, training and skills development**. To date, there has been no comprehensive HRD *policy* for ensuring that the right skills are available to meet the needs of enterprises and that all workers (including the unemployed and those currently excluded from the labour market) are equipped with the necessary employability skills. This shortcoming is fully recognised across many sectors of Government.

As stipulated in the Government Programme 2012-15, a new **National Training Strategy** is therefore being developed by the Ministry of Education and Human Resources and the institutions falling under its aegis (including HRDC) as of 2013, to ensure that reforms in education and training are attuned to changes occurring in the larger economy, and to enable the labour market to cater for the country's needs over the next twelve years. As a first step towards this Training Strategy, **Labour Shortage and Skill Gap Surveys** have been conducted in eight sectors of the economy in collaboration with industry. By end 2012 validation workshops, including public administration, training institutions, and the private sector, had been held for the majority of these sectors so as to verify the preliminary findings of the surveys. These are promising and highly necessary steps towards addressing persisting mismatches in the labour market, as detailed in Section 5.3. Prioritised recommendations from the labour shortage surveys are currently being implemented to address identified issues.

## 5.2. Improving quality of instruction to better attract investment and leverage its spill-overs

### *Mauritius has met its MDGs for universal primary education and gender parity*

Mauritius has maintained a strong welfare state. It provides free health care, and likewise free education at primary, secondary and up to undergraduate level at the University of Mauritius. Mauritius has already attained its target with regard to the **Millennium Development Goal** (MDG) of universal primary education and gender parity in enrolment, thanks to enabling legislation, favourable policy initiatives, budgetary support and infrastructural facilities. Central to the EHRSP is the universalisation of opportunities for quality education at all levels, from pre-primary through to post-secondary education subsectors, and for the training sector. The drive is thus towards ensuring access to learning opportunities for all and fostering innovation and generating new knowledge for the socio-economic and sustainable development of the nation.

**Access-related policy measures** that have effectively contributed to increasing participation in basic schooling include establishing free and compulsory education for all from ages 5 to 16, and wide geographical coverage in terms of infrastructural facilities for the pre-primary, primary and secondary sub-sectors such that all regions of the country are being educationally served and serviced. The transition from one level of schooling to the other has also been facilitated. Meanwhile, a new policy regarding the pre-primary will make education compulsory for 3-5 year olds as well; in this context, the monthly per capita grant of MUR 200 (USD 6) has been extended to all children enrolled in pre-primary education. Access to Upper Secondary education will also be broadened, through the review of the previously existing eligibility criteria.

By end 2011, the **Net Enrolment Rate** in primary education was thus 97%, gender parity stood at 1.0, and literacy of those between 15 and 24 years of age reached 94.5%. This was combined with a low pupil/teacher ratio, especially compared to other African countries where class size easily reaches 40-60 students: there are 13 students per teacher on average for pre-primary schooling, 27 for primary, 15 for secondary, and 11 for pre-vocational training. Further improvements could nevertheless be made in terms of enrolment at post-primary levels: the gross enrolment rate in secondary education stood at 76 % in 2012, and at only 45 % for tertiary education.

The Government objective (led by the Ministry of Tertiary Education, Science, Research and Technology) is now to achieve world class quality education. In this regard, Government has invested massively in new school infrastructure, and has amended the Education Act to make education compulsory until the age of 16 (thus curbing school drop-outs). Perhaps, as an indirect consequence of this, tertiary level enrolment went up by 6.9% over 2010-11. Over 2008-10, the **pass rate for students** taking the Cambridge School Certificate (SC) examination has risen from 75.6% to 77.8%; this pass rate is on average higher in public schools (86.9% in 2010) than in private schools (69.8%), another exception relative to other developing and emerging economies. Score distribution was very similar for the Cambridge Higher School Certificate (HSC) examination results. However, these rates contrast with pass rates at the primary (CPE, Certificate of Primary Education) level – at around 67%, these scores are the lowest across all levels of education in Mauritius. In reaction, the 2014 Budget Speech announces a "historic policy change" by which the CPE examination, which can influence on children's career paths when they are only 10 years old, will be replaced with a more flexible nine-year schooling system.

The Government Programme 2012-15 places high emphasis on quality education, human resource development being the focus of a full chapter out of the six chapters that make up the programme. To align the educational sector with international best practices, Government notably commits to introducing a **new Education Act**, as well as a Tertiary Education Bill which will provide a framework for the development and regulation of tertiary education in Mauritius. The bill will also provide the Tertiary Education Council (TEC) with enhanced tools to ensure Quality Assurance across the tertiary educational sector. In 2013, the allocation for education was increased by 12% on the previous year, to MUR 12.6 billion (USD 400 million); and the 2014 Budget plans for a further 11.2% rise on that amount. Access and general quality of education, as well as strong government support and resources for the sector, are therefore not a problem in Mauritius; rather as discussed below, the central stumbling block faced by the country today lies in the relevance of this academic training for the needs of industry and the long-term competitiveness of the economy.

### *Vocational training and life-long education*

Government support covers not only primary through to tertiary education, but also **life-long learning and vocational training**. With a view to rationalising qualifications and providing for more flexible education pathways and recognition, the Mauritius Qualifications Authority (MQA) has set up a 10-level National Qualifications Framework (NQF). This internationally accepted Framework promotes life-long learning, making it easier for people to move between different education systems and training institutions. In order to develop a national approach to Recognition of Prior Learning (RPL) and to validate and recognise experiential learning, MQA has also developed a policy that encompasses an institutional framework for validation. The NQF encompasses general education, vocational and technical training, and higher education. It applies to all type of qualifications from those achieved at the end of the primary school to those obtained at highest academic and professional level.

As previously, the NQF was found to be too rigid to accommodate the rapid training of individuals for industry-specific skills, the NQF has been revisited an instrument for promoting the development of new qualifications, making delivery more flexible, and widening the range of providers. The Mauritian qualifications framework is being used to increase the influence of stakeholders in the development of TVET qualifications, to render the system more responsive to the needs of the labour market. To further increase flexibility and adaptability of the labour force, Government could also consider developing sector-specific Certificates of Competency alongside, which could be considered valid without having to go through the full procedures of the NQF.

In terms of technical and vocational education and training (TVET), the sector is regulated in Mauritius and to this end, Government set up the **Mauritius Qualifications Authority** (MQA) under the MQA Act 2001. Besides being the custodian of the NQF, MQF oversees all the training activities in the country. Both public and private providers have been set up in Mauritius and their training activities are in strict adherence with the MQA (Registration) Regulations 2009. As a principle, no owner or manager of a public or private training institution is authorised to operate such an institution without due registration and accreditation by MQA. As of December 2012, 470 training institutions (both public and private) were registered with MQA and offered TVET courses. Enrolment for such courses in both public and private training institution reached 6 113 and 5 493, respectively, for 2012.

Government has moreover set up the **Mauritius Institute of Training and Development** (MITD) which is responsible for roll-out of TVET (including by setting up TVET training centres, increasing access to TVET training, and promoting exchange programmes and courses with other institutions in TVET). About 80% of MITD budget comes from Government funds and the remaining 20% from self-financing. MITD co-operates on its training schemes with certain private sector umbrella organisations, such as the Mauritius Export Association (MEXA).

MITD provides free pre-employment training up to National Certificate Level 3 (in full-time mode and through apprenticeship schemes), and higher level courses up to National Diploma are offered at subsidised rates. MITD also provides short and tailor-made courses to upgrade the knowledge and skills of in-service workers and to cater for the specific needs of industries and targeted training for unemployed and retrenched workers. Such training covers the following sectors: hotel and tourism; ICT; electrical and electronic engineering; mechanical engineering; civil engineering; automotive; printing; jewellery; textile/garment making; beauty care; business administration; and agriculture. In 2011, MITD offered a total of 78 different vocational training programmes in different sectors ranging from Basic Certificate/National Certificate Level 2 up to Higher National Diploma, and a total number of 9 251 people were enrolled on its courses. In the context of the educational reform in line with the EHRSP 2008-20, Government is also reforming pre-vocational education.

As from 2012, a new Pre-Vocational Education (PVE) curriculum is being implemented jointly by the MITD and the Ministry of Education and Human Resources, which will span over four years allowing direct access to TVET courses. MITD is also in the process of finalising its five-year strategic plan 2013-17 which aims to set the roadmap for the organisation to work towards the achievement of its mission and vision, while fulfilling all its objectives and functions as laid down in the MITD Act of 2009 in an effective and efficient manner. The plan seeks to promote the MITD as a lead training provider in promoting excellence in TVET both at local and regional levels. It seeks to build on MITD's range of technical and pedagogical expertise, so that the Institute can emerge as a regional player in TVET and participate in "training of trainers" programmes in the Southern and Eastern African regions.

With the view to promoting education for sustainable development (ESD) principles, TVET will also be increasingly aligned with green economy concepts and "green skills", with support from the French Development Agency (AFD). This will help respond to the requirements of emerging green jobs which will be created with the transition towards a more sustainable economy. First steps in this endeavour will be completion of a training needs assessment in green skills and capacity development of MITD as a training provider. The project will enable MITD to play a key role in orienting TVET towards sustainable development by redesigning its existing training programmes, integrating competencies relevant to sustainable development, and ultimately leading to greening of existing jobs.

However, a challenge repeatedly faced by the sector and training providers is the **low profile of TVET among the Mauritian population**, which tends to view vocational education as considerably less prestigious than academic education. This is a central problem of promotion, communication and image; it likewise hampers the expansion of labour-intensive enterprises, particularly in Export-Oriented Enterprises (EOEs) which must as a result source their labour from abroad (see below). This situation requires urgent attention by government and the private sector, as vocational training has the potential to fill several labour supply gaps in Mauritius for which purely academic training is less well-suited.

