

Conyers Dill & Pearman

In Africa

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The African continent, while not unscathed by the global recession, has shown a fair degree of resilience, providing significant opportunities with its under penetrated markets and unleveraged business opportunities. Economic expansion in this region, particularly in Sub-Saharan Africa, is being supported by minerals and energy mainly, but also by a broad base of sectors including agriculture, technology, telecommunications, media and financial services. These industries are attracting massive foreign direct investment (FDI), a large chunk of which is coming through private equity. The African market is attractive for private

equity investors primarily due to the lack of access to capital and limited competition in the region for this segment of activities.

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Flows of FDI to Africa have been increasing significantly during the last decade and Mauritius has a vital role to play in this respect since the country possesses invaluable comparative advantages.

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MAURITIUS: AN IDEAL INVESTMENT PLATFORM

Mauritius combines the traditional advantages of many offshore financial centers (no capital gains tax, no withholding tax, no capital duty on issued capital, confidentiality of company information, exchange liberalization and free repatriation of profits and capital etc.) with the distinct advantages of being a treaty-based jurisdiction, with a substantial network of treaties and double taxation avoidance agreements. While the fiscal advantages offered by its series of tax treaties play a major role in the choice of Mauritius for cross-border investment, there are additional factors which should be taken into account. Mauritius is a well regulated business jurisdiction which has a proud record of adherence to international standards of best practices and offers a convenient time zone location which allows for the conduct of business in the Far East in the morning, Europe during the early afternoon and the United States, later in the day. Mauritius also enjoys a sophisticated international telecommunication service, an abundance of professional service providers at a relatively low cost, an educated and



multilingual workforce, with English and French being the main business languages, as well as economic and political stability. Mauritius also has a hybrid legal system consisting of British common law practice and the French Napoleonic Code although the Privy Council in London is the final court of appeal, and forward-looking legislators have created modern and flexible company / commercial legislation which is essentially based on British common law.

Mauritius currently has tax treaties with 13 African countries (Botswana, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, Seychelles, South Africa, Swaziland, Tunisia, Uganda, Zimbabwe) and has signed tax treaties with 3 others (Malawi, Nigeria and Zambia) which are awaiting ratification. Additional treaties are currently being negotiated with Egypt, Burkina Faso, Algeria and Ghana (Source: Mauritius Revenue Authority).

With Mauritius not taxing capital gains, there are significant potential tax savings available by using a Mauritius domiciled entity to structure an investment into Africa.

Capital gains tax, where imposed in Africa, are generally levied at a rate in the range of 30% - 35%. However, all Mauritius tax treaties restrict taxing rights of capital gains to the country of residence of the seller of the assets. With Mauritius not taxing capital gains, there are significant potential tax savings available by using a Mauritius domiciled entity to structure an investment into Africa.

Almost all African nations impose withholding tax on dividend paid to non-residents, the rate of such imposition ranging generally between 10% to 20%. All Mauritius tax treaties limit the withholding tax on dividend. The treaty

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rates are generally 0%, 5% or 10%, thereby creating potential tax savings of 5% to 20% depending on the African country in question. The treaties guarantee a maximum effective withholding tax rate in the face of potential changes in fiscal policy in the investee countries.

INVESTMENT PROTECTION

For investors wary about investing in Africa, Mauritius can point to the various Investment Promotion and Protection Agreements (IPPAs), which it has signed with 15 African countries, one of which (South Africa) is in force. These IPPAs, inter alia, provide for free repatriation of investment capital and returns, guarantee against expropriation, provide for a most favoured 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. Mauritius has deep African roots, a third of the population being of African origin. It is also worthwhile noting that 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).

OUR MAURITIUS PRACTICE

Conyers Dill & Pearman opened its law office in Mauritius in July 2009 following receipt of regulatory approval and registration of Conyers Dill & Pearman (Mauritius) Limited pursuant to the recent amendments to the Law Practitioners Act permitting the establishment of joint law ventures. The firm has been aware for several years of the strong Mauritius connection with India and plans to be at the forefront of

Mauritius becoming a hub for private equity funds and other vehicles that are investing in Africa; in fact, Conyers is already carving a niche in structuring private equity funds and other vehicles used for investment into Africa.

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Conyers' Mauritius practice encompasses an integrated global team, spanning the firm's London, Middle East and Asian offices. Conyers advises on all aspects of Mauritius corporate and commercial law. Much of the firm's work involves advising major US and European institutional investors and fund managers who have regularly been using Mauritius to structure their investments in emerging markets, including Africa. Conyers also advises on the setting up of private equity / venture capital funds, many of which are structured as protected cell companies. Other frequently used structures the firm is seeing include master-feeder hedge fund structures, side-by-side feeders with master funds in Mauritius, closed-end funds and other



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investment holding structures with underlying special purpose vehicles for investment in countries with which Mauritius has a double tax avoidance agreement or treaty. Conyers also advises on joint ventures, banking and (Islamic) finance transactions, project finance, shipping, aircraft registration and finance.

In addition to Mauritius, Conyers advises on the laws of non-tax treaty jurisdictions including Cayman Islands, British Virgin Islands, Cyprus and Bermuda. The firm is therefore also able to advise on structures involving, for example, investment funds established in these jurisdictions investing in India or Africa through a wholly-owned Mauritius subsidiary.

Conyers' presence in major international business centers enables the firm to offer a 24-hour international service while consistently delivering on its promise of responsive, timely and thorough service.

For further information on Conyers Dill & Pearman and its capabilities in structuring vehicles to facilitate the potential for highly profitable foreign investment in Africa, please contact:



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