

Corporate | Fiduciary | Tax

BUSINESS BRIEFING SEMINAR “Mauritius: Opportunities for Jersey Trust Companies”

Assad Abdullatiff, TEP, LLB(Hons), LLM, Bar
Ex-Chair STEP Mauritius & Council Member STEP Worldwide
Managing Director, AX1S Fiduciary Ltd

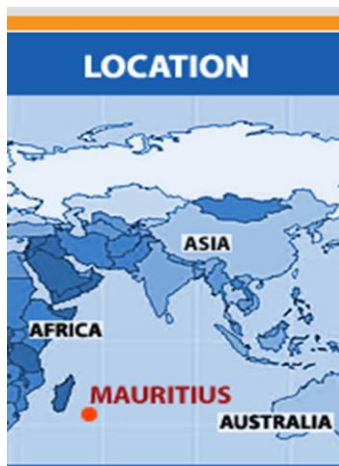
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Jersey

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Mauritius: At the crossroads of India & Africa



- Strategically located in the Indian Ocean, perched on the axis of Africa, Asia and the rest of the world.
- Better known as a **treaty-based tax planning jurisdiction**, it is home to around 25,000 Global Business Companies.
- Over 900 Offshore Investment Funds with Net Asset Base of over USD 200 Billion are set-up in Mauritius.
- An established investment gateway into India, Mauritius is now widely heralded as the entry point into Africa.

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The Mauritius Financial Centre

- Recognized International Financial Centre which relies on modern Institutional & Legal framework.
- Excellent Track record with many accolades:
 - It has never been on any grey or black list
 - Is well regulated and has always been committed to comply with international standards
 - Is business friendly: For the third year running, Mauritius came out 1st among African economies and 19th worldwide in the World Bank's Ease of Doing Business Report.
 - It is rated as the freest economy out of 46 countries in the Sub-Saharan African region and 8th in the world by the World Index of Economic Freedom of the Heritage Foundation.
 - The Ibrahim Index of African Governance rates Mauritius as 1st in Africa on Governance
 - Mauritius has fared well in both phases of the OECD Peer review.
 - In **November 2013**, the Global Forum on Transparency and Exchange of Information for Tax Purposes which is an emanation of the OECD declared Mauritius as a **largely compliant** jurisdiction

The Mauritius Financial Centre

- Mauritius is an independent & democratic state but has retained the Privy Council of the United Kingdom as ultimate Court of Appeal.
- Modern infrastructure with a fine brand of multilingual professional workforce rivaling in competence with European and Western Jurisdictions.
- Sound banking environment, which operates on both local and international fronts
- Dynamic Stock Exchange (primary and secondary markets) and newly set-up Commodities Exchange
- It is well regulated but Investor & Business Friendly.
- Low / Neutral tax base allowing for tax arbitrage through its vast network of Double Taxation Avoidance Treaties (DTAs).

Legal System | Structures

- Mauritius is a *hybrid* jurisdiction borrowing legal concepts and traditions from both Common and Civil law.
- The benefit of this *hybrid* system is that it provide a unique range of vehicles to clients for structuring their global investments, conducting global business activities or for asset holding and estate planning.
- Mauritius allows for the setting-up of Companies, Protected Cell Companies, Limited Partnerships, Sociétés, Trusts & Foundations.
- The diversity of legal structures thus makes Mauritius a unique jurisdiction for the structuring of cross border transactions, asset protection & estate/succession planning.
- Additionally, these vehicles can be specifically licensed to conduct Global Business (Offshore) activities which result in low or no taxation.

Treaty-Based Planning

- Unlike traditional “offshore” centers, Mauritius has focused its development on the ability to allow *treaty-based tax planning* through its vast network of double taxation avoidance treaties (DTAs).
- Where a DTA applies, this results in attractive tax planning opportunities in respect of Capital Gains Tax & Withholding Tax.
- Most of the DTAs in force in Mauritius restricts taxing rights of capital gains to the country of residence of the seller of the assets. Since there are no capital gains tax in Mauritius, the potential tax savings for a Mauritius registered entity are significant.
- Additionally, most DTAs provide for a reduction in withholding taxes rates applicable in the target jurisdiction.
- The Mauritius - India DTA had underpinned the emergence of Mauritius as the dominant channel for inbound investment into India. It is now quickly emulating the Indian story in respect of Africa and widely heralded as the “Gateway into Africa”.
- To benefit from the DTAs, the investment must be made by a Mauritius tax resident company, referred to as a Category 1 Global Business Company (GBC1)

Mauritius remains the largest investor in India!