### *A broad set of pro-poor education policy measures*

With eradication of absolute poverty high on the national agenda, a series of **pro-poor education policy measures** have also been adopted. This is in line with the **Government Empowerment Programme**, launched in 2006 with the aim to "set the foundations of a modern Mauritius where everyone participates in the economic development". This programme notably seeks to increase available employment opportunities, especially for those currently unemployed and retrenched workers; encourage entrepreneurship and improve the capacity and competitiveness of small entrepreneurs; and enhance education of the children in the most vulnerable households.

To fulfil the latter objective, schemes under the Human Resource, Knowledge and Art Development (HRKAD) finance higher education for needy students. This scheme ensures that scholarships are granted to underprivileged students for post-secondary and tertiary studies in recognised institutions, and loan guarantees are secured for families who cannot provide assets as collateral. Moreover Government refund schemes reimburse 50-100% on SC/HSC Exam fees, to facilitate the transition to post-secondary education for needy students. There is also possibility of recovery of investments on higher education through the Income Tax Scheme. Transport is free to all children (up to those attending full-time university courses). Children whose parents are recipients of social aid also receive a financial allowance.

Government is also setting up **Zones d'Éducation Prioritaires (ZEP)** for Primary Schools that scored 40 % or less at CPE Examinations for 5 consecutive years. With UNDP and UNESCO support, the ZEP Project covers 30 schools and aims at reducing school and social inequalities by providing equitable opportunities to the school children. ZEP practices are focused on technical support, capacity building and community involvement for school improvement. Government is also reviewing the existing Laureate Scheme (which offers the best candidates at the HSC examinations scholarships for overseas studies) in the aim of increasing scholarship opportunities for meritorious students from low income families.

Moreover, Government provides some **financial support to private-aided schools**, on a performance-based approach: as of 2013, Cabinet has agreed to the implementation of a New Comprehensive Grant Formula to finance such secondary schools for 2013-15. Within the Formula existing elements, such as Operations Grant, Management Grant, Incentive Grant, Performance Grant, and Pre-vocational Education Grant, have been increased; and new performance indicators, such as quality of School Certificate graduates, and students' attendance, have been added.

## 5.3. Better aligning labour supply with the needs of investors

### *Measuring the alignment between labour supply and demand: Unemployment data*

In 2012, 7.2% of employed workers in Mauritius worked in the primary sector, 29.2% in the secondary sector, and 63.6% in the tertiary sector. More specifically 16.9% of the employed worked in manufacturing, 10.9% in construction, and 15.2% in wholesale and retail trade. Out of the working age population (989 600 in the first quarter of 2012), the activity rate was 58.6%, of which 7.6% were unemployed. 19% of the latter had not reached the Certificate of Primary Education (CPE) level, and 40% did not have the Cambridge School Certificate (SC) or equivalent. Likewise, as of June 2013, of the 37 763 jobseekers registered with the Employment Service of the Ministry of Labour, Industrial Relations and Employment, 20% had not passed the Certificate of Primary Education (CPE) and 11% had CPE as their only qualification. Only 11% of the registered jobseekers had passed the Higher School Certificate and 5% had tertiary qualification. As concerns the gender and age distribution of the unemployed, 44% of the unemployed were below the age of 25, 46% were male and 54% were female.

In 2012, strong demand for skilled workers in financial services, ITC, health care, and tourism offset some of the retrenchment and reduced demand for workers in textile and sugar. Currently, **unemployment is therefore relatively stable**, between approximately 7.6% over 2011 and 2012, and 8.3% in 2013. Nevertheless, these figures should not mask the level of **under-employment**, which according to the HRDC has been increasing in recent years in the context of repeated global economic downturns. HRDC warns that this has led an increasing share of recent graduates to compete for a limited range of jobs in the public sector, due to a perception of greater employment security, rather than joining private enterprises that may better suit their skills and career potential.

As concerns employment opportunities for foreigners, the **Non-Citizens (Employment Restriction) Act** of 1982 governs the work of foreign nationals, who need work permits issued by the Ministry of Education and Human Resources in order to work in Mauritius. Generally, work permits are issued only in cases where no suitable local workers are available, and foreign nationals cannot be given priority over local workers in securing jobs. As of 2013, around 37 000 foreign workers are in employment in Mauritius with a work permit. Work permit procedures are being streamlined to reduce bottlenecks and delays in delivery: the work and residence permits were merged into the Occupation Permit under the 2006 Business Facilitation Act, and more recently an e-Work Permit System is being put in place to provide for online applications and processing of permits. This has further opened up the labour market to foreign talents.

### *A double mismatch between available labour supply skills and existing labour demand*

There appears to be a **considerable mismatch between labour supply and demand** in several sectors of the Mauritian economy, where available skills are not geared towards the industries where labour is in highest demand. As pointed out by MEXA, the umbrella group of private sector exporting companies, there are for instance considerable shortages of engineers in the textiles sector and in airports; and more generally there is a critical scarcity of graduates trained in logistics and supply chain management. **This mismatch is two-fold**: while there is unmet demand for skilled workers in financial services, ITC, health care, and tourism, there is also a deficit of workers in lower-skilled jobs, especially in EOEs.

The Mauritius Chamber of Commerce and Industry (MCCI) makes a similar observation to MEXA, noting **two distinct labour market challenges** in the country: a "shallow market in terms of the pool specialised skills" on the one hand; and "resistance from Mauritian workers to join certain sectors, especially the textile and building industries" on the other. Indeed, due to a perception of lower wages and lesser social status attached to such sectors, the domestic population is considerably reluctant to take up available jobs. In many cases, labour is imported from abroad (notably from Bangladesh), or Mauritian companies themselves install a branch of their labour-intensive operations overseas. As warned by the African Economic Research Council (AERC), the expatriate labour phenomenon which has taken atypical proportions in Mauritius is being driven not by local labour shortages but rather by a shift of workers away from low-wage manufacturing and towards various services sectors (especially IT Enabled Services and Business Process Outsourcing, education, health and tourism).

This contradictory situation is pointed out in the Government Programme for 2012-15, which highlights a structural problem in the labour market: although government has achieved a decline in the unemployment rate since 2005 through labour market reforms, workers are looking currently for employment even while employers face a scarcity of labour. On the demand-side, this mismatch can certainly be addressed by some modifications to the wage structure (for instance the 2014 Budget tasks the Ministry of Labour, Industrial Relations and Employment with better aligning wages with the demand for workers in specific sectors of the economy); but alongside, measures must imperatively be taken on the supply-side, and regarding available employment skills. The existing mismatch can otherwise have worrying repercussions both on unemployment and on technological progress: as noted by the HRDC, the ability of companies to absorb new technology is linked to a firm's skill composition. The supply gaps in both high- and low-skilled occupations suggests the need for an intensification of human resource supports in high-technology areas, but also a parallel need for **human resource investment across a wider range of skills**. This underlines the importance of continuous redevelopment of existing education and training policies to cater to all skills needs. In addition to developing a new National Training Strategy, the 2012-15 Government Programme therefore plans to respond to this by:

- implementing the Decent Work Country Programme, which has been recently finalised and aims at promoting decent employment through activities in consultation with social partners;
- elaborating a **National Employment Policy** (NEP) in consultation with the International Labour Organisation (ILO) and different stakeholders, to serve as a framework to address all unemployment issues in the Mauritian labour market;
- launching a three-year **Youth Employment Programme**, to enhance skills and employability among the youth aged between 16 and 25 years and to provide them with apprenticeship, training and placement in various sectors of the economy; a stipend will be offered to the unemployed youth and their training costs will be subsidised by Government;
- promoting green jobs;
- creating more space in the SMEs sector;
- setting up a national employment resource centre (the COAP, see below) with the assistance of the International Labour Office; this centre will offer extensive information on the labour market, job prospects, education and training;
- introducing a Skills Pledge whereby employers will commit themselves to investing in continuous training and empowerment of all their employees; and
- in addition, since 2013, Government is establishing a **Skills Working Group** (within the framework of the National Resilience Fund), as a public-private

initiative co-chaired by MOFED and the Joint Economic Council; this working group is to especially focus on providing work opportunities for graduates who remain unemployed within one year of graduation; to better equip graduates for employment, the Ministry of Tertiary Education will also work with industry and training institutions to promote industry placements in advance of graduation.

Prior to 2012, various programmes had already been initiated by different authorities to bridge the gap of skills supply and skills requirements, including: a Placement for Training Programme (PTP, which placed around 8 000 workers over 2006-09); a Life Skills Programme; Special Entrepreneurship Programme; a Special Programme for Unemployed Women (SPUW); and a Job Placement programme for youth (initiated since 2007, and which allows for student placements of two to three weeks so as to increase student exposure to career-related experiences, and to ensure better connectivity between school and the world of work. HRDC is also represented at the board levels of the universities, and the Tertiary Education Commission publishes yearly "priority fields of study" documents to map dominant industry requirements in terms of human resources. Related measures announced in the 2014 national budget to address the skills mismatch include providing more qualifications at secondary level to better prepare students for the world of work, and increasing national scholarships for study in areas where skills are in high demand (such as ICT).

