



L'EXPRESS DE FRANCE PRÉPARE UN DOSSIER SUR MAURICE

Le magazine français, L'Express, compte présenter un hors-série de 28 pages sur notre île. Ce dossier spécial passera en revue plusieurs aspects de la vie économique du pays, dont le tourisme, les transports, le logistique, l'aéroport et le port qui demeure un point important pour les routes maritimes dans

cette partie du monde. Les journalistes français consacreront également quelques pages sur le concept de Maurice Ile Durable et prendront pour exemple RT Knits et Ommicane. Un entretien avec le ministre du Tourisme, Michael Sik Yuen, est aussi prévu dans ce dossier spécial.

Kamal Hawabhay blasts at those who call Mauritius a tax haven and a centre for money laundering. Mauritius, he says, should not let its good economic reputation be tarnished as it is becoming India's favourite platform to do business in or invest in African market. The President of Trust and Management Companies Association in Mauritius believes the country should speak to India to put an end to critics and unfounded allegations concerning the double taxation avoidance (DTA) treaty | **LEEVEY FRIVET**

KAMAL HAWABHAY

"MAURITIUS NEEDS TO TALK TO INDIA ON DTA ISSUES"

■ How does a Management Company operate?

A Management Company (MC) is one whose main activity is to set up, administer, manage and provide corporate, nominee, trust and other services to a corporation which proposes to apply for, or holds, a Global Business Licence. An MC is required to be licensed by the Financial Services Commission under section 77 of the Financial Services Act 2007 ("FSA").

Section 72(1) of the FSA requires that all applications for a Global Business licence must necessarily be channelled through an MC. Section 71(5) further provides that a corporation holding a Category 1 Global Business Licence shall at all times be administered by an MC and Section 76 (1) provides that a corporation holding a Category 2 Global Business Licence shall at all times, have a registered agent in Mauritius who shall be an MC.

Management companies therefore are of prime importance to the sector, given their role as intermediaries between clients and the FSC. MCs operate under the FSC Guidance Notes.

MCs are required to perform, for all their client applicants for a GBL, comprehensive Customer Due Diligence (CDD) procedures which should also be periodically reviewed. Such CDD documents and information are then filed with the FSC.

FSC expects that MCs ensure that their business is at all times in conformity with the stipulated conditions, norms of honourable conduct and with the laws of Mauritius; take all reasonable measures and exercise due diligence to ensure that their clients are sound and reputable; keep books and records in connection with their business of company management that reflect accurately their affairs and business; keep separate set of accounts for each company they manage; keep separate funds, assets and property of each of the companies they manage; keep in one bank account, separate from their own bank account, all monies held on behalf of their clients.

Several MCs form part of global net-



works of accounting, taxation or consultancy firms.

The services provided by MCs, include:

- Company and trust formation and administration
- Trusteeship services
- Professional advice on company law, trusts and tax related issues
- Provision of directors, secretary and nominee shareholders
- Registered Agents for Category 2 Global Business Licensees
- Registered Office for Category 1 and Category 2 Global Business Licensees
- Preparation of incorporation and application documents for Global Business Licence.
- Ensuring post-statutory compliance with company and tax laws (filing of changes on Directors, Shareholders, etc.).
- Preparation of documents for applications for residence and work permits, visa, duty exemption, etc.
- Maintenance of books and accounting records.
- Fund administration services such as NAV calculation, preparation of quarterly reports, etc.

■ What difficulties do Management Companies have to face in Mauritius?

Global Business clients are predominantly foreign businessmen and investors and they naturally react to global economic and stock market cues. The current lasting recession has considerably slowed down new business and existing business are adopting a "wait and see" stance. The combined results of the above translate into less work for the MCs and directly impacts their bottomline.

As India's economy started opening up and big business rushed in, corruption also has gone crescendo and the blame game associated with corruption gradually became linked to Mauritius which seems to have been an easy target to accuse since over 40% of India's FDI comes through Mauritius. In other words, we are the victims of our own success!

Kamal Hawabhay, President of Trust and Management Companies.

