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In association with

Mauritius Global Business Update 13

The Limited Partnerships Act 2011

The Limited Partnerships Act 2011 (“LLP”) is now effective in Mauritius. It is a long awaited legislation which has finally been enacted in Mauritius. The LLP is a very flexible vehicle and constitutes the latest offering of Mauritius towards enhancing its status as a Mauritian investment platform of substance.

The LLP is a vehicle of choice for private equity/venture capital funds and other type of funds mainly because of the possibility afforded by the LLP to combine the benefits of a company with those of the partnership such as limited liability protection to investors and the option of election to have separate legal personality while maintaining the fiscal transparency feature of partnerships. The LLP law is however not specific to investment funds and can be easily used to fulfill other objectives.

LLPs are commonly used in various jurisdictions and notably in the USA. Mauritius now offers foreign investors a vehicle having a legal structure that they are familiar with. This familiarity will no doubt enhance the setting up of investment funds in Mauritius as one tier structures thereby increasing the substance of fund operations in Mauritius which in turn protects the structures from treaty abuse issues or anti tax avoidance legislations.

The fiscal transparency feature of the LLP is one of its principal attractions. Accordingly, partners (not the LLP) will individually be liable to Mauritius taxation in their respective income sharing ratio of the LLP to the extent that the LLP has Mauritius source taxable income. Conversely, should the LLP have any foreign source taxable income then only the Mauritius tax-resident partners of the LLP will be liable to Mauritius taxation. Effectively this means that an LLP whose partners are not tax resident in Mauritius and which derives only foreign source income will have no Mauritius tax liability at all making the LLP a tax exempt vehicle.

Following recent clarifications by the authorities and guidance notes on the operation of the LLP, we bring you the salient features thereof. This update is not meant to be and is not an exhaustive list of all the features of the LLP. Only those salient features which, in our opinion, may be of interest to international clients are included here.



1. Key features of the LLP, GP (general partner) & LP (limited partner):

- 1.1. An LLP must have a partnership agreement but the LLP law is very flexible and does not prescribe the contents of the agreement but rather allows the LLP agreement to regulate the terms of the partnership i.e the LLP law shall prevail only if the LLP agreement is silent on any particular issue. The LLP is required to maintain:
 - 1.1.1. a register of partners
 - 1.1.2. an account of capital contributions and returns
 - 1.1.3. accounting records
 - 1.1.4. minutes of meetings of the general partners
 - 1.1.5. copies of all documents filed with the Registrar
- 1.2. Unless otherwise specified in the partnership agreement, an LLP has a continuous and successive existence through its present and future partners until its dissolution.
- 1.3. Unless at least one GP is resident as a natural person in Mauritius or incorporated, formed or registered in Mauritius, every LLP must at all times have and maintain a registered agent in Mauritius
- 1.4. Investors have limited liability protection and the LLP may elect to have or not to have separate legal personality upon registration or anytime thereafter. An LLP with legal personality means that the LLP has both within and outside Mauritius full capacity to carry on or undertake any lawful business or activity, do an act, or enter into any transaction with full rights, powers and privileges and is capable of suing and being sued in its own name.
- 1.5. LLP must maintain a registered agent in Mauritius unless it has at least one GP resident or incorporated in Mauritius.
- 1.6. An LLP is required to have and maintain a registered office in Mauritius which may but need not be its principal place of business.
- 1.7. No partner may be removed from the LLP unless a power to do so is provided in the LLP agreement.

2.1. LP

- 2.1.1. Can have a minimum of one LP
- 2.1.2. Liability limited to capital contributed or agreed to be contributed to the LP.
- 2.1.3. Can be any individual, a body corporate or an unincorporated body, formed or registered with or without liability in Mauritius or elsewhere, including trust, societe or partnership or any other body of persons.
- 2.1.4. Does not participate in the conduct of management of the business, does not transact the business of, sign or execute documents for or otherwise bind the LP but may, amongst others, advise the GP.



2.2. GP

- 2.2.1. Can have a minimum of one GP
- 2.2.2. Personally liable jointly and severally with other GPs.
- 2.2.3. Can be any individual, a body corporate or an unincorporated body, formed or registered with or without liability in Mauritius or elsewhere, including trust, societe or partnership or any other body of persons.
- 2.2.4. A person can be a GP and a LP at the same time in the same LLP.
- 2.2.5. Every GP is an agent of the LLP and of his other partners for the purpose of the LLP business and his acts shall bind the LLP in all respects.

