There's more to Mauritius

Outlining the advantages of an offshore centre east of Africa, **Stephen Scali** and **Kerri Lefebvre** of law firm Conyers Dill & Pearman spoke to **Robin Amlôt**

Stephen V. Scali, Head of Office, Conyers Dill & Pearman (Mauritius)

Mauritius is a 2,040 km2 island nation situated in the southwest Indian Ocean. Its geographical location has allowed it to create a role as a strategically important offshore jurisdiction for business in both India and Africa. Indeed, it has been called by some 'India's Hong Kong'. An estimated 10,000 offshore companies targeting the Indian and Southern African markets have been registered in Mauritius.

The island state is a member of major regional organisations providing preferential access to African and regional markets, including the African Union, Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA) and Indian Ocean Rim Association for Regional Cooperation (IOR-ARC).

TREATIES THE REAL TREATS

The Mauritius International Financial Services Centre (MIFSC) is an OECD White-Listed jurisdiction, and a member of IOSCO, IAIS, FATF and IFSB. It has a network of agreements with African countries including 19 Investment Promotion and Protection Agreements (IPPAs) and 17 Double Taxation Avoidance Agreements (DTAAs). In total Mauritius has so far signed and ratified 38 DTAAs with leading developed and emerging economies around the globe. With all its DTAAs based on the OECD model, the MIFSC is recognised as an ideal 'gateway' for investing in the growing regional markets.

Mauritius offers full protection of foreign investments in key African nations through its network of IPPAs. Mauritius has signed IPPAs with 36 countries of which the 17 African countries include: Benin, Botswana, Burundi, Cameroon, Chad, Comoros, Ghana, Guinea, Madagascar, Mauritania, Mozambique, Rwanda, Senegal, South Africa, Swaziland, Zimbabwe and Tanzania. An IPPA is a bilateral agreement that promotes and protects the interests of investors and reduces risk. For example, IPPAs guarantee against expropriation; provide for free repatriation of capital and investment returns; offer dispute resolution mechanisms; provide most favoured nation status; and ensure compensation for loss due to armed conflict, etc.

The MIFSC offers a fiscal platform with individual and corporate tax rate at 15 per cent with global businesses taxed at a rate of 0-3 per cent due to the foreign nature of their income. The Stock Exchange of Mauritius within the MIFSC is expanding into a regional stock exchange, with special regulations for enabling the listing of junior mining companies.

Kerrl Lefebvre, Director, Conyers Dill & Pearman in Dubai International Financial Centre

Port Louis, capital of Mauritius (credit: PeJo/Shutterstock)

CORPORATE STRUCTURES

Mauritius offers a secure and competitive jurisdiction for structuring and managing African investments. There are two kinds of companies incorporated in Mauritius for the purpose of doing business primarily outside of the jurisdiction:

- Category 1 Global Business Company (GBC1)
- Category 2 Global Business Company (GBC2)

The GBC1 is tax resident in Mauritius and liable for income tax at 0-3 per cent, depending on availability of credit for underlying tax paid (in the other country). It has the usual benefits from DTAA treaties, including:

- Less/no withholding tax payable on dividends, interest and royalties transmitted from a company located in the other treaty jurisdiction;
- No capital gains tax – when the GBC1 sells shares in an company in another treaty country, no capital gains tax is payable (because capital gains tax would only apply in the country of residence of the seller, but there is no such tax in Mauritius); and
- for African countries, capital gains savings are up to 35 per cent.

The GBC2 is structured along similar line to BVI International Business Companies. No income tax liability is incurred in Mauritius but the company does not benefit from DTAA treaties.

Other structures are also available, including funds, trusts and foundations. MIFSC also offers protected cell companies (PCCs). These are single legal entities with 'core' capital (nominal and usually beneficially owned by the PCC's promoters) and 'cellular' capital (held by investors). The PCC structure is useful in contexts such as asset holding, structured financing, debt repackaging and subordinated debt offerings Among the advantages of this structure:

- each cell is "ring-fenced" from any liabilities relating to other cells (no crossover liability); and
- investment activities of a given cell are not affected by the activities of other cells.

COSMOPOLITAN COUNTRY

In conversation with Stephen V. Scali, Head of Office, Conyers Dill & Pearman (Mauritius), and Kerri Lefebvre, Director, Conyers Dill & Pearman at the Dubai International Financial Centre, Robin Amlôt asked for their views on the advantages of investing through Mauritian entities.