Aligning labour supply with demand needs also requires **strong statistical capacity** to evaluate and forecast market trends, and for this Statistics Mauritius (under MOFED) releases annual reports on Economic and Social Indicators, including on education. These present education data compiled through annual surveys conducted in schools, and cover pre-primary, primary, secondary (academic and pre-vocational) and tertiary education, as well as Special Education Needs (SEN) and ICT. The reports also provide Cambridge School Certificate (SC) examination results by type of school administration and sex, which can enable to assess the quality of the education provided.

Most recently and promisingly, HRDC has conducted **sector-specific labour and skill shortage surveys** to inform the forthcoming **National Training Strategy**. These surveys cover long-term evolutions of eight sectors of the economy and have benefited from extensive consultation and input from the private sector, including through validation workshops of survey results in late 2012. Consolidating this positive momentum, the 2014 Budget announces that a six-monthly Employment Trends Survey will henceforth be published to inform youth on career opportunities. When elaborating the National Training Strategy, it will be particularly important to avoid addressing the needs of different industries in silos, as has been the tendency in the past. Indeed as pointed out by private sector umbrella groups such as MEXA, many economic sectors (such as textiles and ICT) are interdependent in terms of their logistical needs and cost-effectiveness. Their respective human resource needs therefore cannot be addressed in an isolated manner.

### *Provision of career guidance to orient graduate career choices*

The Government is aiming to provide enhanced career guidance through the **Centre d'Orientation Académique et Professionelle** (COAP), which is currently being expanded (as to date it has focused only on guidance for secondary school students, and only comprised three full-time staff). The COAP's guidance will be available for Mauritians of any age and at any point throughout their lives to make educational, training and occupational choices and to manage their careers. The Centre will notably: provide relevant labour market information, and careers information, advice and guidance (including not only employment but also education and training options); assist people in managing both planned and unplanned career change; inform about career opportunities locally, regionally and internationally; and build in-school capacity in career education and counselling. On the statistical side, COAP will also seek to increase access to assessment tools and career matching tools in order to select suitable education and training. In this context, Government is moreover setting up a web-based, national career guidance service which should address needs of the whole population, including retrenched workers.

In addition to the COAP and also in the aim of showcasing investment opportunities at all levels of the education sector (from primary schooling, secondary schooling, TVET to higher education), since 2012, BOI has been organising the annual **Mauritius International Knowledge Investment Forum** (MIKIF). This conference gathers participants and speakers from a wide range of countries and seeks to share best practices for developing the right ecosystem to encourage investment in education, and for addressing challenges of executive as well as vocational education. Following the 2013 event and based on participant interest, a pipeline of some 10 education-related investment projects has been created. Alongside, the Ministry of Labour, Industrial Relations and Employment counsels and guides jobseekers on job opportunities, entrepreneurship and training in its daily activities.

### *Addressing the job mismatch in the ICT sector*

Of all economic sectors in which Mauritius seeks to develop competitiveness, ICT has benefited from the most education-related emphasis. As put by the Minister of Education and Human Resources in May 2012, "to maintain Mauritius's value proposition as a competitive business centre for international corporations, its hardware and infrastructure must be complemented by a 21st century workforce". The **National Information and Communication Technology Strategic Plan** (NICTSP) for 2007-11 had set the target of 29 000 people employed in the sector by 2011. The current NICTSP

(2011-14) acknowledges that the quantity and quality of information about employment prospects as well as the demand-supply scenario in the Mauritian ICT industry remains limited and fragmented, which has been identified as a significant barrier to the development of the ICT industry sector.

In 2011, a **Labour Shortage Survey 2011** for the ICT sector was undertaken to measure and understand the current state and pattern of skills as well as the future evolution of the ICT manpower landscape in Mauritius. This included identifying the immediate and future specific skills requirements of the sector, identifying the profile of employees required by employers, and making recommendations for policy makers to devise strategies to reduce the labour mismatch in the ICT sector. The survey also determined the demographic characteristics, skills and competencies of ICT professionals in Mauritius and assessed the critical skills needed by the industry, taking into account growth of ICT demand as well as of the country's manpower. Information was also collected on labour turnover, ICT training expenditures, and recruitment hurdles. Based on this information, the Ministry of Information and Communication Technology has established an ICT Skills Development Programme, for which training and job placements will be industry-led and co-financed on a 50-50 basis between public and private sectors.

## 5.4. Evaluating the effectiveness of training programmes

### *Improving performance of the primary sub-sector*

The failure rate of some 32% of children sitting for the CPE examinations in the primary Sub-sector reflects the degree of inefficiency in the system. In this context, the Ministry of Education and Human Resources introduced the necessary reforms that would give a new orientation to the whole sub-sector for the provision of quality education to every child, in line with international best practices. **Regular performance assessments and remedial education** have now been embedded in the system, so as to identify the learning deficits and tackle them accordingly. Teacher training and capacity building has also been stepped up, and curriculum content has been reviewed so as to align it with emerging market needs. In this context, new curriculum frameworks have been elaborated for the pre-primary, primary and secondary sub-sectors. Currently, the primary framework that was developed in 2007 is in the process of being reviewed.

Regular assessment has also been increased for secondary schooling. As from 2010, the **National Assessment at Form III level** has been implemented with the objective of gauging the competencies acquired by students well as identifying their weaknesses at the end of the lower secondary cycle (which is a crucial stage in the education of a secondary level student). The project had been implemented on a pilot basis in 33 schools and only four subjects had been assessed; in 2012, all schools had been invited to voluntarily join in for a final piloting before embedding the assessment across the system. Finally, so as to increase the effectiveness of academic research, the government announced in 2012 that it would initiate a rationalisation exercise for all academic research institutions which will be merged under one institutional umbrella by end 2013. This follows the recent success of rationalisation in the cane industry.

As for the impact of vocational training, MITD conducts regular assessments of its programmes. It undertakes two types of study: tracer studies, conducted six months after the completion of training programmes (the 2011 tracer studies revealed that around 60% of the graduates were employed within six months, and that 24% of them chose to pursue further training); and a Survey of Employers, conducted annually to establish the relevance of training conducted by MITD. These surveys gauge the satisfaction of employers with respect to the performance of ex-trainees of the MITD at the workplace. Generally, employers are satisfied with the level of skills of MITD trainees. This regular form of assessment, which covers not only the quality of the training itself but the ability of trainees to subsequently entre the job market, and which also incorporates views of private and public employers, could serve as a useful model for other educational programmes underway in Mauritius.

## 5.5. Involving businesses in human resource development

Mechanisms that exist to promote closer co-operation between education institutions and business include Joint Job Fairs, Job Placement programmes, and customised courses/programmes by the public tertiary educations. In addition, a **National Training Fund** (NTF) has been established. Administered by HRDC, the NTF and has been in operation over the past 18 years has generated levy money out of which grants have been paid to employers: the training levy grant scheme imposes a training levy on all employers in the private sector, except for charitable institutions and employers employing household workers. The amount of the levy was equivalent to 1% of the basic wage bill prior to the 2009 financial crisis, and has since been reduced to 0.5%. The scheme has paid out a total amount of nearly MUR 2 billion (USD 63 million) to employers as training incentives since 1989, and has facilitated direct training of around 340 000 persons in the private sector.

Employers contributing to the Training Fund are eligible to **training incentives offered by HRDC** through grant refunds of up 75% of course fees incurred depending on their tax rate. However, while this is an adequate incentive for training, in the past employers have often been constrained by lengthy procedures and delays in securing refunds from the HRDC. In practice, the HRDC refund has represented less than 50% of total training expenses incurred. While about 45 000 people have been trained a year through this scheme since it began, this amounts to only 7% of the workforce and falls short of the performance of similar schemes elsewhere (for instance in Singapore, which provided the basis for this training incentive, the scheme annually reaches over 30% of the workforce).

The Scheme has therefore been recently revised with the aim of encouraging a targeted approach to training whereby the ultimate long term objective would be to develop a training grant system, where all training conducted by firms would be based on a proper training needs analysis and a corporate training plan. As of 2013, a **pre-job training scheme** is also underway, whereby HRDC will pay 60% of the training costs, and the prospective employer 40%; meanwhile a monthly stipend of MUR 6 000 per trainee will be paid on a 50:50 cost sharing basis. Employers are likewise eligible for refund from HRDC of up to 60% of the stipend paid to apprentices engaged in MITD apprenticeship training.

As a small island developing state, with limited natural resources but a heavy social demand for education, Mauritius has also turned towards **cross-border provision of services in the higher education sector**. Private providers are being encouraged to set up their off-shore campuses in the country. Through MITD, these principles of public-private partnership and of close collaboration between training institutions and business have also long been adopted with a view to improving the efficiency and effectiveness of TVET, and in line with the MITD Act 2009, three representatives of the private sector sit on the MITD Board. The private sector collaborates at various levels and function of the MITD – namely in policymaking, financing, curriculum development, on-the-job training, assessment, and school management.

## Trade policy

External trade is of crucial importance to the Mauritian economy: the average ratio of trade in goods and services to GDP in Mauritius is 120%. To a far greater extent than investment inflows, domestic consumption and exports have been the driving forces behind GDP growth in recent years. Yet, there remains significant room for progress in terms of export growth: currently Mauritius ranks in 107th position worldwide (out of 148 countries covered in the 2013-14 GCR) in terms of foreign market size. MCCI compares this to the case of Singapore, which stands at 12th position worldwide despite similar geographical limits to Mauritius. In addition, over 2010-12 Mauritius fell by three notches in the Enabling Trade Index (ETI) of the Global Enabling Trade Report (GETR – to 36th position out of the 132 countries covered). This slight drop in performance is spread across all four ETI sub-indices (market access, which includes openness of the economy to foreign goods as well as the efficiency of import-export procedures; border administration; ICT and transport infrastructure; and business environment). MCCI concludes that appropriate policies remain necessary to enable the Mauritian export sector to increase its range of output and to reap economies of scale.

