SPECIAL REPORT ON MAURITIUS: THE GATEWAY TO INVESTING IN AFRICA

Investment regimes and structures in Mauritius

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Mauritius is a small island in the Indian Ocean, but it has been playing a big role as an investment platform for the region over the past 20 years.

Mauritius started as an offshore sector in the early 1990s when India opened its economy to the world. With the favourable India-Mauritius treaty, Mauritius became the favourite jurisdiction for investments into India. Today, Mauritius handles approximately 40 percent of the foreign direct investment (FDI) being channelled into India. The types of vehicle being used are typically companies structured as investment holding vehicles, collective investment schemes or private equity funds.

Since the global crisis in 2008, investors have been looking for new opportunities to maximise returns and, as a result, we saw a rise in investment in Africa. Mauritius, being part of Africa, became the ideal platform for investments into Africa. This time we are not dealing with one country but with 55 countries, each being distinct and having their own laws. The factors contributing to investors choosing Mauritius were: a tried and tested jurisdiction for international structures, membership to COMESA and SADC, Investment Promotion and Protection

Agreement (IPPA) with a number of African countries and favourable Double Taxation Avoidance Agreements (DTAs) with 19 African countries.[1]

With the rise of Africa, Mauritius has seen new types of investors and investments. More than 50 percent of all global business entities set up in 2012 are investing in Africa. The entities used are typically investment holding companies or private equity funds structured as companies or limited partnerships.

Investment regime

Mauritius offers a wide range of entities for efficient structuring. The vehicle could be a company, limited partnership, trust or foundation.

These entities could then apply for the relevant licence such as:

- Global Business Licence Category 1
- Global Business Licence Category 2
- Collective Investment Schemes
- Closed-end fund
- Investment manager/advisor

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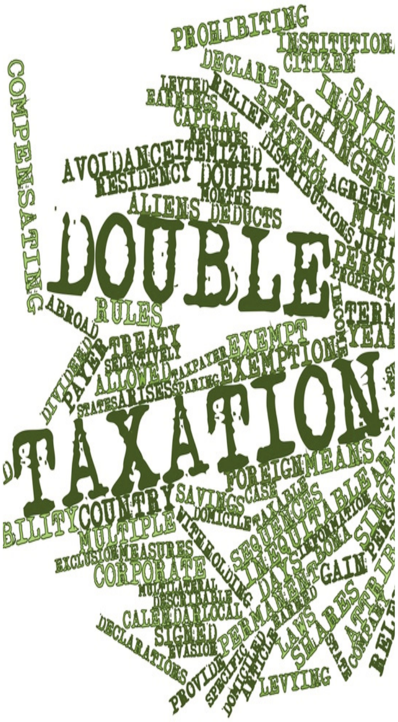
[1] See the table on page 47 for more details.



> Unlike other jurisdictions, Mauritius has only recently adopted a Limited Partnership Act.

MAURITIUS CATEGORY 1 Global Business Companies – GBC1

The GBC1 is a tax resident company in Mauritius and has full access to the expansive network of favourable tax treaties Mauritius has concluded with other countries. In considering an application for a Category 1 Licence, the Financial Services Commission (FSC) will have regard as to whether the conduct of the business will be managed and controlled in Mauritius.

Important features

- Effective rate of income tax is 3 percent;
- No capital gains tax;
- Accounts need to be audited/ signed and filed with the FSC;
- No minimum capital requirement except for financial services activities;
- Company secretary required;
- Can be set up in 10 working days;
- Requires two Mauritian resident directors;
- Can employ local staffs and expatriates;
- Can be converted to a GBC2.

Activities of a GBC1

A GBC1 can undertake any activity provided it is not unlawful, contrary to public interest or may cause prejudice to the good repute of Mauritius as a financial services centre. A GBC1 is allowed to conduct business with residents, subject to certain conditions.

Public companies, companies engaged in banking, insurance, fund related activities or in the provision of nominee or trusteeship services can only be set up as a GBC1. A GBC1 may also be structured as a Protected Cell Company or a Collective Investment Scheme (CIS).

