MAURITIUS

Investment Funds

A briefing by **YKJ Legal**

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Introduction

Mauritius has established itself as a credible jurisdiction in the global business sector over the last three decades. Many factors have contributed to this success. Amongst others, the network of double taxation avoidance agreements which Mauritius has with 46 countries, the legal system of the country, its regulatory framework, its political stability, its infrastructure which meets international norms, the presence of international banks and law firms and most importantly the availability of skilled professionals. The cost effectiveness of the jurisdiction is, no doubt, also a key factor which many clients look at.

The jurisdiction has successfully attracted a large number of fund managers to structure funds in Mauritius. The variety of fund vehicles available gives fund managers or promoters the flexibility to structure funds according to their requirements or the suitability of their investors.

Legislations

Funds can be set up as a company limited by shares, as a limited partnership, as a protected cell company or a unit trust. The following legislations have therefore been enacted to provide a modern and flexible environment to incorporate funds:

- i Protected Cell Companies Act 1999
- ii Companies Act 2001
- iii Financial Intelligence & Anti-money Laundering Act 2002
- iv Prevention of Corruption Act 2002
- v Securities Act 2005
- vi Financial Services Act 2007
- vii Securities Act 2008
- viii Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008
- ix Limited Partnership Act 2011

Types of Funds

Professional Collective Investment Schemes

Funds are registered in Mauritius as collective investment schemes as set out in the Securities Act 2005. The vehicle can be set up as an open-ended or closed-ended entity. Such funds can be registered as a professional collective investment scheme, being a fund where shares are being offered exclusively to sophisticated investors by way of private placement. Professional collective investment schemes are exempted from many of the provisions under the Securities Regulations, on the basis that the shares in the fund are not resold to the public (and that investors are aware of this restriction) and that the collective investment scheme is not listed on a stock exchange. Apart from professional collective investment schemes, other types of funds that can be set up in Mauritius are specialised collective investment schemes, expert funds and self-managed schemes. These funds must be distinguished from retail funds as they are exempted from many of the regulations applicable to retail funds. Such funds are intended to be promoted only to sophisticated investors and high net-worth individuals, and it is quite common for such funds to have a minimum level of investment from its investors.

Specialised Collective Investment Schemes

This is a scheme which is invests in real estate, derivatives, commodities and other products which may be authorised by the Financial Services Commission ("FSC") of Mauritius.

Expert Funds

An expert fund is designed for investors who can make an investment of an initial amount of at least US$100,000. The investors are intended to be sophisticated investors who are aware of the risks and returns for making such investment. An expert fund should be constituted as an open-ended fund, providing an exit mechanism allowing investors to exit the fund.

Self-Managed Schemes

A self-managed scheme is one where the board of directors of the fund performs the function of a collective investment scheme manager, rather than appointing an external manager. In granting authorisation for such a scheme, the FSC will require satisfactory proof that the governing body of the fund will be able to independently perform such functions without an external manager.

Benefits of using Mauritius

- A fund can take advantage of double taxation avoidance agreements.
- There is no capital gains tax in Mauritius.
- There is no withholding tax on dividend and interest in Mauritius.
- There is no exchange control in force and funds can be repatriated freely.
- The maximum income tax liability on a fund which is tax resident in Mauritius is 3%.
- A fund can claim underlying taxes and benefit from tax sparing provisions.
- It is now possible to incorporate an exempt fund in Mauritius as a company up under the Mauritius Companies Act 2001. Such corporate funds will be exempt from tax but do not benefit from tax treaty advantages.

Taxation of Funds in Mauritius

A Fund which holds a global business license is subject to tax in Mauritius at the rate of 15% on its net chargeable income. However, following the abolition of the deemed foreign tax credit regime previously available to Global Business Companies, a partial exemption regime has been introduced since 1 January 2019. The new regime provides for an income tax exemption of 80% on income derived by a Collective Investment Scheme, Closed-end fund, CIS manager, CIS administrator, Investment adviser or assets manager licensed or approved by the FSC, provided that the substance requirements are met.

The exemption applies to the following income:

- Foreign dividend, subject to amount not allowed as deduction in source country.
- Foreign-source interest income.
- Profit attributable to a PE of a resident company in a foreign country.
- Foreign-source income derived by a CIS, Closed End Funds, CIS manager, CIS administrator, investment adviser or asset manager licensed or approved by the FSC.
- Income derived by companies engaged in ship and aircraft leasing.
- Interest derived by a person from money lent through a peer-to-peer lending platform operated under a license issued by the FSC.

To be eligible for the partial exemption, investment funds holding a global business license shall, at all times carry out their core generating activities in, or from Mauritius, by:

(a) employing, directly or indirectly, a reasonable number of suitably qualified persons to carry out the core activities; and

(b) having a minimum level of expenditure proportionate to its level of activities.

The minimum employment requirements and minimum annual expenditure with respect to the different licenses are detailed in the table below.

License Type	Minimum Annual Expenditure (USD)	Minimum Employment in Mauritius
CIS Manager/Asset Manager	30,000	If assets under management: <USD100m: Min 1 USD100m-USD500m: Min 2 >USD500m: Min 3
Investment Adviser	30,000	1
Collective Investment Scheme	Not Specified	Not Specified
Close Ended Funds	Not Specified	Not Specified
Others	25,000	1

There is no capital gains tax in Mauritius and there is no withholding tax payable in Mauritius in respect of payments of dividends and interest to investors or in respect of exchange of shares. However, the recipient may be subject to taxation in the jurisdiction in which he is resident or domiciled for tax purposes and a Fund may be subject to taxation in countries where investments are made.

About YKJ Legal

YKJ Legal is a law firm authorised by the Attorney General's office. We are a team of experienced lawyers and have acted as legal counsels to many high net worth individuals, international corporates and banks.

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