In this context, stimulating both foreign and domestic investment in the country will to a large extent rely on the **creation of investment opportunities within export-oriented industries**. This will require the careful co-ordination and alignment of trade and investment strategies, to ensure that both are complementary and aligned in such a way as to tackle shared structural bottlenecks and to effectively diversify export sectors as well as customer markets. In this light, this sub-section first looks at efforts to streamline and simplify basic trading procedures (such as customs procedures), and then considers more strategic aspects of trade policy formulation in Mauritius – including efforts to: enhance trade policy predictability for investors; structure the country's stance in international trade negotiations; improve collaboration and reduce existing disconnections among bodies charged with trade policy formulation and implementation; and address market restrictions as well as sectoral weaknesses in trade policy support.

## 5.6. Customs and licensing procedures

### *Customs Reform and Modernisation Programme*

In the context of the international trade environment, customs authorities play a critical role not only in meeting trade policy government goals but also in ensuring effective controls that secure revenue, enforce compliance with national laws, and work towards security and protection of society. In Mauritius, this role is especially instrumental as the efficiency and effectiveness of customs procedures can have a significant influence not only on the economic competitiveness of domestic producers and exporters, but also on the investment attraction potential of the country. Moreover, the country's customs authority has been the major revenue-earning department for many years, regularly contributing more than 40% to the budgeted fiscal revenue figure.

Trade transactions costs incurred in customs procedures can be reduced by suppressing and streamlining unduly burdensome procedures, implementing impartial and uniform administrative border requirements, and simplifying clearance systems. The Government of Mauritius has long recognised these needs, and in 1998 embarked on a wide-ranging **Customs Reform and Modernisation Programme** (CRMP) undertaken with the assistance of the World Customs Organisation (WCO). This laid the basis for a strategic plan and modernisation programme over 2002-04. Customs tariff reforms further grew in large scale with the introduction of the 2005 Budget, with a view of transforming the country into a "duty-free island". In this context, in 2006 the Mauritius Customs Department was integrated within the

**Mauritius Revenue Authority** (MRA), a corporate body with an integrated organisational structure tasked with the administration of tax policy, and the collection and accounting of all revenues arising under the Revenue laws (including Income Tax, VAT, Customs, Excise and Gaming).

The wide-ranging CRMP introduced new work methods, including new control and risk management techniques and the elimination of certain tasks and units. Based on the conclusions of two **Time Release Studies** (TRS) carried out to identify bottlenecks in the clearance of goods, customs procedures have been fast-tracked, dwell-time of cargo has been cut back, and the administrative process of customs clearance has been accelerated, especially for certified traders. A tailor-made **Customs Management System** (CMS) was also implemented using Electronic Data Interchange (EDI). Considered as a major breakthrough in the facilitation of customs procedures, the CMS reforms make a wide range of procedures available electronically (see Box 5.1).

In addition to the above, the **Mauritius Cargo Community System (MaCCS)** is an electronic platform which has been spear-headed by MEXA (see below) and which operates since 2008 as a public-private partnership between the Mauritius Ports Authority (MPA, the landlord ports authority which provides the main port infrastructure and superstructure) and the private company Cargo Handling Corporation Limited (which provides general cargo, dry bulk and container handling at Port Louis under a concession contract). In order to fast-track the import and export of goods, cargo manifest and trans-shipment declarations are now electronically submitted and traced through the MaCCS system. This has been recognised as an important break-through in reducing cumbersome procedures for trading businesses, by integrating the full supply chain within the Mauritius port. Beginning in 2012, the system will be extended to the airport as well. Dividends from the system are expected by 2015; this currently makes Mauritius the only port in the Southern Hemisphere with such a comprehensive private-sector driven Cargo Community System.

These reforms have enabled an increase in revenue collected, as well as sizeable reduction in the processing time of customs declarations (from 22 steps to five, and from a 48-hour delay to 15 minutes). Moreover, customs information can now be retrieved and communicated in real time, and the selection process for identifying risky goods and persons has become far more reliable. These reforms have also better aligned Mauritius with the requirements of the revised Kyoto Convention, to which it adheres since September 2008 and which calls for new technologies and a business-friendly approach towards customs controls. Chief among the new governing principles is the commitment by customs administrations to improve transparency and predictability, use risk management techniques, co-operate with other relevant authorities and the business community and adopt appropriate international standards. As a result of these reforms, Box 5.1. **Reforms to accelerate and simplify customs clearance of goods**

- **Green/Yellow/Red channels:** Consignments are electronically selected for any of these channels Consignments routed in the Green Channel benefit from automatic clearance. In 2011, 81% of customs declarations had thus been cleared without physical examination, and use of **X-ray scanners** had also considerably expedited controls at import and export.
- **Fast Track System:** A group of traders with a satisfactory history of compliance at Customs benefit from more simplified procedures in the clearance of goods – thus encouraging voluntary compliance; a couple of Authorised Economic Operators (AEOs) have also been appointed on a pilot basis.
- **Risk Management System:** A centralised section has been set up within the administration with a view to ensure risk-based targeting for control by Customs: Customs attempt to identify and concentrate only on those vessels that represent highest risks in terms of social and environmental protection, IPR, and revenue collection.
- **Post-Clearance Control:** *ex post* Customs audit is being effected at importers' premises after clearance of goods so as to minimise dwell time of cargo under Customs control.
- **Online application and processing of import and export licenses and permits** at the Ministry of Trade, Industry and Consumer Protection using the Tradenet Single Window System. The System enables traders to track the status of their applications in real time, facilitate data harmonisation and standardisation among Ministries and agencies, and increase trade efficiency through the reduction of clearance processing time and related transaction costs.
- **Paperless (electronic) customs declaration documents** are mandatory as of January 2012. This is in accordance with Sections 16 and 43A of the Customs Act 1988, which have been amended by the Finance Act 2011. An **ePayment** facility is also available, and MRA Customs now implements **electronic processing of certificates of origin**. In addition to reducing transaction costs, paperless procedures should also eliminate corruption risks during customs clearance.
- A system of **online Reporting, Monitoring and Elimination of Non-Tariff Barriers (NTBs)** at the level of SADC, COMESA and EAC is now available to stakeholders.

Mauritius was ranked as the best-performing country in Africa on the "customs administration" pillar of the 2012 GETR Enabling Trade Index, performing better than Southeast Asia on average and placing 29th out of 132 countries overall.

### *Rationalising the institutional structure for customs and delivery of import and export licenses*

In addition to efforts for harmonising administrative requirements in customs procedures, reducing transaction costs of customs processes calls for clear communication of transparent and predictable procedures, and for enhanced regulatory co-operation and co-ordination in customs procedures. The **institutional structure of the customs system** has accordingly been improved, so as to provide stakeholders with clearer guidance and information, gather stakeholder feedback, and streamline customs and import control agencies within a single venue. Duty Officers and Customs Relations Managers are assigned to key stakeholders for addressing customs-related concerns. In addition, the MRA Website now gathers all relevant legislations, tariff rulings, operating procedures, and administrative forms. Likewise a committee has recently been set-up to work on a Trade Portal which will provide all information pertaining to import procedures, permits, contact details of trade authorities and other useful information regarding trade. Consolidation has also been physical: the various sections of MRA-Customs (previously located in separate buildings around Port Louis) are now housed within the one-stop "Custom House". Other agencies involved in the control of imports are also housed under one roof in the Port Area. MRA has moreover actively engaged in capacity-building for customs officers and in partnerships with the business community, by holding regular meetings with stakeholders to exchange views on customs-related issues.

Further reforms for trade facilitation within MRA-Customs could include: updating domestic regulatory requirements through periodic audits or built-in sunset clauses so as to take account of changed contexts, technologies and markets; and ensuring on a regular basis that the regulatory compliance burden remains broadly proportional to the underlying policy objectives. This will require enhanced Government efforts to assess actual performance of the customs administration, including by benchmarking against international best practice and international standards (as is being done via the WCO Time Release Studies, of which a third is currently underway), and continuing to identify priority areas for building capacity.

Another important step towards facilitating import and export procedures concerns the **requirements for and delivery of trade licenses**. As discussed in more depth in Section 5.10, Mauritius maintains import and export controls on several strategic commodities, for which various permits are required. It is increasingly recognised by Government that imposition of several import permits from different authorities for a single commodity tends to increase the cost of the products, and the administration is attempting to cut back on this practice wherever possible. Moreover among its "Priority Objectives and Major Services to be provided for 2013-15" (Sub-

Programme 60302), the Ministry of Industry, Commerce and Consumer Protection lists the **simplification of procedures and elimination of duplication of permits by agencies**, as well as the rationalisation of import and export permits. A Committee on Import and Export Barriers has accordingly been set up to remove unnecessary permits, and this task also features on the agenda of the Inter-Ministerial Committee (IMC) on business facilitation, set up in August 2012.

This Committee would benefit from undertaking regular assessment of the proportionality of the imposed controls and licensing requirements, the associated rationale and economic costs and benefits, and any alternative and more efficient means of supporting the domestic economy. More broadly, a similarly co-ordinated approach could be taken *vis-à-vis* all remaining non-tariff barriers (NTBs) in Mauritius, which are today among the most powerful deterrents to the expansion of trade in Mauritius and globally. This positive momentum, in line with the rationalisation approach of the 2006 business facilitation reforms, would helpfully complement past efforts to simplify customs procedures through the CRMP. Such progress should be actively upheld and extended in the domain of trade licensing and other NTBs.