Mauritius is a latecomer in the field of international financial services. Traditional International Financial Centres ("IFC") have been in existence since ages. Mauritius only set up its IFC in the early 1990's and is still facing tremendous competition on certain types of products like the fund vehicles, International Business Companies ("IBC") and the trust. The Mauritius equivalent of the IBC is the Category 2 Global Business companies and this



SERVICE NUMÉRIQUE POUR DÉPISTER LE DIABÈTE

La surveillance de la rétinopathie diabétique est désormais effectuée à l'aide de caméras numériques. Un outil longtemps attendu dans la lutte contre le diabète. Le nombre de diabétiques qui ont bénéficié de dépistage de la rétine tourne autour de 25 000. Certains ont dû être référés à l'hôpital de Moka, d'autres ont dû se rendre à

Chennai pour des traitements plus poussés. Ce nouvel équipement permettant le dépistage à temps, devra faire baisser le nombre de chirurgies. Soulignons que 45 % des diabétiques souffrent de rétinopathie diabétique et que 500 patients bénéficient de traitements au laser tous les mois.



market segment is very price and regulatory sensitive. MCs also face a lot of competition from other non traditional entities but now well established jurisdictions like Singapore, Hong Kong and emerging jurisdiction like Seychelles. Singapore, for example, also have a Double Taxation Agreement (DTA) with India but the capital gains article is less favourable than the Mauritius one. Nevertheless, investors are willing to consider Singapore to achieve certainty in their India fiscal status.

To edge ahead of the competition, the Mauritius IFC chose from the beginning a niche business model which is treaty based. The success story of Mauritius using the Indo Mauritius Double Tax Avoidance Treaty is known globally, and this is no mean achievement. However, the constant unwarranted and biased criticisms, the looming discussion between the Mauritian and Indian governments on the DTA scheduled for December 2011 in Mauritius and the impending introduction of the Direct Tax Code (which contains untested aggressive tax avoidance rules) by India in April 2012 have cast a thick shadow of uncertainty on the Global Business sector and this has impacted MC's business considerably this year.

While it is important to have a sound regulatory legal framework in place to sustain the good repute of Mauritius as an IFC, it is also important to maintain the competitiveness of the jurisdiction and not impose unjustified measures. Not all countries require the same level of operational substance in Mauritius like say India, South Africa or certain European coun-

tries. Striking the right mix of regulations, substance and flexibility has not always been achieved.

Mauritius has also lagged behind the offer of new products as opposed to other jurisdictions which have been very pro-active and business friendly. Enabling laws like Limited Partnership Act has just recently been enacted despite being in the pipeline since 2004 and the Foundation Bill is yet to be passed by Parliament. We earnestly await the introduction of new types of trusts.

■ What are the differences between Global Business Category One and Two?

A Global Business Category 1 (GBC 1) is a Mauritius Tax Resident Corporation which conducts business outside or inside Mauritius (subject to specific FSC approval) and which holds a Category 1 Global Business Licence issued by the FSC. A Resident Corporation is a body corporate formed or registered in Mauritius, and may include any trust, société, partnership or any body of persons governed by the laws of Mauritius.

Since a GBC 1 is a Tax Resident in Mauritius, it may apply for a Tax Residence Certificate issued by the Director General of the Mauritius Revenue Authority (MRA) entitling it to avail to the benefits of the tax treaty network of Mauritius.

GBC 1 corporations are mostly used

for investment holding purposes but are also used to hold intellectual property such as patents, copyrights and trademarks, to receive royalties; asset management, captive insurance and re-insurance and for carrying financial services activities, amongst others. Most global funds licenced by the FSC are GBC1 licenced companies.

The GBC 1 is taxed at the standard corporate tax rate of 15% which may be reduced to an effective rate of 3% of chargeable income if the automatic deemed foreign tax credits are availed of.

A GBC 2 is a Resident Corporation but is not resident in Mauritius for tax purposes and is thus exempt from all taxes. It does not benefit from DTA relief under tax treaties. Although a GBC 2 may conduct most activities, it is not

taxation treaty?

As previously stated, we have succeeded beyond our own expectations in global business dealings with India bound investments and businesses through the Mauritius IFC. Our competitors have obviously been eyeing this niche business of ours since a long time. India has always been a country prone to corruption in certain quarters. As India's economy started opening up and big business rushed in, corruption also has gone crescendo and the blame game associated with corruption gradually became linked to Mauritius which seems to have been an easy target to accuse since over 40% of India's FDI comes through Mauritius. In other words, we are the victims of our own success! The combination of the above along with a total lack of knowledge of

the functioning of MCs, their duties & obligations under the law, the Mauritius regulatory framework, banking procedures and FSC rules provided the ideal fodder to newspapers in search of sensationalism to black mark Mauritius. Over the years, the ordinary people of India have started believing the maliciously false news about the misuse of the Indo Mauritius DTA, even more so that such incorrect allegations have

never been or only very softly opposed by the Mauritius government and private sector. Uncanny Indian Revenue officials started believing these stories

We reject the unfounded allegations of money laundering and the tax haven tag.

Kamal Hawabhay on reports in the Indian media concerning Mauritius offshore sector.

allowed to conduct any financial services related activities and trusteeship services.

■ What do you think about India's will for the review of the double



60 PARTICIPANTS AU GOLF FESTIVAL

L'Heritage Resorts/Air Mauritius Golf Festival a démarré hier pour prendre fin le 3 décembre.