"Mauritius is somewhat less well known than the other jurisdictions we advise on at Conyers. We also have BVI (British Virgin Islands), Bermuda and Cayman but Mauritius is quite well situated in terms of business and tax advantages," said Scali. "We are well known in the tax world for our DTAAs. Traditionally, we have been associated with inward investment into India – we are number one for FDI in India. With respect to Africa it's a mix of foresight, diplomatic relations, hard work and some good fortune.

"Mauritius is an African country, it is bilingual (English/French), it's quite a cosmopolitan country with a population of African origin but also with European, Chinese and Hindu in the mix."

In fact, Mauritius may traditionally be viewed as a tourist destination but it has decades of experience in offshore finance, a stable political system and well-developed financial and IT sectors.

Scali explained the attractions of the GBC1, "If you invest through a GBC1 into another country, when you sell your investment there is zero capital gains in either country and almost always less withholding taxes payable in the source country on dividend interest and royalties. There are significant commercial as well as tax benefits which is why Mauritius is being increasingly used in the context of African transactions in conjunction with other jurisdictions, including BVI, Cayman and Bermudan structures incorporating Mauritian structures."

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THE RIGHT STRUCTURE

Kerri Lefebvre underlined the popularity of BVI structures in the Middle East, "We see an awful lot of BVI structures. Frequently people want to use BVI because of the sophisticated, flexible corporate legislation and its familiarity. But if investors are not entirely familiar with the tax situation in African jurisdictions they may end up taking quite a tax hit at the operating level.

"That kind of problem can be avoiding by interposing a Mauritian holding company. Especially if you have investors from different jurisdictions: some from taxing jurisdictions and some from non-tax jurisdictions. BVI is very convenient has a holding structure for those who are from non-tax jurisdictions, they will enter into investment structures with that at the top level then a Mauritian company will be incorporated by the BVI company for example, then the Mauritian company will invest into an African company."

Among the key attractions of the Mauritian corporate regime are the IPPAs. "They are very valuable because they give comfort and help to minimise risk, providing considerable benefit to investors operating in the region," said Scali.

ACTIVITY INCREASING

Conyers sees interest from the GCC in investing in Africa through Mauritian entities. Scali noted that, "In energy, we have major GCC clients investing through Mauritius into Kenya, for example."

Lefebvre added, "There is activity in a number of sectors: agriculture, IT, telecoms, infrastructure generally. The other interesting thing we are starting to see is Chinese investors managing their affairs and operating their investments from Dubai. However, they tend to want to use offshore structures. They are familiar with BVI as it's tremendously popular in Asia. These clients are now looking to invest into Africa. Stephen and I work together now with Dubai as one end of the bridge and Mauritius as the other – that's the way into Africa."

Mauritius - the traditional tourist view (credit KKulikov/Shutterstock)

Looking to the future, Scali is 'cautiously optimistic' about the future in terms of deals. He said, "Deal flows and deal sizes are increasing. Deal size in Africa is on the smaller side of those we are used to seeing internationally but it is increasing. We expect that to continue and it will continue to help Mauritius develop as a financial centre. Mauritius is in a position to act as a regional financial centre for African development providing high quality financial services, not just investment holding but investment management, custodianship and other related services."

Lefebvre said, "Mauritius is Conyers' newest location. There is still some distance to be covered to change people's mindset so they see Mauritius as an international financial centre and a place where sophisticated financial structures can be created and managed rather than just a tourist centre.

"Mauritius has this wonderful advantage of combining the traditional advantages of a financial centre with its treaty network as well. You have partnership regulation which facilitates private equity transactions; you have protected cell companies creating an excellent platform for investment. You can set up the same kind of structures out of Mauritius as other more established offshore jurisdictions. We will see more and more sophisticated instructions and more and bigger players getting involved, as the African market grows, Mauritius as a 'gateway' will do so as well."

Scali also noted that Indian travel group Make My Trip listing on NASDAQ in New York via a Mauritian corporate structure.

Having discussed Mauritius as a 'gateway' to Africa, Scali addressed the issue of when the financial centre would become a 'gateway' for Africa to the rest of the world. "We have already begun to see African-based corporates looking for opportunities in other parts of Africa or pan-indian ocean business. There is nothing wrong with the notion of the 'gateway' but the future is not just about passing through. We see Mauritius becoming a hub for financial services. This is a long-term story over the next 20-40 years.