## 5.7. Enhancing trade policy consistency and predictability

### *Trade policy formulation overseen by the International Trade Division/Trade Policy Unit*

The portfolio of International Trade was transferred to the Ministry of Foreign Affairs in 1996 to strengthen the effectiveness of trade negotiations and introduce more trade policy certainty and clarity in Mauritius. The resulting Ministry of Foreign Affairs, Regional Integration and International Trade (MoFARIIT) elaborates the country's negotiating position relating to the WTO, the ACP-EU partnership, different trading blocs and bilateral agreements. MoFARIIT oversees trade policy formulation with inputs from the technical expertise of: its International Trade Division (ITD); its Regional Integration Division (RID); its overseas Missions; and its Bilateral and Multilateral Economic and Political Directorates. The latter Directorates moreover help achieve greater coherence in trade policy matters. Meanwhile ITD ensures that obligations under international and regional trading agreements are implemented in domestic laws and regulations.

As detailed in Chapter 3, public-private sector dialogue is an important element in the decision making process for all aspects of policymaking in Mauritius. Trade is no exception, and **businesses are regularly consulted on trade policy**. This demand-driven approach allows to introduce appropriate enterprise support schemes to address in a timely manner issues presenting new challenges to businesses. This dialogue takes place through regular consultation with the **Joint Economic Council** (JEC), **Mauritius Chamber of Commerce and Industry** (MCCI), **Mauritius Export Association** (MEXA) and other private sector bodies.

**MEXA is a particularly active platform** as trade policy is concerned, grouping producers within the export sector across the following fields: textile and apparel, seafood, logistics, jewellery and watches, agro-industries, chemical products, electronic products, and non-textile. MEXA serves both as an information centre for its members (publishing newsletters and providing liaison and contact services for trade missions and trade enquiries) and as a networking platform allowing members to interact with fellow exporters, policy makers and technicians. It seeks to represent the voice of exporters through active representation and lobbying at government level, and also co-operates to some extent with bodies in charge of human resource development and vocational training (such as MITD, as mentioned above). Meanwhile **Enterprise Mauritius** (EM, discussed in detail in Section 5.11) represents smaller companies involved in export promotion, and seeks to assist them for export readiness.

Various relevant ministries (Industry and Commerce, Agriculture and Industry, Finance, and Foreign Affairs, Regional Integration and International Trade through the ITD) are grouped with BOI, Enterprise Mauritius, MCCI, JEC, MEXA and other private sector groups within a **trade Co-ordination Committee**. The latter is itself comprised of technical committees for specific strategic issues (such as WTO negotiations, EPA, regional trade, AGOA, bilateral trade, and nontariff barriers). More intensive technical discussions (for instance on rules of origin, sanitary and phyto-sanitary, technical regulation, standards, financial services, telecommunication, health services, education services, etc.) can also take place in smaller group meetings convened on an ad-hoc basis. The Co-ordination Committee thus serves as a venue for technical discussions, and reports at a higher level to the **Joint Public-Private Sector Committee on International Trade**.

This Joint Public-Private Sector Committee is chaired by the Minister of Foreign Affairs, Regional Integration and International Trade, and provides general guidance on the national trade policy framework for each calendar year. It considers the outcomes of technical discussions submitted by the Co-ordination Committee, prior to deliberation by the cabinet and final approval. It also considers more long-term strategic issues as concerns trade policy, such as tackling the erosion of export competitiveness, and achieving progress towards a more services-oriented economy. The latter is a particular point of interest given that the majority of investment and export-promotion campaigns organised by BOI in the past have focused more on promoting the goods sectors of the economy.

### *Institutional co-ordination across policymaking for trade and investment*

By involving BOI and other government agencies not focused on trade issues alone, the above two trade Committees provide a promising standing mechanism for **addressing bottlenecks to both investment and trade** simultaneously, and in consultation with the private sector. Moreover joint promotional events are increasingly being organised on the trade and investment fronts – in May 2013 Enterprise Mauritius and BOI for instance held the first "Mauritius Trade and Investment Forum" (MATIF). Nevertheless as pointed out by both BOI and MoFARIIT, this exchange among investment and trade agencies takes place mostly on an *ad hoc* basis, and there remains a strong need for more structured and long-term co-operation among these bodies. Thus although MoFARIIT undertakes consultations with all stakeholders (including BOI) in the elaboration of trade policies, it may be desirable to formalise this collaboration and to have a high-level representative from ITD as a board member of BOI.

According to a 2011 UNDP assessment of the level of "trade mainstreaming" in 14 lower and middle-income countries, harmonisation of trade-related issues is indeed at times difficult since policy formulation and implementation are carried out by different institutions. Indeed, Mauritius is a case of strong demarcation between institutions charged with trade policymaking, and institutions implementing the trade policies. As suggested by the Ministry of Industry, Commerce and Consumer Protection, the fusion of trade policy formulation and implementation into a single institution could go a long way in streamlining trade and could facilitate the expansion of trade in the region as well as in Mauritius's traditional markets. The current demarcation instead complicates the co-ordination and follow-up of trade reforms, and generates difficulties for assessing the effectiveness and accountability of trade policy implementation. The Government may gain from adopting a legal framework to formalise the consultation process behind trade policy, to unite formulation and implementation functions, and to clarify the interaction among different institutions.

Such institutional co-operation and streamlining will also be necessary for the **elaboration of coherent trade and investment strategies at the national level** – as discussed in Section 5.8 – especially given the very strong links between investment and trade in the country. A common task-force could be a useful venue for elaborating both investment and trade strategies concurrently, with frequent inputs from other relevant government bodies (such as the Human Resource Development Council and the Mauritius Institute of Training and Development, to optimise the absorptive capacity of the labour market in the priority economic activities identified by these strategies). Beyond helping address these existing structural obstacles to productivity and competitiveness in specific industries, stronger institutional co-ordination would also allow to consider the island's needs in terms of sourcing of raw materials (see Section 5.8). It would thereby enable trade policy to serve a much more strategic and enabling role for promoting both external and internal trade in Mauritius.

## 5.8. Formulating coherent import and export strategies at the national level

### *Market diversification strategy*

From a mono-crop industry based on sugar production, Mauritius has diversified into export-oriented manufacturing, tourism, and financial and business services sectors; ICT, hospitality and property development, the seafood and marine industry, and the biomedical industry have also grown in recent years. Nonetheless further steps towards diversification (both of products and of consumer markets) remain very necessary – an imperative of which Mauritius is fully aware.

Mauritius is notably aiming to reduce its dependence on demand from France and the United Kingdom as its main markets: 95% of sugar industry earnings and 72% of tourists to Mauritius were from European markets in 2010. As part of the national Resilience Programme (2012-15), Mauritius is therefore **gearing its target export markets towards emerging countries** in Asia, the Middle East and especially Africa. The 2012 Budget Speech plans for "more focused and more carefully thought-out promotion campaigns in India, China, and Africa", and the 2013 Budget introduces an "**Africa Strategy**", which aims to attract an increasing number of African investors, professionals and tourists to the island. This strategic orientation has been reflected in an increasing number of bilateral investment and trade agreements with African and Asian economies, as well as strong engagement in the trade commitments of Regional Economic Communities of which Mauritius is a member (see below). Meanwhile expansion of the **tourism industry** will particularly target Chinese and Russian markets (from which tourist arrivals increased by 38% and 58.9% respectively over 2012).

The **Government Programme 2012-15** additionally poses some bases for potential investment and export promotion planning. In order to rebalance exports and capture new opportunities in existing and emerging markets, the programme aims to promote a cluster based approach in the manufacturing sector, and to establish dedicated technology parks for the promotion of specialised activities in the pharmaceutical, medical devices, high-precision engineering and other sectors. To safeguard the interests of domestic industry, it also commits to ensuring effective implementation of antidumping and countervailing legislation, and plans to introduce an Industrial Productivity Enhancement Programme to promote higher productivity of capital and labour. Finally, the government envisages formulating an Industrial Technology Development Plan, revamping the Export Promotion Strategy and Plan, and developing a new industrial investment promotion strategy.

The last two objectives are particularly crucial and would fill important gaps in the current investment and competitiveness landscape of Mauritius. This could be co-ordinated with the joint "trade and investment strategy for Africa" that Mauritius is formulating as of 2013 and which will notably explore opportunities for better positioning the country's **financial services sector** *vis-à-vis* the rest of the continent. The Commonwealth Secretariat will assist Mauritius in: refocusing the country's trade and investment towards Africa; assessing the competitiveness of the Mauritius International Financial Centre (MIFC), in view of developing a marketing plan for the financial sector; and proposing the development of a "global Africa hub" in Mauritius.

This forthcoming trade and investment strategy for Africa could be a positive first step towards better **alignment between broad investment and export competitiveness objectives** in Mauritius – indeed dedicated efforts to increase coherence between trade and investment policy in the country, and to ensure that both of these are consistent in their approach to priority economic sectors, have been rare. As noted in Chapter 3, Mauritius lacks an overarching investment strategy in which priority and time-bound investment objectives are defined; likewise **a long-term export strategy is also lacking**.

