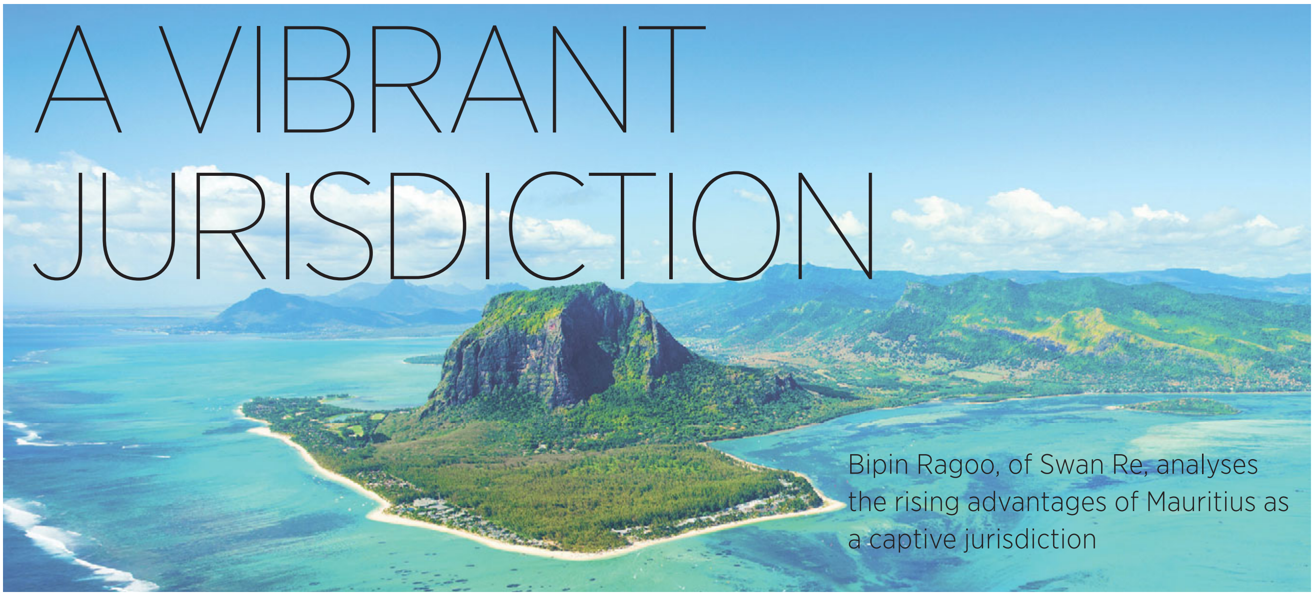
A VIBRANT JURISDICTION



Bipin Ragoo, of Swan Re, analyses the rising advantages of Mauritius as a captive jurisdiction

Mauritius is fast developing as a vibrant international finance centre, with captive insurance as one key pillar. The captive segment comes in the form of protected cell companies (PCCs) and conventional captive insurance companies. Mauritius enjoys one of the highest insurance penetration ratios in Africa and is well placed to further develop the insurance sector. The industry is regulated by the Financial Services Commission, Mauritius (the FSC). The FSC administers a raft of fine pieces of primary legislation and rules to regulate all non-banking financial services as well as global businesses. The relevant enabling acts for the captive insurance sector are the Insurance Act 2005, the Protected Cell Companies Act 1999 and the Captive Insurance Act 2015.

Lately, Mauritius has institutionalised a considerable number of measures to keep abreast of the OECD's Base Erosion and Profit Shifting (Beps) recommendation for substance, especially in a vivid jurisdiction like ours. The call for substance has been at the heart of the recent budget presentation, and the FSC is charged to work closely with the OECD to host a regional centre for capacity building and best practices.

Insurance Act 2005

This is a comprehensive act for the industry as a whole, including PCCs set up for insurance purposes. A PCC can seek licensing from the FSC under the Act as a professional reinsurer, for example. The minimum capital applicable is MUR25m ($750,000). The Act also defines the categories of insurance business, being long term and short term, and a PCC can have a composite licence. The PCC is required under s.40 of Insurance Act to appoint auditors and an actuary. The FSC developed the Insurance (Returns) Rules 2007, which prescribe the form in which a PCC should file its accounts and statutory returns.

Bipin Ragoo

The Act applies to conventional captives in a limited way, for example through provisions relating to transfer and amalgamation as well as insolvency and winding up. Insurance managers, which can act as captive managers, are also licensed in terms of the Act.

Insurance (General Insurance Business Solvency) Rules 2007

These were issued under the Insurance Act 2005 to create a risk-based solvency regime for all general insurance entities. The rules apply to protected cells. Captive insurance companies are, however, subject to separate rules, as explained later.

The Minimum Capital Required (MCR) must be sufficient to meet five sources of risk, as follows:

- Liquidity risk, which is assessed from the balance sheet assets
- Investment concentration risk, where 100% capital is required for investments above the limit (of generally 10%).
- Technical risks: capital for policy liabilities as assessed from UPR and outstanding loss reserves.
- Credit risk: as assessed from the extent of reinsurance ceded and the quality of security used.
- Catastrophe risk, assessed using net retained premium.

The solvency margin has to be at least 100% of the MCR. However, for an added buffer, the ratio of capital available to MCR should always be at least 150%.

Insurance (Long Term Insurance Business Solvency) Rules 2007

These rules have lesser application to PCCs, as cells are mostly set up for general insurance business.

