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# Private Equity Investment into Africa

## The Cayman and Mauritius Route

The recent invitation by China to South Africa to join the BRIC group of major emerging economies, to create the "BRICS" acronym, has heralded a new dawn, not only for the nation of South Africa, but arguably for the continent of Africa as a whole, with large parts of the African Continent now beginning to see real economic growth and development. Many African countries have taken bold steps to break the cycle of corruption and poverty by moving towards political stability and economic openness. This in turn has brought economic and social advancement as well as an unprecedented receptiveness to foreign direct investment ("FDI"). In addition to this, with increasing global demand for raw materials and commodities, many African countries are seeing renewed attention from the main industrial nations, in a 21st Century "Scramble for Africa". India and China have been particularly active in Africa as they seek access to the resources essential for their own economic growth and take advantage of the continent's under penetrated markets and business opportunities.

As well as growth in the mineral and energy sectors, economic expansion in the continent, particularly in Sub-Saharan Africa, is being supported by a broad base of other sectors including agriculture, technology, telecommunications, media and financial services. These industries are attracting massive FDI, a large chunk of which is coming through private equity investments. Flows of FDI to Africa have been increasing significantly during the last decade and the Cayman Islands and Mauritius both have an important role to play in the investment process.

## Jurisdictions of Choice

As investors look to invest into Africa in a secure and tax efficient manner, they are likely to seek out and rely on investment routes structured through reputable and internationally recognized jurisdictions, such as the Cayman Islands and Mauritius. The typical fund structure consists of a Cayman Islands investment vehicle in either a corporate or limited partnership format into which investors would invest. Such a fund may then invest directly into the relevant African country or, as discussed below, it may for tax efficiency reasons invest through a Mauritius holding company, which would act as the SPV investing directly into Africa.

The Cayman Islands has long been, and continues to remain, the jurisdiction of choice for domiciling investment funds. Whether an exempted company, partnership or unit trust is being used as the vehicle for a private equity fund, the jurisdiction with its flexible user friendly regulation, political stability and regulatory environment that is conducive to the needs of investment managers and sophisticated investors alike, makes using the Cayman Islands an efficient and cost effective choice.

One of the most significant benefits of Cayman Islands funds is that they are tax neutral in that there are no income, dividend or capital gains taxes levied in the Cayman Islands. However, in such a structure, to the extent there may be taxes levied on the investment returns generated in the African country where the underlying investment is made, it may be tax efficient to introduce a Mauritius entity to the structure.

Mauritius combines the traditional advantages of an offshore financial center (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 it being a treaty-based jurisdiction, with a substantial network of treaties and double taxation avoidance agreements in place. In order to use Mauritius as an investment platform and take advantage of the benefits of the various tax treaties, investors need to establish a Category 1 Global Business Company in Mauritius (a "**GBC1**"). In addition, in order to establish tax residency in Mauritius, a GBC1 must have at least two directors resident in Mauritius,

maintain its principal bank account in Mauritius, keep and maintain its accounting records at its registered office in Mauritius, and prepare its financial statements and have them audited in Mauritius. Moreover, meetings of the directors of a GBC1 should include participation by at least two directors from Mauritius. By fulfilling these requirements, a GBC1 is eligible for a Tax Residence Certificate which will allow it to benefit from the provisions of the various DTAs. Such a GBC1 is generally subject to tax on income at the flat rate of 15%. However, under Mauritius law, a GBC1 may claim a credit for foreign tax on income not derived from Mauritius against the Mauritius tax payable. If no written evidence is provided to the Mauritius Revenue Authority showing the amount of foreign tax charged, the amount of foreign tax paid is deemed to be equal to 80% of the Mauritius tax chargeable with respect to that income. Consequently, the effective tax rate payable by the GBC1 will be between 3% and nil, depending on the circumstances.

Mauritius currently has tax treaties with 13 African countries (Botswana, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, Seychelles, South Africa, Swaziland, Tunisia, Uganda and Zimbabwe). Six tax treaties have been signed with Malawi, Nigeria, Zambia, Egypt, Kenya and Congo and are awaiting ratification. Additional treaties are currently being negotiated with Burkina Faso, Algeria and Ghana.[1] Hence, where the Cayman fund is investing into any of these jurisdictions a detailed tax analysis should be done in order to determine whether it should do so directly, or whether it would be beneficial for it to do so via a Mauritius GBC1.

As an example of why it might be beneficial to use a GBC1 may occur in relation to capital gains taxes. Capital gains tax, where imposed in Africa, is 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 GBC1 to structure an investment into Africa.

[1] Source: Mauritius Revenue Authority and Board of Investment websites

A further example is that almost all African nations impose withholding tax on dividends paid to non-residents, the rate of such imposition ranging generally between 10% - 20%. All Mauritius tax treaties limit the withholding tax on dividends. The treaty rates are generally 0%, 5% or 10%, thereby creating potential tax savings of 5% - 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

Another significant potential advantage of investing via a Mauritius GBC1, which is not tax related is that being an African nation, Mauritius has signed Investment Promotion and Protection Agreements (IPPAs) with 15 African countries, three of which, with South Africa, Madagascar and Mozambique, are in force.[2] 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 its 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).

Its membership in these regional organizations, and being a signatory to all the major African conventions, can make the choice of a Mauritius SPV investing into Africa, especially having regard to treatment of the investments, a sensible one.

Combining the qualities of the Cayman Islands and Mauritius, allows investors to take advantage of the relative benefits both jurisdictions have to offer. By using a Cayman Islands investment fund, in conjunction with a

[2] Source: Board of Investment website

Mauritius GBC1 where appropriate, a whole range of tax efficiencies can be utilized.

In a world of economic uncertainty, the jurisdictions of Cayman and Mauritius, each in their own right, provide investors and investment managers with much needed comfort and certainty. When investing into Africa in combination with each other, the jurisdictions provide a stable, well regulated and tax efficient platform which can be relied upon.

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