

Board of Investment
Mauritius

Invest Hotel Scheme

Relating to Hotel in Operation

Legal Framework

The Investment Promotion (Invest Hotel Scheme) Regulations 2015 makes provisions for the issue of a certificate under the Invest Hotel Scheme to existing hotels in operation. The regulation came into effect on 10 December 2015.

About the Scheme

The Invest Hotel Scheme (IHS) allows hotel owners to finance the refurbishment, reconstruction, alteration, conversion or upgrading of existing hotels in operation by allowing them to sell villas, suites or rooms that form part of the existing hotel to individual buyers.

In brief, the IHS provides for:

- (i) for the refurbishment, reconstruction, alteration, conversion or upgrading of an existing hotel in operation situated on freehold or leasehold land of more than 1 hectare where units, villas or suites forming part of the hotel can be sold;
- (ii) sale of a maximum of 60 percent of the units;
- (iii) the sale or transfer of units under the provisions of a *règlement de copropriété* but not under the provisions of a *société d'attribution*;
- (iv) the IHS company to -
 - (i) enter into a lease agreement with every unit owner whereby the IHS company will have to manage, operate and market the unit and take reservations in relation the unit; and
 - (ii) operate the front desk and provide all hotel services;
- (v) the owner of a unit to occupy the unit for a maximum of 45 days in any period of 12 months.

Stages to be followed prior to the issue of an IHS Certificate for a hotel in operation

An existing hotel can avail from the benefits under the Invest Hotel Scheme provided it is issued with an IHS Certificate by the Board of Investment. The following process is involved:

Stage 1: Submission of an application for an IHS Certificate to BOI, accompanied by, inter alia:

- (a) a business plan with full and detailed account of the particulars of the hotel and purpose for which the units are being proposed to be sold or transferred ; or

- (b) a deleveraging plan with full and detailed account of the particulars of the hotel and the purpose for which the units are proposed to be sold or transferred.

Stage 2: Recommendation of application by IHS Technical Committee

Stage 3: Approval of project by the Board of BOI and issue of IHS Certificate

Application for IHS certificate to BOI

1. An application for an IHS Certificate must be made to the Managing Director of the Board of Investment.
2. The duly completed and signed application form must be submitted with the following mandatory documents:
 - a. **Certificate of Incorporation of the company**
 - b. **A business plan or deleveraging plan with full detailed account of the particulars of the hotel and the purpose for which the units are proposed to be sold or transferred**
 - c. **Site location plan of subject property**
 - d. **Document relating to ownership of land (copy of lease agreement or title deed)**

Issue of IHS Certificate

1. An IHS certificate is issued where the project is recommended by the IHS Technical Committee and is approved by the Board of BOI.
2. The IHS certificate is issued subject to the following terms and conditions:
 - a. The IHS Company shall invest the proceeds of the sale of any unit in the hotel in such manner and within such timeframe as the approved by the Board;
 - b. The IHS Company shall not sell more than 60 per cent of the units forming part of the hotel;
 - c. The IHS Company shall not sell any unit under the Scheme unless the person acquiring the unit has obtained the formal authorisation from the Board of Investment;
 - d. The IHS Company shall at all times be responsible for the execution, promotion, development and the proper implementation of the scheme in accordance with the approval granted by the Board of Investment;

- e. The IHS Company shall provide the Board of Investment within one month at the end of every quarter a report on implementation of the project.

Formation of Syndicat des Copropriétaires, provision of bank guarantees

Règlement de Copropriété & Cahier des Charges

1. In order for the project to be carried out under the Invest-Hotel Scheme, the promoter may make use of the provisions of Article 664 – 95 Mauritian Civil Code which requires the creation of a **Syndicat des Copropriétaires** (an association).
2. The sale of units or other parts of the hotel is thus made with a “règlement de copropriété” that permits the owner of a unit/property to acquire the full freehold ownership of his unit or property, hence dividing occupation of the property.
3. The hotel buildings are divided into private and common units. The full freehold ownership of the private units is passed to the respective owners whilst the common units (e.g. entrance lobby, garden, roof) are collectively owned in “copropriété” proportionally relating to the size, situation and nature of private space held by each owner.
4. The definition and management of units are set out in the “règlement de copropriété”. This document sets the proportionate shares in the control and service charges of the common parts. It stipulates the rights and obligations of copropriétaires (co-owners) and it lays down the communal areas of the building as well as the private areas, along with the uses that they can be put to.

Syndicat des Copropriétaires

1. The Syndicat des Copropriétaires holding legal personality in pursuance of Article 664-95 of Mauritian Civil Code, shall ensure that the specifications and servitudes mentioned in the “règlement de copropriété” are implemented, duly and properly carried out and adhered to.
2. The unit owners of the individual units being part of the development will be, ex officio, grouped as members in the Syndicat des Copropriétaires.
3. Any purchaser of a unit or other parts of the hotel at a later stage will automatically become a member of the Syndicat des Copropriétaires and will, by virtue of deed of sale, be obliged to adhere to the “règlement de copropriété”.
4. The Syndicat des Copropriétaires shall exist for an unlimited period of time.
5. The Syndicat des Copropriétaires shall have a seal bearing its particulars and title.
6. The Syndicat des Copropriétaires shall have a registered office.

