

## Mauritius: an international financial centre of repute and substance erroneously described as a tax haven

Strategically located in the Indian Ocean, Mauritius is establishing itself as a gateway for investments in Africa. Better known as a treaty-based tax planning jurisdiction and as an international financial centre (“IFC”) of repute and substance, Mauritius is sometimes wrongly referred to as a “tax haven”.

### Mauritius: not a tax haven

Having no or nominal taxes have been recognised by organisations such as the Organisation for Economic Corporation and Development (“OECD”) as not sufficient by itself to characterise a jurisdiction as a “tax haven”. The OECD recognises that every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the appropriate tax rate. The distinguishing features of a “tax haven” are generally recognised to be secrecy and lack of transparency.

Mauritius, like a number of other countries, protects the confidentiality of certain types of information which are not in the public domain, namely in relation to global business entities. However, Mauritius does not promote secrecy as it is always possible for information to be obtained by following the due legal process in Mauritius. Furthermore, all the Double Taxation Avoidance Agreements (“DTAs”) that Mauritius has entered into provide for exchange of information between treaty partners upon request. It is to be noted that Mauritius has 39 treaties in force, 9 awaiting ratification, 1 treaty awaiting signature and 17 treaties being negotiated.

Currently, Mauritius has entered into Tax Information Exchange Agreements (“TIEA”) with five countries. Four additional TIEAs have been signed, but are not yet in force (one of them is the TIEA and an Inter-Governmental Agreement for the implementation of the Foreign Account Tax Compliance Act (“FATCA”) which Mauritius and the United States of America signed in December 2013). Three others are awaiting signature.

The combination of legal process for disclosure and exchange of information mechanisms in the DTAs and TIEAs provide a framework for the effective disclosure of information to any person legally entitled to it. Mauritian regulatory authorities, including the Mauritius Financial Intelligence Unit, have always and continue to actively cooperate with their counterparts in other jurisdictions for the sharing of information.

Mauritius is known for being a country where the rule of law prevails and the jurisdiction is often cited as a benchmark in the region. There is no lack of transparency in the operation of the legislative, legal or administrative provisions; laws are applied openly and consistently. There is no system of “secret rulings”, negotiated tax rates, or other practices that fail to apply the law openly and consistently.

It is worth noting that Mauritius has been evaluated by the OECD, in its 2013 report presented at the 6th meeting of the Global Forum on Transparency and Exchange of Information, as being a “largely compliant” jurisdiction with global tax laws similar to Singapore, the Netherlands and the UK. Mauritius is also on the “white list” of both the OECD and the Financial Action Task Force.

Mauritius has always emphasised that the requirement that global entities intending to do business in Mauritius should ensure that the businesses are centrally controlled and managed in Mauritius through the implementation of adequate substance requirements. The Mauritius Financial Services Commission, the regulator of non-banking financial services sector (“FSC”), has recently reinforced the concept of management and control by introducing additional substance requirements which will become effective on the 1<sup>st</sup> January 2015. The FSC has also issued special guidelines for professional directors, especially those sitting on multiple boards. In addition to the fiduciary duties expected from directors, resident directors must demonstrate that they have sufficient time to prepare for and attend board meetings and that they have a reasonable number of directorships. Reasonableness would be judged based on various factors, including but not limited to the number of board meetings held, categories of companies and staff supports available to the director.



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### **Mauritius: an international centre of repute and substance**

It needs to be appreciated that cross border investments present many challenges including, but not limited to, investment protection issues, fiscal uncertainty and other risks. IFCs play a legitimate and integral role in international finance and trade. Their inherent features allow financial planning and risk management and make possible some of the cross-border vehicles necessary for global trade.

The main reasons why a number of investors chose an IFC such as Mauritius as a jurisdiction from which to organize their investments into Africa are includes:

a) The legal system

Investors look for a jurisdiction which has a modern, sophisticated and dynamic legal framework. In addition, the hybrid nature of our legal system borrowing legal concepts from both Common and Civil law makes Mauritius an ideal jurisdiction both from an investor and investee point of view as we are well versed in both systems of law.

b) The regulatory framework

Investors look for a jurisdiction which has highest standards of regulation and which is committed to comply with international standards. Mauritius is an established IFC of substance and has an excellent track record. Mauritius has also entered into a number of Investment Promotion and Protection Agreements ("IPPAs"). IPPAs typically offer the following guarantees to investors from the contracting states:

- free repatriation of investment capital and returns;
- protection against, or compensation in the event of, expropriation;
- most favored nation rule with respect to the treatment of investment, compensation for losses in case of war or armed conflict or riot etc; and
- arrangements for settlement of disputes between investors and the contracting states.

c) Substance and depth of offering

Investors look for a jurisdiction that has the breadth and depth in respect of legal vehicles and professional services. Mauritius offers a choice of various types of vehicles such as companies, protected cell companies, sociétés, trusts, limited partnerships and foundations making Mauritius a unique jurisdiction for the structuring of cross border transactions, asset protection and estate/succession planning. Mauritius is also known as a platform for the setting up of most of the Africa focused funds. Investment funds can be either open ended or closed end fund. Further to the primary classification, the investment funds may further be categorised as exempt funds when targeting high net worth individuals or sophisticated investors or retail funds.

d) Stability and Reliability

Cross border investment are inherently risky and investors thus look for a jurisdiction with economic and political stability together with prevalence of the rule of law, and availability and access to an independent justice system. One of the key advantages of Mauritius is that although it is an independent and democratic state, it has retained the Privy Council of the United Kingdom as the ultimate Court of Appeal.

e) Geographical / Regional advantages

There may be advantages to be gained by an investor to organise its affairs in a country that enjoys geographical proximity to its key markets. For example, Mauritius is a member of the major African regional organizations which provide preferential access to markets in the Africa region such as the African Union, Southern African Development Community ("SADC"), the Common Market for Eastern and Southern Africa ("COMESA") and the Indian Ocean Rim – Association for Regional Cooperation ("IOR-ARC"). Its membership of these regional organisations, and being a signatory to all the major African conventions, can make Mauritius the best financial service centre for establishing any fund or other vehicle for investment into Africa, especially having regard to treatment of the investments.

f) Tax-planning

It is very common in the context of cross border investments for businesses to be subject to double taxation. In order to reduce or eliminate the unfair burden of double tax on the same income, investors chose to organise their affairs in a jurisdiction which has a bilateral DTA with the investee country. As mentioned above, Mauritius is currently one of the countries having the largest number of DTAs with African countries.

## **Conclusion**

Mauritius is an IFC which promotes substance over form and requires increased local presence with demonstrable impact on the local economy and employment, heightening corporate governance rules to clarify the responsibility allocation within corporate structures, and finally by calling for transparent and frank disclosures within a context of international supervisory efforts to combat abuses. As such, it plays, and will continue to play, an important role in the region by providing an efficient platform from which business could operate from within a framework of robust and dynamic legislation, good corporate governance, asset protection and risk management.

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