Cette sixième édition se disputera sur les parcours du Heritage Golf Club et du Tamarina Golf Club. Selon le General Manager du Heritage Golf Club, le programme est centré à la fois sur le sport

et la détente. La compétition se déroule selon la formule « stableford » et accueille en tout 60 participants, dont 15 pros et 45 amateurs. Le parcours du Tamarina sera ajouté pour la troisième journée, question de faire découvrir aux golfeurs un nouveau parcours.

and started to unduly investigate Mauritius corporations, raise assessments of which about 90% are later quashed by higher Indian courts and push for changes to the DTA.

Pressure to renegotiate the treaty arose mainly because of claims of treaty abuse. It is perceived by certain senior officers in the Indian tax establishment and at the Ministry of Finance that the treaty is used for tax evasion and that India is incurring tax loss of about USD 450M annually. Currently, capital gains are fully exempt from taxation in Mauritius and the DTA between India and Mauritius provides that capital gains from the sale of shares will be taxed only in the country of residence of an investor. This is the basis on which India is pushing for review of the DTA.

Mauritius has been successful in rightly opposing renegotiation of the DTA mostly because of the special diplomatic relations we entertain with India. Senior Indian Minister like the Prime Minister and Finance Minister have always reassured Mauritius that India will do nothing to damage the special relationship that our two countries share. In return, Mauritius has provided India the comfort and reassurance of an improved level of exchange of information on financial flows between the two countries, sharing of banking information, rules to check round tripping etc.

However India is gearing up to revamp its Income Tax laws by introducing a Direct Tax Code which contains untested aggressive tax avoidance rules in April 2012. This Code includes a measure to indirectly override the DTA.

The impending Code & the constant requests to review the DTA have heightened uncertainty to an unsustainable level on the Mauritius route to India which other jurisdictions like Cyprus & Singapore are waiting to benefit from.

Accordingly, it is in the interest of Mauritius to remove this uncertainty and this can only be achieved by putting an end to this matter once and for all by talking to India on the DTA issues. The ATMC takes the view that any discussions on the DTA should be carried out only within the context of larger issues like the finalisation of the CEPCA with India, the designation of Mauritius as an MFN (most favoured nation), ways to minimise the Code impact on Mauritius corporations etc. It is imperative however that Clause 13 which relates to the capital gains taxing rights be maintained as it is.

■ **What could be the impacts on our offshore sector if such treaty were to be reviewed?**

The potential impact will of course depend on what is actually amended, if at all, in the DTA. In the event that the DTA is materially amended, we believe

that the impact may be very harmful to the Mauritius IFC.

The majority of GBC 1 entities in Mauritius are involved in India bound activities, principally investment holding activities and most of the 800 funds set up here also invest in India. A material DTA change may bring these existing clients to rethink their business models using Mauritius while new business may hesitate to come to our shores.

Less business will of course impact the level of employment in Mauritius. The 154 licensed MCs and corporate trustees employ 20 000 Mauritian graduates and professionals at higher than national average pay. The Mauritius economy benefits from a material multiplier effect in relation to business hotel occupancy, business travels, allied industries, training institutions, PAYE collections, VAT collections, MICE segment etc.

It is imperative for the Mauritius IFC to innovate and diversify its products and investment vehicles and keep pace with competing jurisdictions. The recent introduction of the Limited Partnership Act will greatly assist us to attract non treaty tax exempt or neutral funds for example to Mauritius.

As of today, Mauritius is lagging behind several jurisdictions like the Bermudas and Cayman Islands.

However, Mauritius does offer undeniable benefits such as 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.

India is also more and more looking towards investing and doing business in 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. The strategic location of Mauritius al-

rius authorities do not entertain any "fishing expeditions" by foreign authorities in search of exchange of information without any prima facie proof.

Mauritius also fully supports international initiatives (FATF, Basel, IOSCO, and IAIS) in combating money laundering and terrorist financing. The Financial Intelligence Unit (FIU) of Mauritius is member of the Egmont Group. Mauritius is also part of the African Union and a member of Eastern Southern Africa Anti-Money Laundering Group (ESAAMLG).

Furthermore, Mauritius has enacted internationally accepted robust anti-money laundering and anti-terrorist financing legislations, and introduced legal frameworks enabling employment and business facilitation which has further simplified the operational framework for doing business in Mauritius.

The FSC has also entered into Memorandum of Understandings (MOU) with SEBI and Financial Intelligence Unit India to combat insider trading, market manipulation and other fraudulent practices in securities dealing.