This weakness is pointed out by MCCI in its Memorandum for the 2013 Budget, which deplores that although the 2012 Budget entrusted BOI with actively promoting foreign investment in the financial, ICT/BPO and education and medical industries, there was "a lack of a strong dedicated organisation that would **specialise in the promotion of export of services in a strategic manner**", and most efforts on this front (for example, the promotion of the Mauritian tertiary education sector on African markets) "had been performed so far in a fragmented approach". Currently, only EM formulates an export strategy through its annual export development plans and its output agreements with the Ministry of Industry, Commerce and Consumer Protection – with a focus mostly on assisting SMEs for export readiness in the short-term, and on facilitating export of goods rather than services. In addition, Enterprise Mauritius has recently formulated a Market Penetration and Development Plan, with an emphasis on consolidating traditional markets, diversifying into new and emerging markets (including SADC and COMESA regions), and providing structured support to develop export readiness of enterprises. While they are important features of trade facilitation, these time-bound plans cannot substitute for a **long-term strategy built on market diversification, product upgrading, and addressing structural and supply-side impediments to export competitiveness**.

The forthcoming **Economic and Social Transformation Plan** (ESTP, see Chapter 3) which is under elaboration since 2013, could be a useful platform for addressing current shortfalls. The ESTP has indeed been launched to address competitiveness concerns, with a focus on: streamlining trade regulations; improving vocational and on the job training; raising the efficiency of SOEs; boosting public investment efficiency through public financial management reforms; and land law reform. The ESTP could provide a means of ensuring better coherence between trade and investment objectives and other national strategies (on fiscal policy, trade, human resource development, infrastructure, etc.), so as to address more structural bottlenecks to export competitiveness and to investment attraction. Such an integrated strategy should notably carefully consider the potential and role of the Mauritius Freeport and of EOEs in positioning Mauritius as a trade and investment destination – as these two sectors uniquely combine elements of both trade and investment facilitation. Alongside, the **competency of export promotion agencies** would need to be expanded – so as to effectively implement the ESTP and to look beyond traditional goods sectors, towards more innovative, "demand-dynamic" export opportunities and markets.

### *Import strategies for sourcing scarce factor inputs*

In parallel with the above market diversification efforts, it is important that trade policy in Mauritius look beyond export promotion alone. Indeed, as highlighted by MoFARIIT, the island also has a critical need for a well-defined trade policy in terms of **ensuring the sourcing of raw materials in a resource-deficient country**. 53% of the Mauritian Consumer Price Index basket consists of imported goods and even export competitiveness in Mauritius relies on processing imported inputs – making the country particularly vulnerable to inflationary pressures abroad. According to ITD/TPU, the recent move of Mauritius in concluding bilateral trade agreements with resource-rich countries, as well as the recently launched "Africa Strategy" with respect to trade and investment promotion, are therefore motivated not only by the wish to diversify export markets but also to consolidate the sourcing of vital raw materials and production inputs.

This factor sourcing challenge concerns not only raw materials but even labour – as Sections 5.1 to 5.5 indicated, many labour-intensive industries face labour shortfalls because the Mauritian population is reluctant to take jobs to which they attach a perception of low social status. This negative perception is particularly prevalent for jobs in Export-Oriented Enterprises and in the textiles sector. In order to meet the factor cost challenge in the textiles sector, since 1990 Mauritius has therefore **relocated low-end operations to lower-wage countries in the region**, as well as further abroad: since beneficiating from AGOA, several Mauritian companies have opened factories in Madagascar, Mozambique, but also in India and Bangladesh for garment manufacturing. Labour-related legislation was also changed to make it more flexible in respect of employees working in EOEs.

A similar outsourcing approach in the wider **agricultural sector** has concerned acquiring foreign land, rather than labour. Indeed, certain Mauritian investors have been identifying land in neighbouring Madagascar, Mozambique and Tanzania that could be purchased or leased for long-term agro-processing operations. The aim would be to grow products such as potatoes, tomatoes and maize in these neighbouring countries, before bringing them to Mauritius for value-added processing and export to developed country markets. In 2009, Mauritius for instance acquired 20 000 ha of land for rice production in Mozambique, in joint venture with the Singaporean company Vitagrain. The project aims to set up the financial base for hybrid seed production, and to secure land in other countries for rice production. 150 000 tonnes of rice per year are expected through the project, and Madagascar and Swaziland are also being considered for similar projects.

**Such strategies for addressing import sourcing considerations lie specifically at the juncture between investment and trade** – further reflecting the importance of enhancing institutional co-ordination between bodies responsible for trade and investment policy formulation and negotiation in Mauritius. So as to address these factor challenges in a more coherent and co-ordinated manner, it is also becoming essential for Mauritius to develop a **comprehensive import strategy** – rather than proceeding mostly through an array of disparate bilateral agreements with various resource-rich countries. MCCI has reportedly provided some inputs to an import strategy which is under elaboration as of late 2012. It will be necessary to co-ordinate the formulation of this strategy with the elaboration of a joint investment and export strategy, and/or with the development of the ten-year ESTP.

## 5.9. Expanding markets through regional and multi-lateral engagements

In line with the above export market diversification strategies, Mauritius has been actively involved in expanding market access opportunities through negotiations at different levels – in the regional context (COMESA, IOC and SADC), at the bilateral level, and also at the WTO (as detailed in turn below).

### *Regional engagements for free trade within Africa*

The **COMESA Free Trade Area** (FTA) was launched on 31 October 2000; the 12 member states that belong to the FTA trade on a duty-free and quota-free basis among themselves provided that the goods meet the COMESA rules of origin. Meanwhile the **SADC FTA** was formally launched on 17 August 2008.

Meanwhile, implementation of the SADC Trade Protocol started in 2000 with the gradual elimination of customs duties on 85% of tariff lines by 2008 and with tariffs on the remaining "sensitive products" being eliminated by 2012. In addition, Mauritius is a member of the **Indian Ocean Rim Association for Regional Co-operation** (IOR-ARC), for which economic co-operation is based on four pillars: trade liberalisation (including eliminating all tariffs for member countries by 2020); information sharing towards trade and investment facilitation; trade and investment dialogue; and economic and technical co-operation. Mauritius is equally involved in negotiations of a **Tripartite FTA** involving COMESA/SADC/EAC. Thanks to these regional agreements, Mauritius offers preferential access to a regional market of over 600 million consumers. Therefore, as noted by BOI, an increasing number of countries outside of Africa are considering Mauritius as a stable and attractive platform for entering the African market. This rationale is also behind an increasing number of bilateral investment and trade preference agreements signed with Mauritius.

### *Bilateral and preferential trade agreements*

Examples of bilateral trade co-operation with Mauritius (with the cases of Kenya and India below) suggest that this collaboration stretches far beyond trade alone, and comprises strategic partnerships on a wide range of economic issues. Trade agreements with Mauritius are often accompanied by agreements on investment protection (through BITs) and by a formalised institutional structure for implementing the economic collaboration and for promoting peer-learning (through joint working groups, MoUs between relevant investment and export promotion agencies, and joint business councils). This approach allows Mauritius to embed its trade strategy within a broader framework of economic growth and private sector engagement, thus addressing the goals of export competitiveness, market expansion and investment attraction simultaneously.

**Mauritius and Kenya** for instance signed a Bilateral Trade Agreement in 2003, to be implemented and overseen by a Joint Trade Committee. The latter's first meeting, in January 2011, addressed issues such as investment facilitation, export-promotion, and standards and conformity assessment (entailing an MoU between the Mauritius Standards Bureau and the Kenya Bureau of Standards). A BIT and a Double Taxation Agreement have also been signed and are awaiting ratification. In 2012, the Joint Trade Committee further addressed the countries' stances in: regional and WTO trade negotiations; investment promotion (including an MOU between BOI and Kenya Investment Authority); movement of professionals and recognition of qualifications; and air and maritime connectivity. Private sector collaboration and the setting up of a Joint Business Council are now being examined.

In a similar approach, Mauritius has been engaged for several years in **FTA negotiations with India**. This collaboration is especially focused on the textile industry: as of 2013, the two countries aim to develop an "India-Mauritius-South Africa Textile Corridor' (Mauritian textile exports have grown by 35% in 2012 in South Africa alone, creating a 12% market share on manufactured garments in the South African market – up from only 1% in 2005). This project has been sustained by several co-operation agreements, including an MoU for the textile sector. On the implementation front, Joint Working Group has been set up since 2012 and other MoUs have been signed between EM, the National Productivity and Competitiveness Council, the Mauritius Standards Bureau, and MEXA on the Mauritian side, and equivalent Indian institutions.

Mauritius has also signed an **Interim Economic partnership Agreement (EPA) with the EU**, a **Preferential Trade Agreement (PTA) with Pakistan in 2007 and more recently with Turkey**, and is about to embark on PTA negotiations with Tunisia. Under its PTA, since 2011 Turkey has offered duty-free and quota-free access on all industrial products except for a list of 70 clothing items on which duties will be phased down over a period of four years. This agreement has recently been complemented by the signature of a BIT between the two countries, in February 2013. According to EM, Turkey provides a platform for access to other markets such as Europe, Central Asia, the Middle East and North America. Meanwhile under the EPA, the Mauritius market access offer to the EU applies as from 1 January 2013. Within the EPA, the ESA-EU framework offers signatories from the Eastern and Southern African region a separate set of national tariff offers and exclusion lists, but a common text on other areas; signatory ESA countries in addition to Mauritius include Madagascar, the Seychelles, and Zimbabwe. As per this agreement a list of raw materials has been subject to liberalisation when imported from the EU; this concerns in majority agricultural goods, many of which were previously imported and marketed exclusively by the Agricultural Marketing Board (AMB, as detailed in Section 5.10).