Foreign Direct Investment inflows since liberalization in 1991			
Ranking	Country	FDI inflows August '91 – Mar '12 (in US \$ million.)	% share of total inflows
1.	Mauritius	67,777	37.1
2.	Singapore	17,496	9.6
3.	UK	16,567	9.1
4.	USA	13,014	7.1
5.	Japan	9,146	5.0
6.	Netherlands	7,737	4.2
7.	Cyprus	6,425	3.5
8.	Germany	5,293	2.9
9.	France	3,207	1.8
10.	UAE	2,254	1.2
	Others	33,907	18.5
	Total	182,823	100

Source: Department of Industrial Policy Et Promotion, Govt. of India

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Mauritius DTA Network

Australia	Barbados	Belgium
Botswana	Croatia	Cyprus
Democratic Socialist Republic of Sri Lanka	France	Germany
India	Italy	Kuwait
Lesotho	Luxembourg	Madagascar
Malaysia	Monaco	Mozambique
Namibia	Nepal	Oman
Pakistan	People's Republic of Bangladesh	People's Republic of China
Rwanda*	Senegal	Seychelles
Singapore	South Africa	State of Qatar
Swaziland	Sweden	Thailand
Tunisia	Uganda	United Arab Emirates
United Kingdom	Zambia	Zimbabwe

- 9 treaties await ratification : Congo, Egypt, Gabon, Guernsey, Kenya, Nigeria, Russia, Rwanda (New), South Africa (New)
- 1 treaty awaits signature with : Ghana
- 17 treaties are being negotiated with : Algeria, Burkina Faso, Canada, Czech Republic, Greece, Hong Kong, Lesotho, Portugal, Republic of Iran, Malawi, Saudi Arabia, St. Kitts & Nevis, Vietnam, Yemen, Tanzania, Morocco and Montenegro
- The Rwanda Treaty is being re-negotiated

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Mauritius: The entry-point to Africa

- Mauritius boast a vast DTA network with countries in Africa with currently
- It also has a good network of Investment Promotion and Protection Agreements (IPPA) with African countries
- It has secured preferential access to African markets through its membership of regional groups such as COMESA (Common Market for Eastern and Southern Africa) and SADC (Southern African Development Community)
- Its hybrid legal system allows it to tap into both common law and civil law countries in Africa
- Mauritius enjoys both cultural and geographical proximity with Africa

Mauritius - Africa: Summary of DTA Benefits

COUNTRY	WITHHOLDING TAX RATES					
	Dividends		Interest		Capital Gains	
	Domestic	Treaty	Domestic	Treaty	Domestic	Treaty
Lesotho	25%	10%	25%	10%	25%	0%
Swaziland	15%	8%	10%	0%	0%	0%
Uganda	15%	10%	15%	10%	0%	0%
Tunisia	0%	0%	20%	3%	5%	0%
Mozambique	20%	8%	20%	8%	32%	0%
Rwanda*	15%	0%	15%	0%	30%	0%
Botswana	15%	5%	15%	12%	25%	0%
Namibia	10%	5%	10%	10%	0%	0%
Senegal	10%	0%	8%	0%	25%	0%
South Africa	0%	0%	0%	0%	16.5%	0%
Seychelles	15%	0%	15%	0%	0%	0%
Zimbabwe	15%	10%	15%	10%	15%	0%

*The treaty with Rwanda is currently not in force as it is being re-negotiated

Non Treaty-Based Planning

- Even where there is no DTA between Mauritius and the investee country, it may still be advantageous to structure an investment holding entity in Mauritius.
- This could be done through a Mauritius tax exempt company referred to as a Category 2 Global Business Company (GBC2)
- Such a company will benefit from all the advantages that Mauritius all the other fiscal and non-fiscal advantages that Mauritius provides (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 exception of treaty benefits.
- A tax exempt company can be converted to a tax resident company as and when a DTA is in force with the target jurisdiction.
- The added advantage of such a company is that it allows for an investor's exit can be structured by the sale of the Mauritius holding company rather than the underlying African assets, and again with careful planning capital gains taxes can be legitimately avoided. Often such a sale will be an attractive option for the purchaser as well as the investor.

