



Investment Funds in Mauritius

Background

Mauritius has established itself as a credible jurisdiction in the global business sector over the last 20 years. Many factors have contributed to this success. Amongst others, the network of double taxation avoidance agreements which Mauritius has with 43 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 been successful in attracting a large number of fund managers to structure their funds in Mauritius. The variety of fund vehicles available gives fund managers or promoters the flexibility to structure funds according to their requirements.

Legislation

Funds can be set up as a company limited by shares, as a limited partnership, as a protected cell company or unit trust. The following legislation has 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 Regulations 2008
- viii Limited Partnership Act 2011

Types of Fund

Professional Collective Investment Schemest

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

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 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

Under the Income Tax Act 1995 of Mauritius, a fund which holds a category 1 global business licence is taxed at 15% on its income. A system of deemed foreign tax credit of 80% reduces the income tax rate to a net maximum of 3% on the qualifying income of the entity. There is no withholding tax on dividends or interest in Mauritius. In addition, gains realised by a non-resident or resident shareholder on disposition of its shares/units in a Mauritius entity is not liable to tax in Mauritius. The sale or redemption of units by a fund and its investors is not taxable in Mauritius.

Limited partnerships are tax transparent vehicles and are not therefore subject to tax in Mauritius in their own names. Any distribution made to an investor may be taxable in the hands of the investors in accordance with the tax laws of the country in which the investor is located.

YKJ Legal

YKJ Legal is a local law firm authorised by the Attorney General's office. We are a team of experienced lawyers and have acted as legal counsels to a wide variety of investment funds. We assist with the drafting and/or review of constitutive documents for funds and advise on fund structures.

This briefing is for informational purposes only and should not be construed as legal advice.

For further information, please contact:

Yuvraj Juwaheer

yuvraj@ykjlegal.com

T: +230 465 1810

M : +230 5728 2623

Varsha Boodhoo

varsha@ykjlegal.com

T: +230 465 1810

M : +230 5739 2835