Taxation

The GBC1 is taxed at the rate of 15 percent. However, it benefits from foreign tax credits for taxes suffered at source, which are available for offset against tax liabilities in Mauritius. If taxes suffered at source cannot be evidenced, a unilateral tax relief of 80 percent of the Mauritius tax charge is available under the Income Tax (Foreign Tax Credit) Regulations 1996, thus resulting in a maximum net effective tax rate of 3 percent on its foreign sourced income.

MAURITIUS CATEGORY 2 Global Business Companies – GBC2

A GBC2 is the ideal vehicle for trading purposes or for holding and managing private assets. The attractive feature of GBC2 is that it includes a great degree of flexibility and confidentiality.

Important features

- Tax exempt vehicle;
- No access to double taxation agreements;
- Does not qualify for a TRC;
- Maximum confidentiality;
- Financial summary to be filed with the FSC;
- No minimum capital requirement;
- May be transferred to another jurisdiction;
- Can be converted to a GBC1;
- No company secretary required;
- Can be set up in 48 hours;
- Corporate directors are permitted.

Activities of a GBC2

A GBC2 company can carry out a wide variety of activities just like a GBC1, except those activities that involve the provision of financial services/acting as a financial intermediary or the provision of nominee or trusteeship services.

Private equity funds structured as companies

Unlike other jurisdictions, Mauritius has only recently adopted a Limited Partnership Act. Consequently, most private equity funds are currently structured as companies incorporated with limited life under the Companies Act 2001 and licensed as companies holding a Category I Global Business Licence. In addition to the Global Business Licence, the company will need to apply to the FSC for an authorisation to operate as a closed-end fund before commencing business. Only after the FSC has reviewed and approved an application can a company be incorporated.

A closed-end fund is defined as being an arrangement or scheme, other than a collective investment scheme, constituted in such legal form approved by the Financial Services Commission (FSC). The objective must be to invest funds either collected from subscribers during an offering made to the public, or from sophisticated investors and to invest those funds in securities, financial or non financial assets, or real estate property, as approved by the FSC. A CIS as defined under the Act has the obligation, on request of the holder of the securities, to redeem them at their net assets value, less commission or fees. However, a closed-end fund does not have this obligation and is therefore more suited to private equity/venture capital type funds. A closed-end fund is subject to different provisions in the law and FSC regulations depending on whether the shares of the fund are offered to the public (closed-end fund – reporting issuer) or are offered as private placements or are offered to sophisticated investors only (closed-end fund – non reporting issuer).

The special purpose vehicle (SPV)

There is no requirement for the fund to be in Mauritius. In cases where the fund is located in jurisdictions other than Mauritius, an SPV can be set up instead. The SPV is licensed by the FSC in Mauritius either as a GBC1 or a GBC2 under the Financial Services Act 2007 and is incorporated under the Companies Act 2001.

Being licensed as a GBC1, it is considered as a tax resident company in Mauritius and thus has access to the benefits of DTAs that Mauritius has concluded with various countries, essential for mitigating any tax incidence. The GBC1 can also benefit from the advantages of the IPPAs Mauritius has signed. On the other hand, the GBC2, being a tax exempt company in Mauritius, can only benefit from the advantages of the IPPAs in force.

Private equity funds structured as limited partnerships

Limited partnerships are commonly used in private equity fund structures because of their flexibility. In a company, all the investors in a particular share class share the same rights whereas in a limited partnership, the limited partnership agreement can provide that one or more of the limited partners (LPs) have greater rights than the other LPs. In the investment period or early stages of a private equity fund, the fund may be making losses and may require additional funds to be injected by the LPs. A limited partnership fund will facilitate this process, pursuant to the partnership agreement, and gives the limited partnership the flexibility to offset the tax losses of the fund against its profits. The private equity fund set up as a limited partnership could include SPVs between the fund and the target companies in order to take advantage of being a tax transparent structure while also enjoying the tax treaty benefits that Mauritius has with a number of countries.

In a nutshell, the limited partnership structure, in addition to providing fund managers with the flexibility of being able to arrange different terms and conditions with different LPs, also provides greater opportunities for establishing a tax efficient structure.

One of the most interesting aspects of a limited partnership is that it can be tailor-made. Endless combinations of various features can be mixed to provide the most tax-efficient and legally relevant structure for its partners.

Some of the variants are outlined below.

Limited partnership with a separate legal personality

A limited partnership can elect to have a separate legal personality. This means that the limited partnership has the full capacity in terms of rights, powers and privileges to enter into any activity and is capable of suing and being sued in its own right. Any partnership property is then held by the limited partnership itself and not by the general partners (GPs).

