



BOARD OF INVESTMENT



BOI NEWSLETTER

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BOI meets Kamal Hawabhay, Managing Director of Global Wealth Management Solutions Ltd.

Mr Hawabhay, how has Mauritius evolved as an International Financial Centre since the early 1990s.

The emergence of the financial industry in Mauritius started with the diversification strategy of the economy in the 1990s. Mauritius as an IFC has since gone a long way to now become the 3rd pillar of the economy. The emergence and steady growth of the Global Business sector was largely due to the foresight and support of successive governments which put in place the necessary fiscal incentives and flexible regulatory and legislative framework, albeit based on best practice during the first decade, through initiatives like the establishment of a stock exchange in 1989 and an expanding network of double tax avoidance treaties and Investment Protection Agreements. These provided the ideal environment to attract international investors and businesses to set up Global Business vehicles in Mauritius. In 2001, the Financial Services Commission modelled on international regulatory standards and agencies replaced the previous regulator of financial services other than banking which includes the Global Business sector.



The growth of the Global Business sector is quite significant, the number of management companies has grown from around 20 in the 1990's to 140 in 2010 and Global Business entities has increased from around 4000 to over 30,000 over the past two decades. Over the years, the nature of Global Business activities offered in the Mauritius IFC, other than investment holding has become more complex and sophisticated and encompasses products such as global collective investment schemes, close-ended funds, expert funds, specialised collective investment schemes, CIS management, investment dealers and others.

The growth of the Global Business sector is also to a large extent due to the steadily increasing levels of expertise, professionalism, high end service offerings of management companies. This has been achieved through experience, investment in latest technology, constant training, employment of qualified professionals and the sheer drive to always aim higher exhibited by management companies.

To sustain the growth of the sector, the existing and enabling legislations were overhauled and new legislations were introduced. Of note,

- A new Financial Services Act (FSA) which streamlines and consolidates the whole licensing framework for various non-bank financial institutions and financial service providers replaced the older legislation. The FSA introduced a new conceptual approach to Global Business; The Finance Act 2010 has put in place measures to encourage further businesses of substance to set-up in Mauritius by allowing Global Business entities to also conduct business in Mauritius.
- A Securities Act which place the securities industry in Mauritius on par with and in many cases ahead of other IFCs. Its innovative provisions enhances the regulatory standards of our securities' market in line with international best practice and in particular with the objectives and principles of the International Organisation of Securities Commissions (IOSCO);

The Banking Act was amended to allow existing banks to carry on Islamic banking business.

- The Insolvency Act was enacted and came into force on 1st June 2009. The Act provides security and stability to loan and capital providers.
- A draft Limited Partnership Bill and Foundations Bill have already been prepared and it is anticipated that these two pieces of legislation will be passed during the current year.

The objective of the Mauritius IFC has, since inception, has always been to be a treaty driven jurisdiction which enables substance to be built into the operations of Global Business entities in Mauritius. Unlike other so called traditional jurisdictions which thrive on secrecy, Mauritius has always been a transparent jurisdiction where confidentiality in relation to legal operations and transaction is guaranteed by law and yet we are open to scrutiny, subject to and within the bounds of existing laws in Mauritius. We have indeed grown on the back of the Mauritius India treaty which has benefited both Mauritius and India in several ways but have since become the jurisdiction of choice as a platform for investments in emerging markets.

Mauritius is today a mature jurisdiction with appropriate legislation compliant to a large extent with the requirements of international bodies like the OECD, World Bank, FATF among others. It is worth noting that Mauritius has never been on any blacklist of non compliant jurisdictions and this has enabled Mauritius to grow its IFC without any fear of sanctions.

What would you consider as the major strengths of our jurisdiction?

The success of Mauritius as a centre for the provision of financial services owes much to its long standing values of integrity and probity. The jurisdiction prides itself in having a robust regulatory framework sensibly balanced with a business friendly environment. Mauritius fully supports international initiatives (FATF, Basel, IOSCO, and IAIS) in combating money laundering and terrorist financing. Mauritius recent classification on the White List of the OECD enhances its position as a reputable jurisdiction.

Mauritius is ranked as a top performer in the 'World Bank Ease of Doing Business Report (June 2010), 1st in Africa and 20 among the 183 countries surveyed. This positions Mauritius as a highly attractive country for investment and business, especially in the region.