The Syndic

1. To enable the Syndicat des Copropriétaires to start off and running, a Syndic shall be appointed. This first appointment is subject to ratification by the first General Assembly.
2. The Syndic is the Official Agent of Syndicat des Copropriétaires. The Syndic is generally entrusted with all the powers which have been bestowed upon him by under the "règlement de copropriété".
3. The Syndic is appointed by the General Assembly who determines the remuneration. The Syndic may be chosen from amongst or outside the owners; his term of office may not exceed three years, but is renewable for the same period of time in accordance with the provisions of Article 664 – 55 MCC.
4. The Syndic must ensure that all communal areas are maintained, that their administration is operating smoothly and he must represent the Syndicat des Copropriétaires in legal proceedings and generally in all legal matters and deeds.

Transfer of land rights to Syndicat des Copropriétaires

1. On creation of the co-owned property, the hotel development area must be transferred to the Syndicat des Copropriétaires. The Syndicat des Copropriétaires is created with the sale of the first unit or a part of the hotel.
2. Where land is leased from the Ministry of Housing and Lands, an application for transfer of lease to the Syndicat des Copropriétaires must be submitted to the Ministry of Housing and lands.

Sale of units forming part of the hotel

A. Eligibility for acquisition of a unit

The following persons may acquire a unit or any other part of the hotel property from an IHS Company:

- (a) a non-citizen of Mauritius
- (b) a citizen of Mauritius
- (c) a company incorporated, or registered as a foreign company under the Companies Act 2001
- (d) a société, where its deed of formation is deposited with the Registrar of Companies
- (e) a partnership under the Limited Partnerships Act; or
- (f) a trust, where the trusteeship services are provided by a qualified trustee licensed by the Financial Services Commission

B. Documents to be submitted prior to sale of a unit or other parts of the hotel

The IHS Company must submit to BOI after the issue of the IHS Certificate and prior to the sale of any immovable property under the IHS, final specimen copies of the following documents:

- a. **A specimen copy of the deed of sale for the transfer of a unit** – a draft copy of the deed of sale including the "règlement de copropriété".
- b. **A specimen copy of the lease back agreement** - an agreement by which a property acquired by an investor is leased back to the IHS Company (seller) where the unit owner or any person on his behalf may use that unit for a total of not more than 45 days in any period of 12 months.

Please note that no application for acquisition of a unit or any other part of the hotel shall be considered by the Board of Investment if the above documents have not been duly submitted to the BOI.

C. Application to acquire units or part of hotel under IHS

1. A non-citizen, citizen, company, société or trust wishing to acquire property under the scheme shall make an application to the Board of Investment.
2. Every application for the acquisition of property under the IHS together with such information, particulars and documents as specified in this guideline and a non-refundable processing fee of 10,000 rupees must be made through the IHS Company and addressed to the Managing Director of the Board of Investment.
3. The non-refundable processing fee of 10,000 rupees must be paid through cheque by the IHS Company and drawn to the order of the Board of Investment. (The IHS company may pay in advance a sum for a batch of applications)

An application shall be considered as ready for processing by the Board of Investment at the date by which all the information, particulars and documents have been duly submitted and considered as complete by BOI.

D. Screening of application

1. The IHS Company shall carry out due diligence exercise through a reputable bank for all applications received prior to submission of same to the Board of Investment. The IHS Company's bank shall carry a Know Your Client (KYC) exercise and open a bank account for the client called the "Escrow Account".
2. The IHS Company shall forward the completed application form duly filled and signed to the Managing Director of BOI for approval.
3. **In the case of a non-citizen, the following documents must be submitted to the BOI:**
 - a) Duly authenticated copy of first 5 pages of passport
 - b) Duly authenticated birth certificate
 - c) Certificate of morality dated not more than 3 months

d) Letter from the bank certifying the KYC exercise for the client.

4. In the case of a Corporate Applicant (Company):

- a) Certificate of registration evidencing the company is registered as a foreign company under the Companies Act 2001 or Certificate of incorporation under the Companies Act 2001, as may be the case;
- b) The shareholding pattern/ultimate beneficiary

5. In case of trust where the trusteeship services are provided by a qualified trustee

- a) Evidence from the Financial Services Commission that the trustee is a qualified trustee under the Trust Act 2001

6. In case of a societe where its deed of formation is deposited with the Registrar of Companies

- a) Evidence of the societe having a file number with the Registrar of Companies and deed of formation deposited with the Registrar of Companies

7. In the case of a Citizen of Mauritius:

The applicant is required to submit along with the application form to acquire property in Mauritius, his/her National Identity card and letter from the bank certifying opening of an escrow account.