Finally, Mauritius forms part of the list of **African Growth and Opportunity Act** (AGOA) beneficiary countries. This builds on the existing Generalised System of Preferences (GSP) scheme and offers duty-free and quota-free market access to the United States for approximately 7 000 products. Apparel and textiles are not included under the General System of Preferences (GSP) program, on which AGOA is based. Nonetheless, AGOA provides beneficiary Sub-Saharan African countries with duty-free access to the US market for apparel, subject to specific rules of origin and other administrative requirements. A BIT between Mauritius and the US is also currently under consideration. Thanks to the above agreements and preferential schemes in place, Mauritius (together with Malawi) enjoys the highest margin of preference in its target markets out of all 132 countries covered by the Enabling Trade Index of the 2012 GETR.

### *An active negotiating stance within the WTO*

In its approach to WTO negotiations, Mauritius considers that **addressing the supply-side constraints** of developing economies in order to improve competitiveness and upgrade their standards and technical regulations is essential – and that preferences therefore should not be seen as a permanent arrangement, but should progressively be replaced by trade-related solutions. Likewise, Mauritius holds that the term "trade-related capacity-building" should be interpreted as "building capacity to produce and trade", and so should not be limited to training and information dissemination alone. Government is currently emphasizing this wider interpretation in the context of the "Aid for Trade" initiative of the Doha Development Agenda. With this perspective, Mauritius is very active in WTO negotiations, in which it is a member of multiple groups, including: the African, Caribbean and Pacific countries with agricultural preferences in the EU; the African and G90 Groups; the group of Small, Vulnerable Economies (SVEs, for negotiations on agriculture and fisheries subsidies); the G10 (with a focus on agriculture and of which Mauritius is the only SADC or COMESA country); and the G33 (which pushes for limited market opening in agriculture for certain developing countries).

Mauritius works mostly within the African Group on general issues, whereas the other groups are referred to for specific issues. According to WTO analysts, "Mauritius has a track record of being one of the most effective trade negotiators in Africa", having been a key player not only at regional level but also in the ACP Group and in the negotiations of an EPA. In order to enhance effectiveness and chances of success in trade negotiations, the government has also supported capacity-building for trade policy formulation, notably by enabling participation by trade analysts and other officials of relevant ministries in training programmes, seminars and workshops, domestically and abroad.

The **private sector is fully represented** in the preparation of WTO meetings and negotiations. The private sector has participated in all the WTO Ministerial conferences and regional meetings, and both private-sector and trade union representatives attend a number of trade-related committees (such as: the Committee of Agriculture and International Trade; the National Negotiating Committee on Post-Lomé discussions; the Regional Co-operation Council, set up under the chairmanship of the Minister of Foreign Affairs with a view to forging a coherent regional strategy for Mauritius given its membership of various groupings; and the WTO Standing Co-ordination Committee). These committees communicate their views to a core group chaired by the Permanent Secretary to the Trade Minister. The WTO **Standing Co-ordination Committee** in particular has a strong mandate for dealing with the implementation, follow-up and co-ordination of trade policy issues falling under WTO Agreements, and comprises representatives from both public and private sectors as well as various technical sub-committees.

### *Implementation of commitments on tackling tariffs and Non-Tariff Barriers*

In light of the crucial importance of external trade to the economy (the average ratio of trade in goods and services to GDP in Mauritius is 120%), Government ensures that all trade decisions and measures related to meeting both its regional and WTO commitments are transposed in domestic legislation. Today, around 90% of tariff lines are already duty free and the country ranks as the eighth freest in the world in terms of the openness of its trading system. Predictability and legal security are important principles on which trade policy decisions are taken, as they can serve as important safeguards both for exporting enterprises and for investors.

All trade policy measures relating to the **elimination or reduction of tariffs and the elimination of NTBs** are implemented either through the Finance Bill or by Regulations and therefore on a sound legal basis. MOFED retains the right to eliminate or reduce tariffs without prior consultation in the context of the yearly budget. In the 2012 Budget for instance, it was announced that import permits were being abolished except where they were absolutely necessary. Policy reversal on these commitments is not condoned in Mauritius and any affected party can have recourse to the Courts if any new policy decision may negate or dilute a decision taken previously.

The legal text which forms the basic instruments of anti-dumping and anti-subsidy investigations also entered into force in 2010: the **Trade (Antidumping and Countervailing Measures) Act** lays down the procedures on how trade remedy cases are to be initiated, how the investigations are to be conducted, and the conditions for ensuring that all interested parties are given an opportunity to present evidence. This act is in accordance with the three agreements to deal with unfair trading practices outlined by the WTO: actions taken against dumping; government subsidies that distort fair competition; and emergency measures to limit unexpected surges in imports.

The Act also establishes an **Investigating Authority** for conducting investigations that involve lengthy and very complex procedures. This Authority is operational as of late 2012. Under Section III of the act, the Investigating Authority may impose countervailing measures on products imported into Mauritius where it is determined, pursuant to an investigation, that the investigated product is subsidised and that there is a causal link between the subsidised imported product and injury to the domestic industry. The countervailing duty will nonetheless not exceed the total rate of subsidisation of the investigated product. Investigations into alleged dumping or subsidisation can be launched following applications made by the domestic industry, or on self-initiation by the Authority. Investigations are to be concluded within one year, and in no case later than 18 months following initiation of investigation. The Authority may also suspend an investigation without the imposition of provisional measures, or anti-dumping or countervailing duties upon acceptance of the offer of undertaking from an exporter to revise its prices or to cease exports at dumped or subsidised prices. In case of subsidy, the undertaking may be given by the government of the exporting country. The State Law Office of Mauritius is also currently working out a Safeguard legislation, which would complete this growing legal framework on trade remedies in Mauritius.

## 5.10. Harmonising trade distortions amongst industries and addressing market access restrictions

### *Impact of the State Trading Corporation and Agricultural Marketing Board on industry-specific trade*

In a country such as Mauritius, whose development strategy depends on foreign trade and investment, it is important that policymakers safeguard the need of regulatory authorities to address legitimate domestic policy objectives without recourse to needlessly burdensome trade measures. Regulatory impact assessment of trade policy measures should require or encourage regulators to **avoid unnecessary trade restrictiveness**, with a view to minimising potentially adverse effects on trading partners.

Trade policies in Mauritius are not implemented on a selective basis to favour or discriminate against any particular sector. Yet, while the liberalisation process has covered all sectors and all products, it has done so at varying levels. Indeed **tariff liberalisation** has taken account of a number of products considered to be sensitive: through the **State Trading Corporation** (STC, set up in 1982 as the trading arm of the Government of Mauritius for the importation of certain essential commodities), government controls the import of rice (only non-basmati or other non-luxury rice), wheat flour, petroleum products, Liquefied Petroleum Gas, and – until July 2011 – cement. STC is also in a stand-by position to intervene in the market for any other commodity in case of emergency. Meanwhile import and export of a variety of agricultural products (including onions, potatoes, garlic, turmeric and cardamoms) require clearance from the **Agricultural Marketing Board** (AMB), against possible payment of fees.

As discussed below, **the role of the AMB and STC would deserve careful re-consideration** by government. MCCI notes that, with the Competition Commission and the Price Observatory being fully operational in Mauritius (see Chapter 4), the need for maintaining any form of price control through these bodies needs to be re-assessed. In addition, the advantages of the AMB and STC in terms of food and energy security are not clear, and the IMF estimates that untargeted subsidies on LPG, rice and flour cost 0.4% of GDP in 2013. Moreover, as STC subsidies are not reflected in the annual budget, the evaluation of associated fiscal costs and benefits may have been insufficiently exhaustive to date.

**STC imports rice and wheat flour by international tender**, using on a price-based analysis to select the best bidder. It then submits the best prices obtained to the Ministry of Industry, Commerce and Consumer Protection, which fixes the final price for the domestic market. These prices are made available online – as of June 2012, flour is for instance sold at a retail price of MUR 5.85 per ½ kilo. There is some incoherence in this system however: while STC's main focus is to meet domestic demand, it also occasionally re-exports limited quantities of products to respond to unforeseen sporadic demand and to meet short-term regional needs. Although the STC argues that its competitiveness in these circumstances is derived from its bulk purchase tender prices (which can offset additional freight cost of re-export), this approach appears unnecessarily complex and costly. It especially belies the food security rationale underlying the STC imports in the first place. The IMF 2013 country report thus recommends that these subsidies be phased out, or otherwise administered according to an automatic pricing mechanism as has been done for fuel oil.

As concerns **pricing and control of petroleum**, since the introduction of an Automatic Pricing Mechanism (APM) in October 2010, fuel oil is sold in bulk to petroleum companies at a set price per litre. However since its establishment the APM has resulted in high price volatility and in poorly understood price movements. In addition because APM fuel retail prices are only adjusted in response to significant changes in international prices (based on a system of triggers and caps and following the approval of a Petroleum Pricing Committee), there have been delays in adjustment in the past. As noted by the IMF, before the latest adjustment in early March 2013, retail prices had not been adjusted for two years despite significant movements in international prices. Moreover, the current price-setting mechanism for fuel oil risks acting as a regressive subsidy for the rich, rather than meeting its objectives of widespread affordability – as indicated by recent household survey data, fuel-related expenditures tend to be more concentrated towards richer segments of the Mauritian population. As for the rice and wheat sectors, STC pricing and controls of the petroleum sector may therefore need to be subjected to thorough cost-benefit analysis in order to inform the future directions of this market intervention strategy.

