

CONYERS DILL & PEARMAN - IN AFRICA

康德明律师事务所 - 在非洲

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非洲大陆，未受到全球经济衰退的负面影响，呈现相当程度的反弹，以其尚未被渗透的市场和未全面开发的商业机会提供了重要的机遇。本区域内特别是撒哈拉以南的非洲地区的经济发展以矿物及能源产业为支撑，但也得到了包括农业、科技、电讯、媒体及金融服务业在内广泛的产业基础支持。这些行业吸引了大量的外国直接投资（下称“FDI”），其中很大一部分来源于私募基金。非洲市场吸引私募基金投资者主要源于本区域内获得资本的渠道不多以及该类活动的竞争较少。

流向非洲的 FDI 在过去 10 年中大幅增长，毛里求斯因其国家拥有无可比拟的优势在其中充当了非常重要的角色。

毛里求斯：理想的投资平台

毛里求斯集合了许多离岸金融中心的传统优势（无所得税，无预扣所得税，发行资本上无需征收资本税，公司信息的机密性，外汇自由及利润和资本的汇回等）及其独特的优势，即其是一个以协定为基础的司法管辖区，拥有庞大的协定网络及避免双重征税的协议。尽管一系列的税收协定所提供的财政优势是选择毛里求斯作跨境投资的主要原因，但也有其他因素。毛里求斯是一个规范的商业地区，在遵守“最佳实践”的国际标准中有着骄傲的纪录并且是适宜的时差区，在上午可进行远东地区的商业活动，下午进行欧洲的商业活动，傍晚进行美国的商业活动。毛里求斯亦拥有成熟的国际电讯服务，大量成本相对低廉的专业服务提供者，受过良好教育拥有多国语言能力的工作人员，英语及法语是主要的商业语言及稳定的经济和政治环境。毛里求斯的法律体系由英国普通法及《法国拿破仑法典》结合组成但最终上诉法院是伦敦的枢密院，具有前瞻性的立法者创立了基于英国普通法的现代化及富有弹性的公司/商业法律。

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 investments (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.

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.

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

毛里求斯现与 13 个非洲国家有税收协定（博茨瓦纳，莱索托，马达加斯加，纳米比亚，卢旺达，塞内加尔，塞席尔，南非，史瓦济兰，突尼斯，乌干达，津巴布韦）及与其他三个国家（马拉维，尼日利亚和赞比亚）签订了 6 份税收协定待批准通过。与埃及，布基纳法索，阿尔及利亚及加纳的谈判正在进行中（消息来源：毛里求斯财政机构）。

非洲征收的所得税，税率普遍在 30% 至 35% 之间。但毛里求斯税收协定限制资产出让方的居住国征收所得税的权利。因毛里求斯不征收所得税，利用以毛里求斯为住所地的企业实体结构化对非洲的投资会有巨大的潜在税收优惠。

几乎所有的非洲国家向支付给非居民的红利征收预扣所得税，税率约在 10% 至 20% 之间。所有的毛里求斯税收协定限制对红利征收预扣所得税。协定的税率是 0%, 5% 或 10%，因此存在了 5% 至 20% 的潜在税收优惠，取决于涉及的非洲国家。当面临投资所在国发生政策改变的时候，税收协定保证了最大限度有效的预扣所得税税率。

投资保护

对担忧投资于非洲的投资者来说，毛里求斯与 15 个非洲国家签订了许多的投资促进与保护协议（下称“IPPAs”），其中与南非的协议已经生效。这些 IPPAs 中规定了投资资本与利润可以自由的汇回，保证不征收，规定对投资者实行最惠国待遇及在发生战争或武装暴动时赔偿，并且进一步提供解决投资者与合同国间争端的安排。毛里求斯具有渊源的非洲历史，三分之一的人口是非洲原著民。值得注意的是毛里求斯是非洲主要地区组织的成员例如非洲联盟，南部非洲开发共同体(SADC), 东南非共同市场(COMESA) 以及环印度洋地区合作联盟(IOR-ARC)，这些组织为进入非洲市场提供了更为优厚的待遇。

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).

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 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 (Source: Ministry of Foreign Affairs – Mauritius). 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).

