

Regulatory Environment of the Mauritius

Mauritius – A Trusted Jurisdiction for Private Wealth Management

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INTRODUCTION

Strategically located in the Indian Ocean perched on the axis of investments from Europe, Africa, the Middle East and Asia, Mauritius has throughout the last two decades forged a strong reputation as a premier international financial centre. The combination of fiscal and non-fiscal advantages together with the diverse product-base have been the key ingredients of the Mauritius success story. Although Mauritius is better known as a gateway for the structuring of investments into India and increasingly Africa, it is well on course to become a leading jurisdiction for private client services in the region.

PRIVATE WEALTH MANAGEMENT

Private Wealth Management (PWM) is the term generally used to describe highly customized and sophisticated investment management and financial planning services delivered to high net worth investors (HNWI). This includes advice on the use of trusts and other estate planning vehicles, business succession planning, and investment amongst others. As the number of HNWI 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. At the same time there is a lot of instability and uncertainty in the financial markets with countries like Spain being on the pinnacle of European woes. The world is also going through a lot of changes be political, economic and regulatory. This is

creating a paradigm shift in the way that HNWI manage their wealth and new opportunities for international financial centers, which have the breadth and depth to manage complex multi-jurisdictional cross-border transactions in the most cost-effective way.

THE MAURITIUS INTERNATIONAL FINANCIAL CENTRE

The financial services sector comprises of an array of institutions including well-established banks, insurance and pension companies, stockbrokers, investment companies, non-bank deposit-taking institutions, leasing companies, credit institutions, money changers and foreign exchange dealers.

Mauritius is widely heralded as the "Gateway to Africa" and despite the talks about the impact of the Indian Direct Tax Code, it is still the preferred route for investment into India. Its wide network of treaties and simple and favorable tax regime make it a preferred bridging step between the Western World and the emerging markets of Africa, India and China. However, the professionals of the area acknowledge that Mauritius has more going for it than just tax and sandy beaches.

As a leading International Financial Services Centre, Mauritius has developed a fine brand of professional workforce rivaling in competence with European and Western jurisdiction. Mauritius is now an attractive jurisdiction for firms looking to capitalize on opportunities within this field. It has liberalized its legal services market to enable foreign law firms to establish local offices or joint ventures alongside Mauritian lawyers. The Mauritian authorities are keen to engage with a wider international legal sector in-country with the effect of further stimulating investor confidence in the market. Mauritius is also positioning itself as a regional centre for international dispute resolution and is actively promoting for international legal practitioners to represent parties and to act as arbitrators in international commercial arbitrations in Mauritius.

THE MAURITIUS TRUST

Trusts are one of the most important wealth management tools used by the Super Rich all over the world. Trillions of dollars' worth of assets are held through trusts worldwide. This is because a Trust is able to deal with most matters that are relevant in PWM and which include:

- Preservation of family property and protection against risk
- Tax planning (which may include inheritance and / or capital gains)
- Avoidance of forced inheritance laws or probate formalities
- Succession & Business Planning

The Mauritius Trust has all the attributes for use in wealth preservation and management and has been the cornerstone of its PWM offering

since the 1989 when the first Trusts Act (which was an updated and improved version of the English Trustee Act 1925) was enacted. . In 1992, the Offshore Trusts Act was enacted to specifically provide for many of the desirable features prevailing in other offshore jurisdictions. In 2001, a new modern and forward looking Trusts Act was enacted. The Act contained most of the desirable features prevailing in other offshore jurisdictions but also brought about a number of innovative features paving the way for Mauritius to become an important jurisdiction for estate planning. In particular, the following are interesting features of a Mauritius Trust:

Types of Trusts

The Trusts Act 2001 allows for the setting-up of a multitude of trust types including fixed, discretionary, spendrift, charitable purpose, non-charitable purpose and sharia compliant trusts amongst others.

Confidentiality

There are no registration or filing requirements for a trust and confidentiality is enshrined in the provisions of the Trusts Act. There can be no disclosure in the absence of a court order and the Trusts Act clearly defines the situations when the Court or the Judge in Chambers shall make an order for disclosure or production of any confidential information

Trusteeship

Every Trust set-up in Mauritius must have at least one qualified trustee which is defined as a management company or such other person resident in Mauritius as may be authorized by the Financial Services Commission of Mauritius which is the unified non bank financial services regulator. This ensures that all trusts are professionally managed. Trusteeship can also be split into a Custodian and Managing Trustee and Private Trust Companies may be set-up to act as Trustee for a particular Trust or group of related (underlying) Trusts and which does not need to be licensed as a Trustee.

Anti-Attack Provisions

The Trusts Act 2001 contains some interesting provisions to prevent a trust from being attacked on the basis of succession rights, marriage or divorce and insolvency of a settlor or beneficiary.

Tax Planning Opportunities

The Income Tax laws make a distinction between resident and non-resident trusts. A non-resident trust is not subject to taxation in Mauritius whereas a resident trusts is taxable on its chargeable income at the rate of 15% per annum. However resident trusts may apply for a Category 1 Global Business License (GBC1) which result in such trusts being taxable at the rate of 3%. In addition, such trusts may avail of the benefits under the various Double Taxation Avoidance Agreements (DTAA) that Mauritius has signed and ratified with a number of jurisdictions worldwide leading to interesting tax planning

opportunities.