Political stability, confidentiality, cost competitiveness, offer of a wide range of services, certainty in tax and regulatory laws and compliance with world class anti money laundering laws while maintaining a flexible approach to doing business are prime considerations for international investors and businesses when planning their entry and exit strategies. Mauritius offers all these benefits and more

Non tax strengths include modern physical and telecommunication infrastructures, highly educated work force, an efficient domestic banking system coupled with an extensive network of 37 tax treaties and the availability of local legal and accounting expertise. Several international law firms have set up law corporations in Mauritius and the big 4 global accounting firms along with medium size firms also offer their services in Mauritius.

Mauritius had enabled local and international arbitration laws in 2008 to make it a favourable venue for arbitration of international commercial disputes. Last year, a new platform was created by the Government of Mauritius for international commercial and investment arbitration which is the culmination of five years of co-operation between Mauritius and the leading institutions in the field in the course of which Mauritius has adopted in November 2008 a legislation based on the UNCITRAL Model Law, adapted to best serve the interests of international users among others.

The above benefits have contributed greatly to the reputation of Mauritius.

In your views, what are the major challenges that our jurisdiction may face in the foreseeable future?

Other than the Indian conundrum relating to the impending India Direct Tax Code, Mauritius is also facing much competition from other well established jurisdiction like Singapore, Hong Kong and emerging jurisdiction like Seychelles.

There is no doubt that Mauritius is the most well placed IFC to access the African market mainly Because of its strategic geographical location, market access, security, comfort and long standing experience of the African market and tax efficiency. Africa is increasingly

regarded as the next frontier market but the continent is wide and diverse with some countries experiencing double digit growth while some countries experience difficulties. The continent does seem however ripe for private equity investments and the time to enter Africa is indeed now. Mauritius has the right tools to mitigate the inherent risks of the African Market such as its network of Investment Promotion and Protection Agreements among others but these are virtually unknown to the world. Mauritius already has the know-how, experience and maturity to assist investors and businesspersons to leverage off its already existing attractive benefits to ensure their safe entry on the African market and their eventual exit. The challenge for Mauritius will be its ability to effectively let the world know about these attractive benefits of using Mauritius and also to remind the world that Mauritius is also an African country.

Most of Europe and the USA are either still in recession or have low growth rates. The harder it is for international investors to find a potentially profitable market to invest or do business the greater the challenge for IFCs like ours. Fortunately for Mauritius, it shares excellent long standing, historical and close cultural ties with the two biggest growing economies, namely India and China. The threat that Mauritius faces will be to maintain if not reinforce its already buoyant investment led global business with India against competition from other jurisdictions while positioning itself as a direct platform for Chinese rising involvement in Africa.

Introduction of new products, if delayed, may cause Mauritius to lag behind other established jurisdictions. The Limited Partnership Bills and the Foundation Bill are being much awaited and are expected to open new avenues of business for Mauritius. The extent to which these will be successful remain to be seen.

Mauritius has long been used as the platform for investing into India. Lately, Indian outbound investors have used our platform for investing in other parts of the world specially into Africa. In your opinion what explains this two-way traffic and how do you see this evolving in the future?

Mauritius has been the ideal gateway to India since two decades because of the favourable treaty that it has with India but very importantly also because Mauritius provides certainty of fiscal and regulatory laws coupled with the absence of foreign exchange control laws and the rule of law which all businessmen and investors look for primarily. Tax is indeed an important consideration as it often is a material cost of doing business but is not and cannot ever be the driving force. If tax was indeed the paramount reason then metaphorically speaking, this would amount to the tail wagging the dog! Other significant benefits of using Mauritius to access India are the considerable expertise and knowledge of Indian foreign institutional investment and portfolio laws among others that Mauritius professionals have acquired over time, the commonality of language & culture, lesser costs & greater ease of doing business and very importantly an impartial judiciary system of high standard & relative quick delivery of justice. These are the principal reasons behind the success of Mauritius.

The strategic location of Mauritius allows it to rightly position itself as the gateway for investment in India and Africa. Africa has great unexploited potential and has steadily been attracting billions of FDI. Mauritius has several well established tax treaties with 13 African countries namely Tunisia, South Africa, Botswana and Swaziland and awaits ratification with Egypt, Kenya, Zambia, Malawi and Nigeria. Mauritius and India are both founding members of the Indian Ocean Rim. Mauritius is also a member of the Common Market for Eastern and Southern Africa (COMESA) and the South African Development Community (SADC). We can therefore be and indeed are becoming India's favourite platform to do business in or invest in African market. Similar to China, India is also expected to have increasing demands for raw materials, energy and commodities which are plentiful in African countries like Nigeria (Oil), Zambia (Copper, Cobalt, Zinc), Namibia (Uranium, Diamonds), South Africa (Uranium, Chromium), Niger (Uranium), Botswana (Diamonds) and Senegal (Phosphates). Several Indian Multinational Companies are already accessing Africa through Mauritius to draw benefit from its treaty and other network with such African countries.