Limited partnership with no separate legal personality

Where no election is made, a limited partnership is deemed to have no separate legal personality. This means that the limited partnership is not distinct and separate from its owners. Hence, no court judgement can be enforced against the limited partnership. Any partnership property is then held by the GP.

Limited partnership with an opaque tax structure

It is possible for a limited partnership to elect to be liable to income tax at 15 percent in Mauritius and as such, the limited partnership will be 'opaque' for tax purposes. The limited partnership will have a separate capacity from its owners from a tax point of view and will be taxed in Mauritius instead of the partners. The limited partnership will also benefit from foreign tax credits. Where the limited partnership holds a GBC1 licence, it will benefit from deemed foreign tax credit of 80 percent, thus being subject to a maximum effective income tax rate of 3 percent only. Capital gains are tax exempted in

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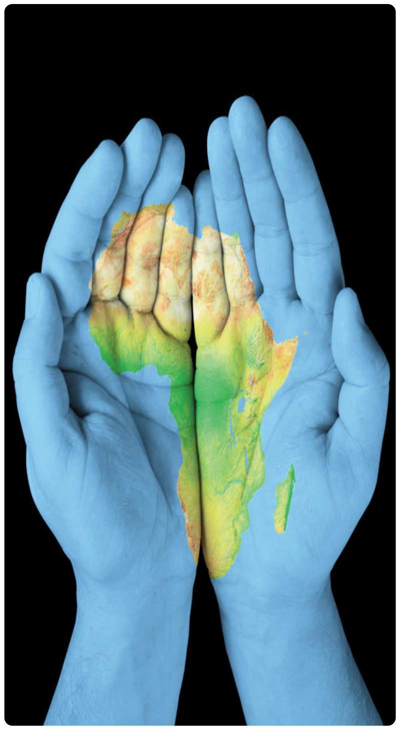


Mauritius. This is an important tax-planning tool since a simple election can transfer the tax liability from the partners to the limited partnership especially when different tax jurisdictions are involved.

Limited partnership with a transparent tax structure

When no election is made, a limited partnership is deemed to be a transparent entity for tax purposes (see Figure 1). The limited partnership shall not be liable to income tax in Mauritius.

Table 1 compares a Global Business Company to a limited partnership.

Figure 1: Limited partnership with a transparent tax structure

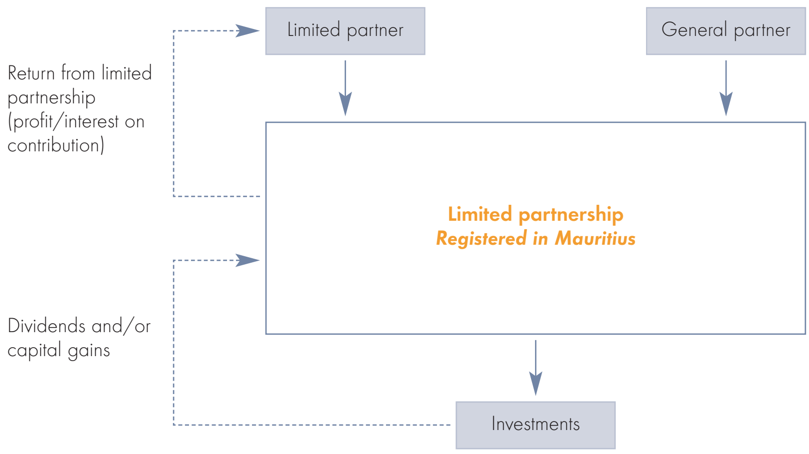


Table 1: Comparison of a Global Business Company to that of a limited partnership