It is thus not surprising that a number of HNWI already use a Mauritius "Trust" for estate, succession planning and family office services. A Mauritius trust can be put to a number of possible uses, namely:

- Accumulation & Preservation of Wealth
- Succession planning
- Asset Protection
- Tax Planning
- Off balance sheet transactions
- Corporate finance/asset financing
- Securitization

NEW DEVELOPMENTS – THE MAURITIUS PRIVATE FOUNDATION

Whilst the 'trust' appeals to clients from common law jurisdictions, it may be less attractive to those clients from Civil Law jurisdictions where the 'trust' concept is largely unknown. Also, a 'trust' does not have corporate personality which means that very often, an underlying SPV has to be resorted to when the intention is to hold property in some civil law jurisdictions which do not recognize a trust.

In 2009, a Joint Working Group (JWG), comprising of key representatives of the public and private sector including STEP Mauritius, was set-up to make proposals on ways and means to enhance the international competitiveness of the Mauritian Global Business Sector, in particular on the introduction of new products. Amongst others, the JWG concluded that the adoption of a law on Private Foundations would be beneficial to the jurisdiction. On 05 June 2012, the Mauritius Parliament passed the Foundations Act aimed at allowing for the setting-up of Private Foundations in Mauritius. The enactment of a Foundations Act is aimed at further promoting Mauritius as a platform for wealth management services, succession and estate planning in the region. Under the Foundations Act, the salient features of a Mauritius Foundation are as follows:

- (a) it could be set-up *inter vivos* (by charter) or by will;
- (b) it could be set-up to benefit persons, class of persons or to carry out a purpose which may be charitable, non-charitable or both;
- (c) it would have to be managed by a Foundation Council;
- (d) It would require a secretary in Mauritius which would need to be a licensed by the Financial Services Commission;
- (e) It would need to have a registered office in Mauritius;
- (f) When registered it would have separate legal personality;

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- (g) It would need to keep proper books of accounts and keep its records in Mauritius at its registered office;
- (h) Where the founder and all the beneficiaries are non resident (or if set-up for a purpose, that purpose is being carried out of Mauritius) it would be exempt from tax in Mauritius.

OTHER KEY BENEFITS

Regulatory framework

The success of Mauritius as a centre for the provision of financial services depends upon the maintenance of its reputation of probity. Our small island prides itself in having a sufficiently robust regulatory framework within a business friendly environment. Mauritius fully supports international initiatives (FATF, Basel, IOSCO, IAIS) aimed at preventing the jurisdiction from being used for money laundering and terrorist financing. It is worth noting that Mauritius has never been blacklisted. The two regulators for the Financial Services Sector, namely the Financial Services Commission and the Bank of Mauritius are dedicated to the supervision of the bank and non-bank financial services sector.

Investment Protection

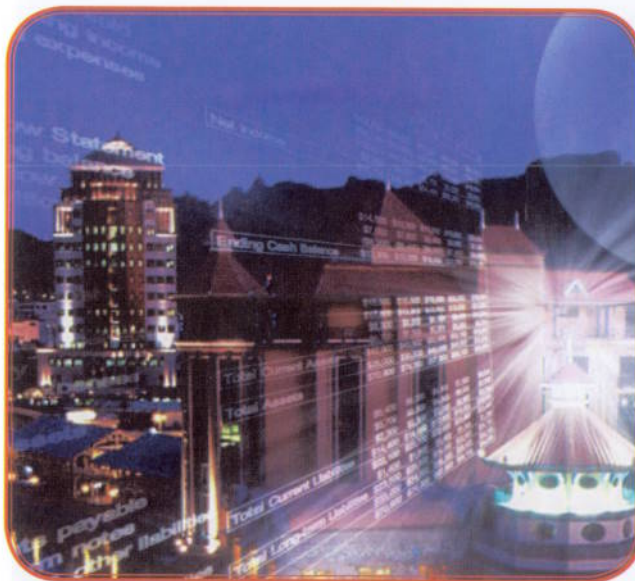
Mauritius has signed a number of Investment Promotion and Protection Agreements (IPPAs) which inter alia, provide for free repatriation of investment capital and returns, guarantee against expropriation, provide for a most favored nation rule with respect to treatment of investors, and compensation for losses in case of war, armed conflict or riot and further provide arrangements for the settlement of disputes between investors and the contracting states.

Regional involvement

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 in these regional organizations, and being a signatory to all the major African conventions, can make Mauritius the best regional financial service centre for private wealth management services.

Mauritius, a reference in the region...

Mauritius is a worldwide reference for political stability in this side of the world with a presidential democracy modeled on the British parliamentary system with the highest court of appeal being the Privy Council of the United Kingdom. Mauritius also offers a diligent, educated, multilingual and experienced professional labor force. The



literacy rate is currently at 86%. Apart from professionals who are trained abroad in renowned institutions, professional and specialized training are also available through its two state universities and private local institutions affiliated to foreign universities. Mauritius benefits from a low cost of operations and there are also a series of attractive fiscal incentives such as no tax on dividends, no withholding tax on interest, royalties and dividends, no estate duty, inheritance, wealth or gift taxes, no stamp duties, registration duties and levies.

CONCLUSION

Initiatives on the regulatory front, coupled with the measures and policies implemented by the government and continued innovation have contributed in making Mauritius the undisputed centre for private wealth management services in this part of the world.

