

Setting up a Fund in Mauritius

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Investment funds might be shying away from the limelight in the wake of spurring innovative financial instruments, but they continue to remain a popular choice for investors and target companies alike. There is indeed a common consensus between start-ups and well-established companies that private equity capital is one of the best sources of capital to power a company's growth.

The very defining characteristics of an investment fund are appealing to investors. Quite simply, an investment fund is a scheme which is constituted as a company, trust, limited partnership or any other legal entity as approved by the Mauritius Financial Services Commission ("FSC") whose sole purpose is the collective investment of funds in a portfolio of securities and where the investors do not have day to day control over the management of the property.

Mauritius continues to be a jurisdiction of choice for investors for a plethora of reasons. Statistically, there has been an increase in the number of funds licensed by the FSC since the creation of the global business sector back three decades ago. There are, as at date, more than 1,000 investment funds which

are licensed by the FSC, including both open-ended and closed-ended funds. It is also apposite to state that most of the funds licensed in Mauritius are operating as private equity funds.

In the same line of thought, the sophistication of the market allows for the possibility of listing on the Stock Exchange of Mauritius.

It is against this backdrop that we propose to give a high-level overview of the factors which should generally be taken into account when contemplating the setting up of a fund in Mauritius.

JURISDICTION OVERVIEW

From a geographical standpoint, Mauritius is ideally situated – it shares the same time zone as the UAE which allows for transactions to be held with countries all around the world within the same day. In addition, it is a recognised financial services centre and has a sophisticated level of regulation and professional level of service. Also, Mauritius has a politically stable environment with a system of law inspired from both the English Common law and French Civil law with final right of judicial recourse to the Judicial Committee of the Privy Council. The political and social stability combined with a solid legal system contribute to the fact that Mauritius consistently leads when it comes to the Ease of Doing Business rankings.

It is also comforting that there are no foreign exchange controls. In other words, no approval is required for the repatriation of profits, dividends and capital gains earned by a foreign investor in Mauritius.

LEGAL STRUCTURING

Most funds are structured either as companies or limited partnerships. They can also be constituted as trusts or Protected Cell Companies.

Company structures and limited partnerships confer advantages of their own but the number of private equity funds being set up as limited partnerships has soared since the enactment of the Limited Partnerships Act 2011. Indeed, limited partnerships are regularly used by Fund Managers setting up private equity/Closed End Funds and investors, especially Development Finance Institutions (“DFIs”), are comforted by their familiarity with such structures.

(i) Limited Partnership

A limited partnership must be set up with at least one general partner (GP) and one limited partner (LP). One of the most striking features of a limited partnership is that it can elect to be either transparent or tax opaque. Being a fiscally transparent entity, the partners would be taxed at their own hands, in their respective jurisdictions. On the other hand, by opting to be tax opaque, same will entail taxes being paid at the level of the partnership, in Mauritius.



General Partner (GP)

The law governing limited partnerships makes it clear that, subject to the constitutive documents and certain other exceptions, every GP shall be an agent of the limited partnership and of its other partners for the purposes of the business of the limited partnership and shall have general authority to conduct and manage the business and affairs of the limited partnership and to exercise, in its name, all its rights, powers and authority.

The GP therefore plays a crucial role in the administration of a limited partnership, the more so that it is, by law, responsible for all the debts and liabilities of a limited partnership. It is therefore logical for promoters to be wearing the proverbial GP hat. That being said, there is nothing which prevents a GP from delegating certain of its duties and obligations provided that the said delegation is provided for in the partnership agreement. It is also noteworthy that a GP can be constituted as an individual, a corporate body or an unincorporated body, formed or registered with or without liability in Mauritius or elsewhere, including any society or partnership or any other body of persons.

Unlike a company, a limited partnership can elect to have, or not to have, separate legal personality. An interesting fact to note is that, in Mauritius, unlike a few other International Financial Centres (“IFCs”), the limited partnership can change its legal personality at any point during the course of its life.



Limited Partner (LP)

Investors in a fund are typically admitted as limited partners. Unlike the GP, their liability is limited to their agreed contribution, and it is well established that LPs should not participate in the conduct or management of the business of the limited partnership.