Meanwhile the **Agricultural Marketing** Board (AMB, established in 1963) has among its objectives to: encourage local production of as much of the country's food requirements as is economically feasible; minimise marketing costs while satisfying consumer demand; and limit price fluctuations. Accordingly, the importation or exportation of onions, potatoes, garlic, turmeric and cardamoms requires a "no objection" clearance from the AMB. Importation of similar list of products (also including milk and limes), which previously required import permits from the Division of the Ministry of Commerce and Consumer Protection, now only require AMB clearance. Quotas are also maintained on the export of chilled fish, salt, and potatoes, as well as products of strategic national importance (cement, silver and gold). A list of several of these agricultural products (including pepper, capsicum, vanilla, cardamom, nutmeg, coriander, ginger, turmeric, tobacco, and salt) have nonetheless been subject to liberalisation when imported from the EU as of January 2013, as part of the Mauritius-EU EPA.

In reviewing the role of STC and AMB and devising alternative control and pricing strategies, the cost of these measures on the national budget as well as their impact on domestic exporters and on foreign investment attraction, will need to be assessed. This will necessitate reliable **impact assessment tools** which can regularly measure the concrete effect of these measures, and so as to verify whether the end-rationales of greater food security, poverty alleviation, environmental protection and domestic competitiveness are truly being met.

## 5.11. Addressing sectoral weaknesses in trade policy support

The government of Mauritius has recognised that current competitiveness risks derive not only from global economic contractions in EU markets, but also from a weak economic and productive structure – and therefore that basing the island's trade and growth model on trade preferences and on diversifying export markets alone cannot be sustainable. Rather, securing export competitiveness will require a sound human resource base in the domestic economy (as addressed in Sections 5.1 to 5.5), as well as enabling, low-cost infrastructure (Chapter 4). In the shorter term, some temporary support measures for enhancing the supply capacity of domestic companies may also be necessary – as detailed below.

### *Targeted government support to specific export-oriented enterprises*

The Government Programme 2012-15 recognises that EOEs are facing "sharp challenges", and proposes several measures to capture new export opportunities in existing and emerging markets. Within this programme, measures to address weaknesses in specific export sectors aim essentially at consolidating and building confidence in particular industries. Specific projects have been identified in the following sectors for implementation in the next few years:

- agri-business and biotechnology (refined sugar, ethanol, food crop production – potato, corn, soya bean – food processing, dairy products and livestock);

- renewable energy and environment (wind, bagasse, solar, cold sea water for air conditioning, and waste-to-energy projects);
- medical tourism (medical, surgical and diagnostic packages to the one million English and French speaking tourists currently visiting Mauritius);
- bio-medical research and clinical trials; and
- knowledge-based industries (foreign universities' campuses in Mauritius, distance education, e-learning, vocational and technical training).

The 2010 report on Facing the Eurozone Crisis moreover makes provisions for accelerating the restructuring of the sugar industry – this includes levying an Environmental Fee on molasses exports as from the 2012 crop, to encourage local value addition in the form of fuel ethanol and potable alcohol.

### *Facilitating trade promotion for local and small enterprises*

In preparation for the Industrial and SME Strategic Plan 2010-13, in 2009, a perception survey of 40 enterprises (comprising very small, small, medium and a few larger enterprises) was conducted. The results showed general satisfaction of entrepreneurs with business performance in Mauritius: small firms have innovated, adopted new technologies and management processes alongside substantial investment in equipment, and achieved turnover as well as quality, know-how and operational management improvements. The financial situation was also rated as quite satisfactory, although employment stagnated. However the study pointed to **insufficient market intelligence**, with SMEs failing to undertake systematic export market research and there is lack of strategic international partnerships.

While support on operational issues such as finance, management or business plans elaboration were not considered as the most binding constraints for the SMEs surveyed, need for research and development – which did not keep pace with tariff liberalisation – was highlighted as a predominant problem. The report concluded that trade visits, improved assistance for process and product innovation, export market information and strategy advice of high professional standards were therefore required.

As previously mentioned, the task of improving SME market intelligence with regard to available export opportunities, and generally assisting SMEs for export readiness, has been placed on **Enterprise Mauritius** (EM). This Trade Promotion Organisation results from a collaborative partnership between the Mauritian public and private sectors, and aims to assist locally-based businesses in their growth and development by providing them with various types of support in view of competitive trade. These include: market development and intelligence; financial assistance; consultancy and strategy development; product and quality improvement; kills and trends monitoring; and networking. EM services are open to companies from the following sectors: textile, garments and accessories; light engineering and jewellery; agro-industry (including beverages and seafood); consultancy services, ICT/BPO, logistics; printing, packaging, publishing and plastics; and furniture, paints and chemicals. In addition to this direct support, approximately one-third of EM's budget is spent on market research to identify promising export niches for SMEs.

**EM also plays a role in market research and export diversification**. Every year, it co-ordinates the participation of businesses in various local and international events also seeks to encourage new trade flows by: assisting in the development of new products for existing markets, or for new markets (a July 2011 study for the agro-sector for instance investigates how to penetrate the Japanese food market); assisting in conducting market tests of sample products with potential buyers; and providing web-based access to Global Business resources for market research. EM will also be at the forefront of the "Africa Strategy" promoted by government since end 2012: by 2012, one-third of the EM budget was for export-promotion activities in the continent, and EM's promotional campaign in Africa was launched in March 2013 in Uganda and Rwanda. MoUs with counterpart export promotion agencies across the continent will follow.

### *International networks for sectoral support to trade*

The **Global Trade Finance Programme** (GTFP) set up by the International Finance Corporation (IFC) of the World Bank Group has established a network of banks through which local financial institutions ("issuing banks") can establish working partnerships with participating international banks ("confirming banks"), thus broadening access to finance and reducing cash collateral requirements. These participating banks can provide partial or full guarantees covering payment risks on banks in partner emerging markets, for both funded and unfunded trade-related transactions (including transaction-specific guarantees such as letters of credit, trade-related promissory notes, bills of exchange, guarantees, performance bonds and advance payments guarantees – similar guarantees are also offered by Mauritius Commercial Bank, below).

By tapping the risk mitigation provided by the GTFP, international trade finance providers can thus enhance their global reach confidently, gain familiarity in new markets such as Mauritius, and build relationships with quality counterparty banks around the world. The programme gives priority support to trade flows that promote critical sectors, such as agriculture and energy efficiency, while maintaining strategic focus on SME importers and exporters and trade between emerging markets. Several commercial banks in Mauritius are GTFP confirming banks, including Barclays Mauritius, Habib Bank, the State Bank of Mauritius, and Mauritius Commercial Bank; however no local financial institutions are GTFP issuing banks.

Meanwhile, the **WTO-UNCTAD International Trade Centre** (ITC) has set up a technical assistance programme to strengthen schemes and mechanisms offered by both private and public financial institutions in the field of export finance, short-term trade credit and credit insurance and guarantees. The programme also aims to build up the capacity of entrepreneurs and credit officers in dealing with credit and financial risk management. It is targeted at three distinct levels where constraints and needs require a different set of activities: public and private manufacturers and traders; financial institutions, export-import banks, export credit insurance and guarantee agencies; and the financing environment, including organisations that have a direct impact on the availability and cost of trade finance. Mauritius is one of the countries in which one of the ITC's latest projects, aimed at increasing transparency and understanding about Non-Tariff Measures (NTMs) and related obstacles to trade, have been launched in 2012.

### *Export and import insurance provided by government under the RWG*

Trade and FDI can both be enhanced by measures that facilitate cross-border transactions, including those that hedge and transfer risks attached to exchange rate movements and payment defaults – such as **transit insurance and export and import finance**. Financial institutions therefore need access to guarantees covering payments risk on trade transactions, as well as the introduction and implementation of related measures and trade instruments. Prior to its current restructuring as an "SME Bank", the Development Bank of Mauritius DBM operated an Export Credit Guarantee Scheme and an Export Credit Insurance Scheme. More recently, the Restructuring Working Group (RWG) comprises an Import Loan Guarantee Scheme (which guarantees purchase of raw materials on specific export orders in the manufacturing sector) and an Export Credit Insurance Scheme (which provides insurance cover for export sales until December 2014).

**Mauritius does not have an Export Credit Agency**, but the Bank of Mauritius has developed Guidelines on the Recognition and Use of External Credit Assessment Institutions in March 2008. This guideline is issued under the authority of Section 100 of the Banking Act 2004 and Section 50 of the Bank of Mauritius Act 2004, with the purpose of allowing banks to use credit assessments provided by external credit assessment institutions (ECAIs) to determine the risk weights on their credit exposures. Part II of the Guidelines deal with the use of ECAIs and Part III with the use of export credit agencies that *inter alia* provide export credit insurance facilities and publish consensus country risk scores.

Export and import financing support is also available on commercial terms from Mauritius Commercial Bank (MCB). In recent years, alongside an internal restructuration to better assist SME endeavours, MCB has supported major players in spearheading the development and growing sophistication of the national economy – notably those operating in the export-oriented manufacturing, hospitality, property development and construction sectors. It has also attended to the needs of the sugar industry. MCB, moreover, makes a wide range of export and import financing facilities available on a commercial basis (such as Export Documentary Credit to guarantee receipt of payment from the buyer of the exported goods; and Credit Protection which protects exporters against risk of default by buyers, by providing information on buyers' credit worthiness and solvency).

Nevertheless, it should be noted that **these services could be further enhanced to make them more targeted and accessible for the needs of small as well as large exporters**: while over 2010-11, 19.5% of MCB's total credit to the economy (including both public and private loans) went to tourism, and close to 20% went to financial service activities, only 2.5% (MUR 6 070 million, or USD 195 million) went towards the "export-oriented industry". This is a 12.2% drop from the previous year, a reduction in demand which may reflect dissatisfaction with the design and affordability of commercial export financing facilities currently provided.

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