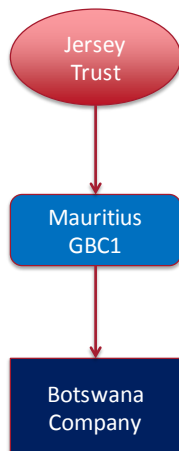
Global Business Companies

- Mauritius offers two types of Global Business Companies, the Category 1 Global Business Company (GBC1) and the Category 2 Global Business Company (GBC2)
- The GBC1 is regarded as a tax resident company and can therefore benefit from DTA access.
- A GBC2 on the other hand is non-resident for tax purposes in Mauritius and cannot thus access benefits under DTA.
- Additionally, a GBC2 cannot undertake activities which are regarded as financial services activities or financial business activities.
- GBC2s have minimum compliance and reporting requirements as compared to GBC1s.

Taxation of Global Business Companies

- **Global Business Category 1 Companies:**
 - Subject to 15% corporate tax BUT entitled to automatic deemed tax credit of 80% resulting in effective tax of maximum of 3%.
 - In most cases, amount of actual foreign tax paid would be greater than 15% and thus this often results in wiping off the 3% down to nil
 - May avail of benefits under Double Taxation Agreements (DTA)
- **Global Business Category 2 Companies:**
 - Totally exempt from income tax.
- **Other Tax Incentives available to Global Business:**
 - No Capital Gains Tax, Withholding tax on dividends, royalties or interests
 - Dividends received from GBC Companies are exempt from taxation in Mauritius
 - Both GBL1 and GB2 outside the scope of VAT

Practical Example



- HNWI with a Jersey Trust wants to undertake an investment in a power project in Botswana.
- A direct investment from Jersey would result in a 15% withholding tax on dividends paid out by the Botswana company to the Jersey Trust.
- There would also be a Capital Gain Tax of 25% on any gain made upon a disposal of the shares by the Jersey Trust
- By structuring the investment through a Mauritius GBC1 company:
 - The withholding tax on dividends will be reduced to only 5%
 - There will be no CGT upon the disposal of shares in the Botswana Company by the GBC1
- The GBC1 company will be subject to corporate tax at the maximum rate of 3% in Mauritius

Mauritius: Opportunities in respect of PWM Services?

- Jersey would normally be the preferred jurisdiction for the provision of private client services because of the breadth and depth of its offering.
- However, Mauritius also offers the whole gamut of private client products and could be considered for those clients with certain risk profiles.
- The Mauritius Trusts Law is a modern piece of legislation allowing for the setting-up of various types of trusts including spendrift, charitable & non-charitable purpose trusts and sharia compliant trusts.
- It is also possible for the client to have his / her own Private Trust Company in Mauritius to act as Trustee to his / her trust(s).
- For clients who prefer to use a structure that has benefit of separate legal personality like companies but with flexibility that a trust provides, the Foundation which was introduced in 2012 is the perfect vehicle.

