

Mauritius: Aspiring to become a 'mid-shore' jurisdiction

Introduction

In the aftermath of Economic Mission Statement which articulated the vision and ambition of the Prime Minister of Mauritius Sir Anerood Jugnauth for Mauritius, let us dwell on how the financial services sector can contribute to achieving a second economic miracle.

Establishment of the international financial center

Mauritius began on its global business journey (then termed offshore) with the amendments to the banking legislation in 1989 to allow the setting-up of offshore banks and quickly after with the establishment of the legal and regulatory framework for offshore business in 1992. At the time, it was thought that the thrust of the business would have been from South Africans HNWI and UHNWIs who would view Mauritius as an alternative jurisdiction to the Channel Islands for estate planning. However, we took a very different tangent. The establishment of our international financial center fortuitously coincided with the liberalization of the Indian economy and Mauritius became a preferred foreign investment route into India by virtue of the highly beneficial tax treaty between the two countries.

Much water has flown under the bridges since then. From humble beginnings, Mauritius is today home to more than 20,000 global business companies and 600 funds promoted by multinational corporations, blue chip companies, institutional investors and high net worth individuals engaged in business activities around the world.

Over the years, Mauritius established itself as a treaty based planning jurisdiction through its vast network of double taxation avoidance agreements.

Substance over form

In that sense, Mauritius has always sold itself as a jurisdiction of "economic substance" unlike other offshore centers which focus their offering on the incorporation of companies such as the British Virgin Islands which boasts 1 Million offshore companies on their register and our next door neighbor Seychelles, with 100,000 companies. However it remains that the bulk of the global business activities are still in respect of the provision of corporate set-up, secretarial and fund administration services to those legal structures that are established in Mauritius for undertaking international investments mostly because of the treaty benefits.

Challenges ahead

Whilst this model has contributed to the development of the financial center and created a lot of opportunities for our young professionals, there may be at least two objections to preserving the status quo:

1. The provision of set-up, secretarial and fund administration services is ultimately relatively mechanical with low-value addition;
2. The sustainability of a model which is primarily based on tax arbitrage in view of the changing global attitude towards tax avoidance.

In respect of the latter in particular, whilst the demarcation line between tax avoidance (lawful) and tax evasion (unlawful) used to be clear, the last years has seen the distinction becoming increasingly clouded. Laws known as General Anti-Avoidance Rule (GAAR) statutes which prohibit “tax aggressive” avoidance have been passed in several developed countries and judicial doctrines have accomplished similar purposes, through the “business purpose” and “economic substance” doctrines.

Other jurisdictions are looking at reviewing their double taxation treaty with Mauritius. The recent shockwaves that were created by the alleged proposal by India to review the clause in respect of capital gains tax in the India – Mauritius Double Taxation Agreement shows the dangers of a model that relies on factors on which we have no control. Furthermore, the OECD through the Base Erosion Profit Shifting (BEPS) report, are looking at ways to tackle multinationals who make use of offshore structures to transfer their profit base to low-tax jurisdictions.

Moving up the value chain

As the bedrock of our global business sector has for long been based on the opportunity for tax treaty based planning, these initiatives call for a re-engineering of our business model so that we may move up the value chain in the provision of Financial Services. I believe that the future of the global business industry will require a deepening and diversification of the range of activities and services that may be provided from Mauritius. What could these be?

We all agree that it will be impossible for a country like Mauritius to compete with international financial centers like of New York City, London, or Tokyo. This is because these centers are located in areas with an agglomeration of participants in financial markets and venues for these activities to take place. This is not the case of Mauritius. However, the aspiration to be a strong, leading regional finance center able to provide an array of professional services to an international client base

is legitimate and achievable. This is a jurisdiction which is neither fully “offshore” nor fully “onshore” but a “half-way house” between onshore and offshore which is sometimes defined as a “mid-shore” jurisdiction. Singapore and Hong Kong are leading this new trend. In order to move up the value chain, Mauritius should expand and scale up the type of financial services that may be provided from the jurisdiction in the following areas:

Banking services

Banking is the cornerstone of any financial center and it is important that banks are able to provide a full range of innovative banking services banking services including corporate, institutional banking and personal banking to international clients. In particular, banking services should not be limited to basic current/deposit account services but should extend for example to the provision to loan facilities to acquire international assets, bridging facilities where appropriate, multi-currency credit card acquiring services and treasury services.