E. Compulsory lease back agreements

- 1. After purchasing a unit, the owner is required to enter into an agreement by which the property is leased back to the IHS Company.
- 2. The unit leased to the IHS Company may be used and occupied by the unit owner or any person on his behalf for a total of not more than 45 days in any period of 12 months.

F. Resale or transfer of a unit

- 1. The owner of a property is allowed to resell his/her property with no minimum price requirement.
- 2. Where the owner of a property intends to sell or transfer the property, he/she is required within 30 days prior to the sale, give notice in writing thereof to the Managing Director. A copy of the notice shall be given to the IHS Company and the Syndic.
- 3. The sale or transfer of the property can only be made to:
 - a. a non-citizen of Mauritius
 - b. a citizen of Mauritius
 - c. a company registered as a foreign company under the Companies Act 2001
 - d. a company incorporated under the Companies Act 2001
 - e. a société, where its deed of formation is deposited with the Registrar of Companies

- f. a trust, where the trusteeship services are provided by a qualified trustee licenced by the Financial Services Commission

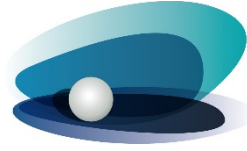
The person acquiring the property is required to submit an application as per these guidelines. The application must be accompanied by an attestation of opening a bank account through which money for payment shall be transferred and a non-refundable fee of 10, 000 rupees paid by mode of a cheque drawn.

Duties and taxes on acquisition of unit by purchaser from IHS Company

The land transfer tax and registration duty are as follows:

Duty	Rates
Land Transfer tax (payable by the IHS Company on the value of the property)	5% of the value of the property
Registration duty (payable by the purchaser)	5% of the value of the property (other than stand alone villa) USD 70, 000 for standalove villa

The deed witnessing the transfer of leasehold rights by an IHS Company to a syndicat de co-propriétaires is exempt from payment of registration duty and land transfer tax.



Board of Investment
Mauritius

**THE INVEST-HOTEL SCHEME
RELATING TO HOTEL IN OPERATION**

APPLICATION FOR IHS CERTIFICATE

made under the Investment Promotion Act 2000

(Section 18) and Investment Promotion (Invest Hotel Scheme) Regulations 2015

This application form must be accompanied by the relevant documents and particulars as per the guidelines issued by the Board of Investment

Please hand-deliver the completed application form to:

**The Managing Director
Board of Investment
10th Floor, One Cathedral Square Building
Port Louis**

SECTION 1 : GENERAL

1.1 Business Details

Company Name _____
Company Incorporation number _____
Business Registration number _____
Name of Director _____
Address _____
Telephone _____ Facsimile _____
Email Address _____

1.2 Shareholder Detail(s)*

Investor 1

Name or Business name _____
Telephone _____ Facsimile _____
Email Address _____
Primary Nationality _____

Investor 2

Name or Business name _____
Telephone _____ Facsimile _____
Email Address _____
Primary Nationality _____

Investor 3

Name or Business name _____
Telephone _____ Facsimile _____
Email address _____
Primary Nationality _____

*If more than one, provide same as annex to application form
Full description of the promoters' background should be provided in the business plan.

SECTION 3 INVEST-HOTEL PROJECT

3.1 Project description

Location _____

Total number of units _____

Hotel rooms _____

Villas _____

Suites _____

Other types of units _____

Other components of the hotel: _____

3.2 Sale of units & other parts of a hotel

Number of units planned for sale _____ Number _____

3.3 Hotel management company & Tourist Enterprise Licence

Name of Management Company: _____

Date Tourism Enterprise Licence issued by the Tourism Authority _____

SECTION 4 LAND USE PLANNING

4.1 Land development

Please provide plot size for each component

Land Area (Ha)

Freehold

Leasehold

4.2 State Land (if development on state land)

Do you hold:

Lease Agreement

Date of lease agreement: ____/____/____

Letter of Intent

Date of letter of intent: ____/____/____

Letter of reservation

Date of letter of reservation: ____/____/____

4.5 Statutory Declaration

It is hereby declared by the undersigned applicant(s) that:

- (a) all the particulars furnished in this application and in the documents and particulars attached hereto, are true and correct and that I/We have not suppressed any material fact,
- (b) any estimates given in this application have been made in good faith and with all due care, and
- (c) no director of the company has ever been convicted in a Court of Law for a criminal offence, penalised, sanctioned or is currently or has ever been under investigation for professional negligence or malpractice by any regulatory authority in any country.

I/We further undertake to abide the provisions of the Investment Promotion Act 2000 and the regulations made thereunder and all relevant and applicable laws of the Republic of Mauritius.

Name of Director 1:.....

Position:.....

Date:..... Signature:.....

invest-Hotel Scheme

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