	Global Business Company		Limited partnership	
	1	2	GBC1	Domestic
Registered office in Mauritius	Yes	Yes	Yes	Yes
Legal personality	Yes	Yes	Optional	
Access to double tax treaties	Yes	No	Yes	Yes
Registered agent	N/A	Yes	Yes	
Company secretary	Yes	Optional	N/A	N/A
Annual meeting	Yes	Not required	N/A	
Obligation to prepare audited financial statements	Audited financial statements within six months of balance sheet date	Only a financial summary needs to be prepared within six months of balance sheet date	Audited financial statements within six months of balance sheet date	Audited financial statements within six months of balance sheet date (only financial summary required for small limited partnerships)
Tax status	Taxed at 15% with a maximum effective rate of 3%	Tax exempt	Not liable to income tax – unless opt to be taxed as a company in Mauritius – maximum effective tax rate 3%	
Filing of tax return	Within six months of balance sheet date	Tax exempt	If elect to be taxed, submission date within six months after balance sheet date. In any other case, not later than 31 March.	Not later than 31 March
Filing of annual return with the registrar	N/A	N/A	Yes – during the month allocated by the registrar	
Re-domiciliation	Allowed	Allowed	Allowed	Allowed

Investment manager/advisor

The client may wish to incorporate a CIS manager, (also known as the investment manager), in Mauritius in order to manage the CIS. A GBC1 can act as an investment manager for a fund by applying for a CIS Manager Licence with the FSC. This is not compulsory but can help to strengthen the tax residence of the CIS in Mauritius. The investment manager will have to demonstrate a proven track record in fund management to be granted a licence by the FSC.

The role of a management company in Mauritius

A management company (MC) is typically a trust company that is licensed by the FSC to set up and administer Global Business Companies. Any entity holding a Global Business Licence can only be administered by a licensed MC.

The FSC and the Registrar of Companies will only deal with the MC and not with the investors directly. Services provided by MC include;

- Corporate services
- Fund administration
- Trusts and foundation
- Accounting
- Tax

The MC is normally a one stop shop. The MC will liaise with all the other parties (such as banks, lawyers, regulators and auditors) on behalf of the client. It is very often the case that the MC will assist the client with the appropriate fund structure, tax advice and provide templates of constitutive documents.

Listing in Mauritius

In the last few years the Stock Exchange on Mauritius Ltd (SEM) has simplified its listing rules for Global Business Companies and funds. These rules enable a company to be listed just after its incorporation and in less than six weeks. The relaxed rules provide flexibility on the conditions for listing of Global Business Companies and funds as follows:

- Waiver of the listing condition to have a minimum of 200 shareholders;
- Waiver of the listing condition to have at least 25 percent of the company's shares in public hands;
- No track records required in terms of the three years audited accounts requirement
- Private placement memorandum or Offer Memorandum of the fund could be used for the application for listing instead of onerous Listing Particulars
- Shares of the company could be listed as a technical listing i.e. the shares would be listed but with NO trading on the exchange.

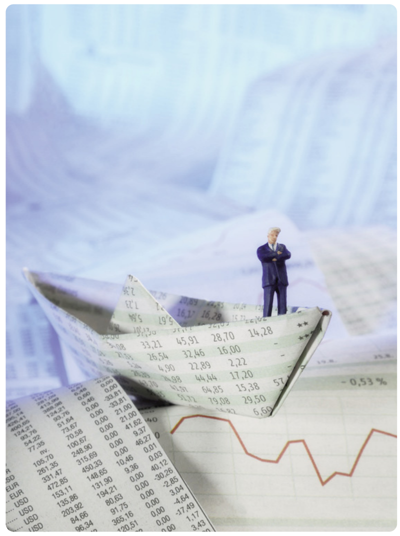
Some of the reasons why private equity funds have listed on the SEM:

- Private equity funds normally provide a better return than hedge funds, although at the expenses of locking in the capital for a number of years. With a listed private equity fund, investors can dispose of their investments at any time on the exchange.
- Provides access to some investors who can only invest in freely transferable securities e.g. pension funds.
- Providing an exit strategy for their investments if the SPV is listed.
- The SEM has a multi currency trading and settlement platform; thus private equity funds can be listed in USD, EUR, ZAR and GBP.
- Listing on the SEM is a way of demonstrating substance in Mauritius

The way forward

Mauritius wants to position itself as a jurisdiction of substance. New laws

New laws have been proposed to encourage investors to do more business within Mauritius such as having an office in Mauritius, employing local staff, listing or having assets/investments in Mauritius.



have been proposed to encourage investors to do more business within Mauritius such as having an office in Mauritius, employing local staff, listing or having assets/investments in Mauritius. This will provide an eco-system in the region where Mauritius becomes the natural place to do business when investing not only in Africa or Asia but worldwide.

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