



MAURITIUS Limited Partnership

A briefing by YKJ Legal

Introduction

The Limited Partnerships Act 2011 was promulgated on 15 December 2011. This Act was keenly awaited in Mauritius. The limited partnership ('LP') structure is popular among investors in US and European private equity funds.

This investment vehicle is a welcome addition to the range of investment structures that may be used in Mauritius to structure private equity funds for US and European investors for the purpose of investing into Africa and Asia.

Key advantages

LPs are useful structures for investors who do not wish to assume an active role in the day-to-day management of their investment capital. By investing through an LP, the investors benefit from privacy as the partnership agreement is not available for public inspection. More importantly, the tax transparent feature of the LP makes it an attractive vehicle for tax planning purposes. The LP enables the establishment of a look-through structure that allows all profits and losses of the LP to be carried through to the limited partners (i.e. the investors). This spares the LP from "double-taxation" thereby making it a tax-efficient investment vehicle for investors. The LP accordingly is not a taxable entity in its own right. This is clearly beneficial to investors as they do not risk any tax leakage at the level of the LP.

The Mauritius LP law does, however, allow the LP to depart from the default position of tax-transparency and opt for a corporate personality. In the event that an LP opts for a corporate personality, all profits and losses of the LP will not flow through to the investors – they will instead be treated as the LP's own profits and losses and be taxed accordingly at the level of the LP in the same manner as a company is taxed.

Apart from tax transparency, a key advantage of using an LP is flexibility. If a person invested in a company, the administration of that company would be subject to the usual and mandatory provisions of Mauritius company law. In contrast, the administration of an LP is largely dependent on the terms of a private limited partnership agreement. The limited partnership agreement can therefore be drafted with maximum flexibility reflecting the needs and expectations of investors. A partnership agreement would, for example, document the nature of the partnership business, the duration of the limited partnership, the business records and accounts that have to be maintained by the general partner, the manner in which contributions are to be made by limited partners, the allocation of profits and losses, the return of contributions and the admission of new partners.

In effect, a partnership agreement is equivalent to the constitution of a company but can be drafted without the mandatory and prescriptive requirements of general company law. A Mauritius foundation which will hold a global business licence will obviously be an entity which will need to comply with the Financial Services Act 2007. Thus, an application for the incorporation of such a vehicle can only be submitted through a licensed management company.

Structure of LPs

As is common with other LPs in other jurisdictions, a Mauritius LP consists of one or more general partners and one or more limited partners. In broad terms, a general partner manages the business of the partnership and is liable for the debts of the LP. In contrast, a limited partner is a passive or silent investor. If a limited partner is not involved in the management of the partnership business, the limited partner will enjoy limited liability and will only be at risk on the insolvency of the limited partnership for the contribution which the limited partner has made (or agreed to make) to the limited partnership.

Traditionally, limited partnerships do not have legal personality. They cannot sue or be sued in their own name and instead they can only act by or through a general partner. The Mauritius legislation is at the cutting edge of jurisdictions as it allows limited partnerships to be formed with or without legal personality. The Mauritius legislation should therefore be seen as being up-to-date and advanced and catering for the changing needs of investors. Whether a limited partnership should be formed with or without legal personality will be mainly dictated by tax considerations in the jurisdiction where the partnership assets are located.

In simple terms, an LP with a legal personality means that the LP has a legal personality distinct from that of its partners and thus it can sue or be sued in its own name and contract in the name of the LP.

Requirements for a global business licence

The Financial Services Commission (the "FSC") in a circular dated 2012 has set out the requirements for limited partnerships applying for a global business company licence ("GBC licence"). In considering an application for a GBC licence, the FSC will have regard as to whether the conduct of business will be or is being managed and controlled from Mauritius in accordance with section 71 (4) (a) of the Financial Services Act 2007.

In relation to an LP applying for a GBC licence, the FSC will have regard as to whether-

- (a) at least one partner of the LP is:
 - (i) resident in Mauritius, where the partner is a natural person; or
 - (ii) incorporated, formed or registered under the laws of Mauritius, where the partner is not a natural person;
- (b) the registered agent of the LP is a resident in Mauritius;
- (c) the LP will maintain at all times its principal bank account in Mauritius;
- (d) the LP will keep and maintain at all times its accounting records at its registered office in Mauritius; and
- (e) the LP prepares its statutory financial statements and causes such financial statements to be audited in Mauritius.