Companies

In a company structure, investors are admitted as shareholders and the management is vested with the Fund entity’s Board. If a parallel is to be made with the setting up of a limited partnership, then shareholders can be assimilated to limited partners and the GP as the Board of directors.

Companies tend to be more rigid and less flexible. The high cost of compliance and the inability to elect separate legal personality or to choose the tax treatment does not appeal to fund managers. However, past experience suggests that the selection of a fund vehicle is often dictated by gauging the interest of the majority of investors. Companies are at all costs not to be discarded as an appropriate fund vehicle and continue to remain a popular choice for many fund managers.

LEGAL FRAMEWORK



Fund Typologies

At its simplest, a fund can be regulated as either a collective investment scheme, which is essentially an open-ended fund, or as a closed-end fund. The main distinction lies with the subscription/redemption mechanism. In an open-ended structure, an investor can choose to subscribe for shares or redeem his or her investment at any point, based on the provisions of the constitutive documents. Conversely, in a closed-end fund, investors are locked-in and distributions are at the option of fund in line with its distribution waterfall. It goes without saying that this is an oversimplification and that the constitutive documents will in all likelihood be very detailed and prescriptive.



Fund Functionaries

(i) CIS Manager

Funds in Mauritius are required to be managed by a Mauritius licensed manager which in effect holds a CIS Manager licence from the Financial Services Commission. On a broader level, there is also the possibility for funds to be self-managed or managed by a foreign manager i.e. a fund manager which is licensed as such, in an equivalent jurisdiction.

(ii) Bank

As a matter of fulfilling substance, funds and entities holding a global business licence are obligated to have their principal bank account in Mauritius.

(iii) Administrator

In the same vein, administrators take on a wide spectrum of roles which include the setting up of the principal bank account, transfer agency, compliance, liaising with the regulators both in and out of Mauritius, investor reporting – just to name a few.



Registration Process

Both types of funds require a fund authorization from the FSC which is the local regulator for the non-banking financial services sector and global business in Mauritius. The registration process calls for the submission of application forms, customer due diligence documents on relevant stakeholders, draft offering memorandum, draft constitutive documents such as the constitution or partnership agreement, documents relating to fitness and propriety and the requisite licensing fees. In addition to these documents, the FSC retains the discretion to request further information as it deems fit.

While staying within the regulatory context, a fund conducting business principally outside of Mauritius and whose majority of shares/voting rights/legal or beneficial interests are held by non-Mauritian residents, is also required to apply for a Global Business Licence (“GBL”).

Consequently, an entity which holds a GBL must be administered by a licensed management company. The whole setting up process is driven by the management company which is entrusted with the task of liaising with authorities and acting as the company secretary or registered agent, as applicable.

The FSC communicated indicative timeliness for the processing of fund applications back in 2019. In a nutshell, on the assumption that licensing applications submitted are complete and detailed, the FSC will, on a best endeavours basis process applications within 60 working days. This 60-day indicative timeline only applies to those funds which are further subcategorised as either professional or expert funds. Since nomenclature varies across jurisdictions, it must be highlighted that terms such as mutual funds, private equity funds or hedge funds are not typically used sensu stricto. So, the Mauritian equivalent of a private equity fund would be a closed-end professional collective investment scheme.

OUR VALUE PROPOSITION

As a duly licensed management company, Axis works together with our business partners and clients to provide a seamless service to our clients.

As a fund administrator, we are geared to provide full-fledged, end-to-end solutions to our Fund clients. The services start as from the Fund's inception and throughout the Fund's lifetime, that is during its investment period and subsequently at the time the Fund starts to dispose of its investments and is eventually liquidated. Axis administers different Funds with varying sizes in relation to their corpus/Assets Under Management ("AUM"). The smallest Fund has an AUM of approximately USD 1.5 million (Venture Capital Fund) while the largest one has a corpus of circa USD 750 million (a Fund which is involved in impact investments). The Axis Fund team has grown significantly in size over the past 5-6 years, with over 30 team members, more than 25 Funds under administration and assets under administration hovering in the range of USD 3 billion.

Our service offering includes, inter alia, the following:

- Fund Formation
- Fund Administration
- Fund Accounting & Tax Services
- Investor Services & Registrar
- Capital Call Management, Waterfall Calculations & Distributions
- Compliance (FATCA, CRS, Data Protection, AML&CFT)



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