Protected Cell Companies Act 1999

The Act provides for the creation and management of PCCs, making Mauritius one of the few African countries with specific legislation for PCCs. The force of law brings about clarity and certainty as regards to the segregation of assets and liabilities of protected cells. The Act explains the business activities that PCCs can be used for, which include insurance business. Parts II and III carry comprehensive provisions relating to the incorporation of a PCC, creation of individual cells, and ring-fencing of cellular and non-cellular assets, capital and liabilities. There are also provisions relating to financially troubled cells or PCCs, i.e. administration, receivership and liquidation.

Fundamentally, s. 4 (2) of the Act underscores that notwithstanding the ability to create legally segregated cells, the PCC together with the cells constitute a single legal persona. In s. 7 (2) the Act proscribes the creation of any cell without approval from the FSC, and each such cell cannot undertake business activities different from what the PCC is licensed to do.

Captive Insurance Act 2015

This modern act established the framework for the licensing, regulation and supervision of captive insurance business. Before it, the Insurance Act 2005 applied to captive insurance arrangements, but without specificities. Therefore the enactment signified a seminal step in the development of Mauritius into a reputable captive jurisdiction.

Each captive has to be licensed in terms of the Act by the FSC. For good order, every captive is required to have an agent who files the application and interfaces with the FSC on all matters relating to the captive, including the captive's reporting requirements.

A captive insurer should maintain a registered address in Mauritius and have a board of at least three directors, one of whom must be a resident in Mauritius. The resident directorship can be fulfilled by the captive's agent. Board meetings have to be conducted in Mauritius at the registered address, with the resident director in attendance.

Documents/information required in applying for creation of a captive are: business plan, cover specifics (type of policy, limits and reinsurance), liquidity management, projected financials and investment strategies, suitability of agent, insured's loss mitigation measures and KYC information.

Annual filings of the captive consist of audited financials, solvency report and management report on underwriting, reinsurance and investment matters. Newly formed captives enjoy a tax holiday until 16 December 2025.

Captive Insurance (Pure Captive Insurance Business) Rules 2016

These rules only provide for pure captives. The FSC circulated draft rules that will provide for the full ambit of captives, including third party captives.

A pure captive cannot write long-term insurances. It is expected to have a minimum unimpaired paid-up capital of MUR3m.

The MCR comprises of asset capital and underwriting capital. The asset capital aggregates the capital charges applied to the assets chosen by the captive. The margins range from 0% (for cash) to 100% for intangible assets. Underwriting capital is calculated as 10% of the higher of net written/earned premium and net outstanding losses (incl. IBNR). As a guide, allowable reinsurance is that done with a reinsurer rated at least BBB (S&P) or B- (AM Best). Similarly, the captive must appoint (subject to FSC approval) an auditor and an actuary, whose independence, qualifications, resources and experience are underlined in the rules.

The prescriptions in the Captive Insurance Act 2015 are designed to create a robust insurance vehicle not malleable to abuse by any stakeholder.

Insurance (Risk Management) Rules 2016

The enabling primary legislation is the Insurance Act 2005. The rules apply to protected cell companies. The rules require licensees to set up and maintain proper risk management structures, including a Risk Management Framework (RMF) and annual reporting requirements. The RMF should enable the company to develop and implement strategies, policies, procedures and controls to manage the full breadth of risks expected to be faced by players in the industry. The rules enumerate, in the schedule, 10 types of risks to be managed. These are business continuity, capital, credit, group affiliation, insurance, investment, liquidity, operational, outsourcing and reinsurance. Another key requirement is for licensees to appoint a risk officer, to be approved by the FSC Mauritius, with a direct reporting line to the company's board, thus raising the risk management function to a strategic level.

The rules do not apply to captives created under the Captive Insurance Act 2015. Instead, s.10(1)(b) of the act requires captives to establish adequate internal controls and adopt strategies, policies, processes and procedures in accordance with principles of sound corporate governance and risk management.

Financial services (Consolidated Licensing and Fees) Rules 2008 as read with Amendment Rules 2017

These rules apply to protected cell companies and provide for the different licenses available and the corresponding processing and periodic fees. The fees for protected cell companies engaging in insurance/reinsurance as per the table below. Further, insurance managers, which can act as captive insurance agents, incur a processing fee of $1,000 and a fixed annual fee of $1,500

Swan Re is a subsidiary of Swan General Ltd, Mauritius' largest insurance group. With a balance sheet worth over US$1.3bn, the group provides top level security and peace of mind to its customers. Swan Re is a leading protected cell company in the region.

With a composite professional reinsurance license, Swan Re is able to provide a comprehensive bouquet of cell captive products. The company deploys its qualified and experienced human capital to provide bespoke risk financing solutions. The A-Z spectrum of our activities is such that we are truly a one-stop shop. We facilitate feasibility studies, structure the primary insurance product and outwards reinsurance and ensure an arm's length pricing structure. We subsequently create the cell through the FSC, and administer the cell in terms of its capitalisation, revenue, claims and other expenses, as well as investments. Swan Re also fulfils the solvency monitoring, actuarial, auditing and reporting requirements for the cells. All this allows our clients to comfortably watch over the improvement of their economic capital through the captive vehicle.

More details on our website: https://bit.ly/2zDQWfd.

LICENCE (CODE)	PROCESSING FEE		FIXED ANNUAL FEE		VARIABLE ANNUAL FEE (PAYABLE QUARTERLY)
	1ST CELL	ADDITIONAL CELL	1ST CELL	ADDITIONAL CELL	
Long Term Insurance Business (INS-1.1Av)	$2,500	$750	$3,000	$600	0.35% x Gross Premium
General Insurance Business (INS-1.2Av)	$2,500	$750	$3,000	$600	0.35% x Gross Premium
External Insurance Business (INS-1.3Av)	$1,000	$300	$1,500	$300	-
Professional reinsurer (INS-1.4Av)	$1,000	$300	$1,500	$300	-