毛里求斯业务

根据最近修订的 Law Practitioners Act 中允许设立合资律师事务所，在获得政府批准及注册了 Conyers Dill & Pearman (Mauritius) Limited 之后，康德明律师事务所 2009 年 7 月在毛里求斯开设了办事处。本所近年来已意识到毛里求斯与印度有密切的联系并计划在协助毛里求斯成为私募基金及其他投资非洲机构的中心中位于前列。事实上，康德明已在结构化私募基金及其他投资非洲的机构中占有一席之地。

康德明在毛里求斯的业务由一支全球化的团队完成，覆盖了伦敦办事处，中东办事处及亚洲办事处。康德明可以就毛里求斯公司法和金融法的各个领域提供咨询。本所的主要工作涉及向利用毛里求斯结构化在新兴市场包括非洲投资的美国 and 欧洲主要机构投资者及基金经理提供咨询。

康德明也对设立私募基金或风险投资基金提供咨询，其中许多被结构化成受保护的单元公司。其他经常使用的结构包括母-子对冲基金结构，母基金在毛里求斯的单边独立子基金，封闭式基金及当毛里求斯与投资国间存有避免双重征税协议或协定时采用特殊目的公司的其他投资控股结构。康德明在合资企业，银行业及（伊斯兰）金融交易，项目融资，船运，航空器注册及融资领域提供咨询。

除毛里求斯以外，康德明也对无税收协定的司法管辖区的法律提供咨询，包括开曼群岛，英属维尔京群岛，塞浦路斯及百慕大。因此本所可以向某些结构涉及例如设立在上述司法管辖区的投资基金利用设立在毛里求斯的全资附属公司在印度或非洲投资提供咨询。

康德明在主要国际商业中心设有办事处，能够在提供 24 小时的国际服务同时承诺始终提供反映迅速、及时和全面的服务。

OUR MAURITIUS PRACTICE

Conyers Dill & Pearman opened our 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. We have been aware for several years of the strong Mauritius connection with India and plan to be at the forefront of Mauritius becoming a hub for private equity funds and other vehicles that are investing in Africa; in fact, we are already carving a niche in structuring private equity funds and other vehicles used for investment into Africa.

Our Mauritius practice encompasses an integrated global team, spanning our London, Middle East and Asian offices. We advise on all aspects of Mauritius corporate and commercial law. Much of our work involves advising major U.S. and European institutional investors and fund managers who have regularly been using Mauritius to structure their investments in emerging markets, including Africa.

We also advise on the setting up of private equity / venture capital funds, many of which are structured as protected cell companies. Other frequently used structures we are seeing include master-feeder hedge fund structures, side-by-side feeders with master funds in Mauritius, closed-end funds and other investment holding structures with underlying special purpose vehicles for investment in countries with which Mauritius has a double tax avoidance agreement of treaty. We also advise on joint ventures, banking and (Islamic) finance transactions, project finance, shipping, aircraft registration and finance.

Being a multi-jurisdictional offshore law firm which also advises on the laws of Cayman Islands, British Virgin Islands and Bermuda, Conyers Dill & Pearman is also able to advise on structures which involve, for example, investment funds established in non-tax treaty jurisdictions, such as the Cayman Islands, British Virgin Islands and Bermuda, investing in India or the African continent through a wholly-owned Mauritius subsidiary.

Our presence in major international business centers enables us to offer a 24-hour international service while consistently delivering on our promise of responsive, timely and thorough service.

本文并不是法律意见，其内容并非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅!

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

关于康德明律师事务所
About Conyers Dill & Pearman

康德明律师事务所是跨司法管辖区的律师事务所，能够依据百慕大、英属维尔京群岛、开曼群岛和毛里求斯的法律提供服务。擅长于公司业务和商事业务的法律咨询，商事诉讼以及私人客户事宜。康德明律师事务所的架构，律所文化以及精英团队，能够使本所不断践行承诺，为客户提供及时周到的服务。本所在欧洲、亚洲、中东和南非等主要世界性金融中心设立分所，从而能从全球各重要地点为客户提供最高质量的法律咨询。康德明律师事务所设立于 1928 年，现拥有 600 位员工，其中超过 150 位是律师。附属公司 Codan，提供一系列信托、公司秘书、会计和管理服务。

Conyers Dill & Pearman is a multi-jurisdictional law firm that advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda and Mauritius. The firm specialises in company and commercial law, commercial litigation and private client matters. Conyers structure, culture and expertise enables the firm to consistently deliver on its promise of responsive, timely and thorough service. Conyers provides clients with the highest quality legal advice from strategic global locations including offices in the worlds leading financial centres in Europe, Asia, the Middle East and South America. Founded in 1928, Conyers comprises 600 staff including more than 150 lawyers. Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

康德明律师事务所被《律师》杂志命名为“2009 年最佳离岸律师事务所”。

Conyers Dill & Pearman was named Offshore Law Firm of the Year 2009 by The Lawyer.

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