Clearly, the above requirements for securing a GBC licence helps the LP in developing more physical presence and substance in Mauritius, thereby reinforcing its tax residency in Mauritius. This augurs well should the LP decide to avail itself of benefits under the various double taxation agreements currently in force in Mauritius.

It is important to note that the requirements of the FSC in relation to the LP having to maintain accounting records in Mauritius and the need for it to have its financial statements audited by a resident auditor in Mauritius are to ensure that this vehicle adheres to the OECD standards on tax transparency. Mauritius is on the whitelist of the OECD and Mauritius is making every effort to ensure that that this new vehicle satisfies the OECD standards on transparency issues.

Taxation

The default tax position of an LP is that of tax transparency. Accordingly, the LP will not be liable to income tax in Mauritius. All profits will be taxed in the hands of the partners and not at the level of the LP.

Where the LP makes an election to have legal personality, it will lose the tax transparent position and will be liable to corporate tax at the rate of 15%. If such an LP holds a GBC licence, it will qualify for deemed tax credits at a maximum of 80% of foreign income and this will result in an effective tax rate of 3% for the LP.

Treaty benefits and the LP

Generally, under a double tax agreement, the definition of a “person” includes any body of persons whether corporate or not. Accordingly, an LP which does not have legal personality should be allowed the same benefits under a double taxation agreement as a partnership in general.

It must further be noted that the Income Tax Act 1995 has been amended to provide that the

definition of “Society” includes a limited partnership. The implication of this amendment is that an LP is for the purpose of the Income Tax Act 1995 resident in Mauritius if it has its seat or siège in Mauritius and different if it has one of its partners resident in Mauritius.

Where the LP has opted for corporate personality status, the question as to whether the LP will benefit from double tax treaty benefits is clearer. The tax position of such an LP, should not be different from that of a company. Therefore, an LP with legal personality should be able to avail itself of the benefits of double tax treaties.

By virtue of being registered in Mauritius, an LP, whether transparent or not for tax purposes, should satisfy the first test of residency for double tax treaty purposes. However, it has been a general tendency for holders of GBC licenses in general to reinforce their tax residency in Mauritius by satisfying the tie-breaker test of effective management and control in Mauritius. This is generally achieved by creating more substance and by justifying a commercial or economic presence in Mauritius. The fact that the FSC needs to be satisfied on these two requirements prior to issuing a GBC licence goes a long way in guaranteeing LPs access to double tax treaty benefits.

Therefore, for the purpose of demonstrating substance in Mauritius, it would be important for the LP to demonstrate that significant economic substance and presence is in Mauritius. It is important for clients and management companies to implement adequate measures to ensure that the structure is used in such a way that it meets the expectations of regulatory and tax authorities.

Statutory requirements

A central register is maintained in respect of each limited partnership by the Registrar of Limited Partnerships in Mauritius. This register is not open to public inspection where the limited partnership holds a Mauritius GBC licence.

The financial statements of a limited partnership are filed with the Registrar of Limited Partnerships in Mauritius unless the limited partnership holds a global GBC licence in which case financial statements are filed with the FSC. Financial statements do not need to be audited unless this is required under the partnership agreement or some other enactment. However, if the LP has a GBC licence, the financial statements must be audited.

The capital of a limited partner can only be returned if the general partner certifies that the limited partnership is solvent at the time of, and immediately following, the distribution.

Conclusions

Mauritius LPs will offer a familiar and attractive investment platform for investors. Mauritius is an economic gateway to Africa and Asia and has 44 double taxation avoidance agreements in place. The challenge going forward will be to structure limited partnership arrangements in the particular jurisdiction where partnership assets are in the most tax efficient manner.

It is expected that in the near future this vehicle will present good alternatives to fund managers and investors and that the Mauritius LP will become an investment vehicle of choice, particularly for US investors and for investors seeking tax-transparent structures.

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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