Private Wealth Services

As the number of High Net Worth Individuals (HNWIs) continues to increase especially in the BRIC countries but also on the African continent, there is an increasing demand for sophisticated financial solutions and expertise throughout the world. In particular, if Mauritius wants to become a jurisdiction of choice for private clients, it is essential that it is able to provide the full array of wealth management services, trusts and estate and succession planning, and more recently foundations. Whilst the legal framework is conducive to the setting-up of trusts, foundations and private trust companies, there is a marked deficiency in respect of asset management services.

Funds

The global funds sub sector has been predominantly been Private Equity focused piggybacking on the use of Mauritius as a treaty based tax planning jurisdiction. However, Venture Capital, Real Estate, Infrastructure and Hedge funds are still untapped.

Additionally, Mauritius has not really put itself forward as a jurisdiction for the administration of non-Mauritius domiciled funds which has been for example the hallmark of Luxembourg which is regarded as the second largest fund administration centre in the world. There is no reason why Mauritius could not use the experience that it has acquired over the years in the context of Mauritius domiciled funds to funds domiciled abroad.

Capital Markets

Despite the introduction of specific rules for the listing of Global Business Companies and Global Funds which relaxes some of the conditions required for a “normal” listing, the number of listings on SEM has been low. Nonetheless, the SEM is a full-fledged member of the World Federation of Exchanges (WFE) and has over the years become one of Africa’s leading Exchanges offering operational excellence and a strong financial architecture.

It is currently ranked 5th Exchange by market capitalization in sub-Saharan Africa and is the only Exchange in Africa to provide a multi-currency listing, trading and settlement platform in USD, EUR, GBP, ZAR and MUR. It is one of the two Exchanges in Africa which has obtained the status of designated Stock Exchange by the United Kingdom’s Her Majesty’s Revenue and Customs (“HMRC”) and Cayman Islands Monetary Authority (“CIMA”). Mauritius thus provides an excellent platform for Africa focused corporate entities who want to list on a reputed stock exchange.

Insurance

Mauritius could be used for a variety of structured insurance products particularly insurance transformers and vehicles for securitization of insurance risk. For example, Mauritius is one of the few selected jurisdictions to have a protected cell company legislation which is an ideal vehicle for captive insurance business;

Islamic Finance

Although the banking laws were amended in 2008 to allow for Islamic Banking services, Mauritius has underachieved in this segment. Opportunities exist in respect of Islamic Asset Management and Fund Domiciliation, SPVs and Sukuk Structures & Islamic Private Wealth Management through the use of Waqfs, Trusts and Foundations. This is a \$1 trillion industry and Mauritius has all the attributes to tap into this segment.

Charity & Philanthropy

Private giving from all countries around the world is on the rise and this has created a new space for a whole range of professional services around charity and philanthropy. Mauritius already offers a number of legal vehicles to accommodate charitable and non-profit vehicles for philanthropic purposes namely the trust, the foundation and the company limited by guarantee. Combined with the other advantages that Mauritius offers as a jurisdiction, it can become a jurisdiction of choice for the structuring and professional management of charitable and philanthropy activities aimed at Africa.

Conclusion

In conclusion, Mauritius has already built a fantastic platform through an ingenious combination of fiscal and non-fiscal benefits, a diverse product-base and world class regulatory framework. Mauritius has also over the years forged a reputation as a safe, well regulated and business-friendly jurisdiction of substance for international investors. The time has come for taking this platform to new heights so that the bedrock of the jurisdiction becomes one based on the quality of its offering than on more volatile considerations such as taxation or confidentiality. The new trademark for the international financial center could be Mauritius: At your service. This will create more opportunities for our young professionals aspiring to a challenging and intellectually fulfilling career.



About the author

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