Another attractive reason for using Mauritius is the Investment Promotion and Protection Agreements (IPPAs) that Mauritius has signed with 17 African countries. Given the risks of doing business in Africa, the benefits of the IPPAs such as free repatriation of investment capital and returns, guarantee against expropriation, most favoured nation rule with respect to the treatment of investment, compensation for losses in case of war or armed conflict or riot

and arrangement for settlement of disputes between investors and the contracting states are of paramount importance to investors.

Lately, initiatives by international bodies like the OECD has called upon IFCs to ensure more 'substance'. More recently, India has also announced in its proposed Direct Taxes Code, its intention to move towards a policy of more 'substance' by IFCs. How is Mauritius, as a trusted and well regulated IFC, responding to such international norms?

It is to be noted that substance is indeed an increasing consideration for the Category 1 Global Business Licence entities (GBL1) and to a much lesser extent for the Category 2 Global Business Licence companies (GBC2) which are the Mauritius equivalent of the International Business Companies (IBCs). The Finance Act 2009 introduced additional requirements to be met by GBC2s such as the filing of financial summaries, the provision of full due diligence on the beneficial owners of such GBC2s and the business objective outline. These are enhanced substance measures for the GBC2s.

The recently released OECD report on Transparency and Exchange of Information for Tax purposes referred to the filing of financial summaries by GBC2s as being insufficient. It must be said that the equivalent of the GBC2 in the Eurocentric jurisdictions like Jersey, Guernsey and BVI have no accounts filing requirements at all save for public companies. It is important to highlight the fact that the GBC2 is not tax resident in Mauritius and hence cannot benefit under tax treaties. Accordingly this perceived lacking relating to the GBC2 has no bearing whatsoever to any treaty related business between Mauritius and India or any other treaty partners. The OECD report also reported that the Income Tax Act in Mauritius was amended to enable the Mauritius Revenue Authority to more effectively exchange information about non residents with the appropriate authority of the requesting treaty partners. It must be understood that this again refer to the GBC2 only. No negative criticisms are levelled at all at the GBL1 which is used to benefit under treaties, whether from the viewpoint of statutory filings, filing of audited accounts, exchange of information or due diligence about the beneficial owners & directors. This mere fact unambiguously reconfirms that the GBL1 entities operating in the Mauritius IFC are well regulated and are above board.

It must be well understood that since the policy of the Mauritius IFC has since the very beginning always been to be a treaty jurisdiction, it follows that substance has always been part and parcel of the Mauritius operations of the GBL1 entities that set up here. This is because to be able to benefit under the tax treaties, the Global Business entities must be tax resident in Mauritius and such tax residency is achieved for the purposes of tax residence under the treaties only if management and control is in Mauritius. It is true however that the level of substance requirement has risen over time particularly since the 911 event in the US which was a true paradigm shift. Mauritius has adapted fairly quickly to the new world order. The Tax Residence Certificate now issued by the Mauritius Revenue Authority which was a permanent certificate was subjected to enhanced procedures in 2006 and is since renewable annually. The Financial Services Act 2007 introduced new substance considerations which the FSC is now, by law, required to take into account in considering an application or a renewal for a GBL1. The FSC must consider whether the conduct of business will be or is being managed and controlled from Mauritius and in doing so may have regard as to whether the GBL1:

1. Shall have or has at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement.
2. Shall maintain or maintains at all times its principal bank account in Mauritius.
3. Shall keep and maintain or keeps and maintains, at all times, its accounting records at its registered office in Mauritius.
4. Prepare or proposes to prepare its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius.
5. Provides for meetings of directors to include at least 2 directors from Mauritius.

It is therefore clear that Mauritius has adopted very concrete measures in ensuring that the substance requirement is already embedded in law as opposed to most of the other jurisdictions.

The Association of Trust and Management Companies (ATMC) has also pursued discussions on enhanced substance requirements initiated by its members since over a year now. Our IFC

is in competition with several long established and other emerging IFCs and it is critical that we strike the right balance among substance, regulation and business requirements and this is why on-going consultations with the various stakeholders in the sector is taking place as otherwise the Mauritius IFC will be challenged to its detriment by other equally regulated but more flexible and business friendly IFCs.

Nevertheless, we believe that the measures that Mauritius has taken so far and is contemplating to implement do address the concerns of investors worldwide, foreign governments and international bodies on the credibility and good faith of our IFC.

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