Mauritius for PWM Services: Salient Features of the Mauritius Trust

- **Trust Types:** A variety of different types of trusts may be set-up including fixed, discretionary, spendrift, charitable & non-charitable purpose trusts and sharia compliant trusts.
- **Confidentiality:** No registration or filing requirements for a trust and confidentiality enshrined in the Act. No disclosure in the absence of a court order and Act limits the circumstances when a judge can make an order for disclosure.
- **Governance:** Each trust must have at least 1 Qualified Trustee which is defined as a Trust Company (or other person) licensed by the Financial Services Commission. This ensures professional management of trusts.
- **Private Trust Companies:** It is possible to set-up a Private Trust Company (PTC) to act as a Qualified Trustee of one or a number of related trusts. A PTC does not need to be licensed as a Trust Company but needs to appoint a licensed Trust Company to carry out its trust administration services and as Company Secretary.
- **Protectors:** The Act allows for the appointment of protectors who may given as little, or as much power as the settlor wishes depending upon whether the settlor wants a pro-active or passive protector. The Act also provides that a protector shall not be deemed to be a Trustee by reason only of the exercise of the powers conferred.
- **Anti-Attack Provisions:** The Act contains specific provisions aimed at preventing a trust from being attacked on the basis of succession rights (including forced heirship), marriage or divorce and insolvency of a settlor or beneficiary. Additionally, a non-resident settlor shall generally be deemed to have had the capacity to transfer or dispose of assets to a trust.

Mauritius for PWM Services: Salient Features of the Mauritius Foundation

- **Types of Foundations:** May be set-up to benefit persons, class of persons or to carry out a purpose which may be charitable, non-charitable or both.
- **Confidentiality:** Although Foundations need to be formally registered, there is no requirement for the Foundation Charter to be registered but only for minimum information extracted from it. Additionally, confidentiality of information is enshrined in the law and disclosure is permitted in very limited circumstances.
- **Governance:** Managed by a Council which shall have at least one member ordinarily resident in Mauritius. No requirement for that member to be a licensed trust company. Requires a secretary in Mauritius which needs to be a licensed and needs to have its registered office in Mauritius.
- **Legal Personality:** The act of registration creates, in law, an entity with specific juridical personality, enjoying aspects of corporate ability.
- **Protectors:** Protector(s) may be appointed. The Act however allows the Charter to determine what shall be the powers and duties of the protector(s).
- **Anti-Attack Provisions:** The law contains specific provisions aimed at preventing a Foundation from being attacked on the basis of succession rights (including forced heirship), marriage or divorce and insolvency of a settlor or beneficiary.

Taxation of Trusts | Foundations

- Tax law distinguishes a resident (for tax purposes) Trust | Foundation from a non-resident (for tax purposes) Trust | Foundation.
- A Trust will be non-resident (for tax purposes) where the settlor is a non-resident and all the beneficiaries appointed under the terms of the trust are, throughout an income year, non-resident
- A Foundation will be non-resident (for tax purposes) when the founder is a non-resident and all the beneficiaries appointed under the terms of a charter or a will are, throughout an income year, non-resident.
- A Non Resident Trust | Foundation is exempt from taxation in Mauritius.
- A Resident Trust | Foundation is taxable on its chargeable income at the rate of 15% per annum but can apply for a Category 1 Global Business License (GBL1).
- A GBL1 Trust | Foundation will be taxed at the maximum rate of 3% and will also be able to access benefits under Double Taxation Avoidance Agreements (DTA).

Possibilities for Jersey Trust Companies

- A Referral Arrangement to enable you to expand your product offering without the necessity of incurring any capital expenditure.
- Referral Arrangement coupled with the creation of a “virtual” cubicle arrangement whereby staff are dedicated to the provision of services to your clients.
- Creation of a Managed Trust Operation in Mauritius enabling you to ring fence and keep ownership of the client base under your own dedicated cubicle without having to go through the expense of setting-up and maintaining full fledged operations in Mauritius.
- Outsourcing of some processes and leveraging benefits ranging from lower cost labor, improved quality of service thus allowing you to focus on your core business processes.

Why work with us?

- AX1S is a independently owned specialist professional fiduciary firm offering a whole gamut of trust and corporate services to an international clientele
- AX1S is an offshoot of BLC Chambers, a leading Mauritian law firm whose lawyers have a wide range of expertise, enabling them to provide clear, sound and timely legal advice on the full spectrum of legal and commercial areas.
- AX1S and BLC work in tandem to provide a comprehensive, seamless and impeccable service to clients.
- Through our affiliation to ALN (Africa Legal Network) and network of partners, affiliates and associates in other jurisdictions, we are able to provide a comprehensive integrated and seamless cross-border legal and fiduciary services that our clients require.

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Thank you!

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