2. Global Business LLPs

- 2.1. An LLP can hold a GBC 1 or 2 licence or any other licence as may be required for the conduct of its business.
- 2.2. All applications for the set up of a GBC LLP must be made to the Financial Services Commission ("FSC") through a licenced Management Company ("MC"). The FSC shall then, upon the success of the application, issue a clearance to the Registrar of LLPs ("Registrar") to issue a Certificate of registration.
- 2.3. In considering an application for a GBC1 licence, the FSC considers the following factors:
 - 2.3.1. whether the conduct of business will be or is being managed and controlled from Mauritius
 - 2.3.2. whether at least one partner of the LLP is resident in Mauritius, where the partner is a natural person or incorporated, formed or registered under the laws of Mauritius,
 - 2.3.3. where the partner is not a natural person, whether the LLP will:
 - 2.3.3.1. have a Registered Agent resident in Mauritius;
 - 2.3.3.2. maintain or maintains at all times its principal bank account in Mauritius;
 - 2.3.3.3. keep and maintain at all times its accounting records at its registered office in Mauritius; and
 - 2.3.3.4. prepare and audit its statutory financial statements in Mauritius.
 - 2.3. A GBC1 LLP is required to file its audited accounts with the FSC within 6 months of its financial year end.
 - 2.4. The FSC requires that a GBC1 LLP maintains, at all times, its MC as its registered agent.



3. Taxation of a GBC1 & 2 LLP & its partner(s)

- 3.1. An LLP is not *prima facie* liable to tax (irrespective of whether or not it elects to have a legal personality)
- 3.2. However, a resident GBC1 LLP may, by notice in writing given simultaneously to the Mauritius Revenue Authority ("MRA") and to the FSC opt to be liable to income tax at the rate of 15 per cent which reduces to an effective tax rate of 3% after applying the automatic deemed foreign tax credits like in the case of a GBL1 company.
- 3.3. An LLP is tax resident in Mauritius when it has its seat in Mauritius or where at least one partner or GP is resident in Mauritius. However for treaty benefits purposes, a tax residence certificate issued by the MRA is required.
- 3.4. A non-resident LLP is liable to Mauritius income tax at the rate of 15% on its Mauritius source income only, if any, as if the LLP was a company.
- 3.5. The provisional tax payment system known as the Advance Payment System (APS) also applies to any GBC1 LLP which has opted to be taxed in its own name.
- 3.6. An LLP can seek treaty benefits unless it holds a GBL2 licence
- 3.7. An LLP with a GBC2 licence is tax exempt but is also not tax resident in Mauritius
- 3.8. Capital gains on disposal of securities and other movable property are exempted from Mauritius taxation
- 3.9. There is no withholding tax on distributions to investors.
- 3.10. Every partner of a GBC1 LLP is liable to income tax on his share of income from that LLP at the rate of 15%
- 3.11. An inference (i.e not stated as such in the Income Tax Act) albeit an untested one is therefore that a non-resident partner is not liable to Mauritius tax unless the income of the LLP is derived from Mauritius
- 3.12. The net income of a partner from a resident LLP is effectively determined by applying his % profit sharing ratio during an income year to the income of the LLP assuming the entire income of the LLP was distributed among the partners.

4. Continuation

- 4.1. Foreign LLPs can be continued into Mauritius, and Mauritius LLPs can be continued into other jurisdictions.
- 4.2. Registration and continuation of a foreign LLP in Mauritius does not create a new legal entity.

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5. Confidentiality

- 5.1. Only the FSC may require Global Business LLPs or any of its GPs to produce any information relating to the accounting records of the LLP.
 - 5.2. Subject to the LLP agreement, in respect of LLPs holding a GBC licence, the Register of LLPs maintained by the Registrar of LLPs may only be inspected by an officer, the MC or Registered Agent of that LLP. Nevertheless, the name and address of the LLP, of its MC or Registered Agent appointed by the LLP are public records and are accessible to the public.
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