The Mauritius IFC is today transparent and mature and boasts of an institutional framework which encompasses norms, rules of conduct, well-defined and formal systems like a well performing, swift and impartial judicial system, adequate laws relating to private property and contracts, agencies regulating the economic and financial system, transparent laws of taxation etc. In short, we have the rule of law in Mauritius coupled with a flexible and ease of doing business second to none on the MO Ibrahim Index and other such indices.

We reject the unfounded allegations of money laundering and the tax haven tag.

■ **The financial sector of Mauritius has become a pillar of its economy. How do you forecast the coming years for the sector?**

There are a number of challenges facing the sector, apart from the impending India DTA renegotiation and coming into force of the DTC. The financial crisis has slowed down business from Europe and the US.

It is difficult for international investors to find a potentially profitable market to invest or do business. The African market is very promising but at the same time there are many risks associated to it. Some African countries do not have the proper infrastructure, legal framework and banking facilities required for doing business.

China has concluded a more favourable tax treaty with Hong Kong a couple of years ago and much of China inbound investment and business are channelled through Hong Kong. It is difficult to do business with China.

It is imperative for the Mauritius IFC to innovate and diversify its products and investment vehicles and keep

It must be noted however that Mau-



ANGEL 1 REPOSE À POINTE D'ESNY

Le cargo battant pavillon panaméen a été sabordé, durant le week-end, au large de Pointe d'Esny. Les inspections sur la coque du cargo ont révélé des fissures de 40 mètres de long par 30 mètres de large. Le navire restait à flot grâce à des pompes, mais la situation est devenue critique quand il

s'est retrouvé en haute mer, avec les fissures qui se sont élargies. Le navire avait quitté Singapour fin juillet en direction de la Côte d'Ivoire avec une cargaison de 33 000 tonnes de riz. Une avarie technique l'avait contraint à se rapprocher des côtes mauriciennes.

CAPACITY. The financial sector currently employs some 20,000 professionals and recruits many school leavers and university graduates

pace with competing jurisdictions. The recent introduction of the Limited Partnership Act will greatly assist us to attract non treaty tax exempt or neutral funds for example to Mauritius.

■ The financial sector has indeed grown up in a short delay, but can we take it that it will be a source for job creation?

The sector currently employs 20,000 professionals and recruits many school leavers and university graduates besides the professionals. Apart from MCs, accounting and audit firms, legal firms, legal professionals and banks derive a large part of their turnover from the global business sector and they employ qualified skilled people. The global business industry also contributes indirectly to employment in other sectors, for example the hospitality sector.

The transfer of transportable and high end skills and know-how achieved through dealings with foreign professionals is a very attractive plus point of the global business sector. This coupled with higher than national average remuneration has contributed greatly to avoid a brain drain amongst our young professionals as they can now fulfil their ambition in Mauritius itself.

■ What are the reasons for the success of the Mauritian's financial sector and why others countries in the region can't do the same?

The success of Mauritius as a centre for the provision of financial services is linked to the existence of a robust regulatory framework sensibly balanced with a business friendly environment.

Mauritius is ranked as a top performer in the 'World Bank Ease of Doing Business Report (June 2010), 1st in Africa and 20th 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



The African market is very promising but at the same time there are many risks associated to it.

Africa, according to Kamal Hawabhay, could be the next big thing for finance-related activities.

businesses when planning their entry and exit strategies. Mauritius offers all these benefits and even 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 36 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.

■ How about the budgetary provisions made for the sector in the 2012 Budget?

We note that the Minister of Finance recognises the importance of financial services to Mauritius as he spoke financial services being the "Linchpin of our Economy". However besides the recent introduction of the LP Act, the only measures he announced to "widen the spectrum of financial vehicles in our jurisdiction" was the intention to "soon set out the legal framework to promote:

- i. Foundations;
- ii. Private Occupational Pensions; and
- iii. New concepts of Trusts."

And for the first time, a Mauritius Minister of Finance thought it appropriate to announce that "The Government of Mauritius will continue to protect our country's best interest with

regards to the India/Mauritius Double Taxation Avoidance Agreement." This mere announcement does mean that he recognises the perils ahead.

Unfortunately, the Minister did not consider any of the budget proposals the ATMC proposed to him

On the plus side, however, the industry welcomes the government's initiative to promote and develop the sector. We also welcome the appointment of two roving ambassadors for Africa and the Indian Ocean who will assist in widening the network of Double Taxation Avoidance Agreements and Investment Promotion and Protection Agreements with African states. The widening of the DTA network in Africa has long been requested by the Global Business sector.

We also appreciate the removal of the solidarity levy on MCs which was totally unwarranted. The financial services industry is inextricably linked with the globalised economy and the current turmoils globally along with the uncertainties linked to the India DTA have affected our industry badly. A further levy on MCs would have driven the tax charge of MCs to 27% which would have been unsustainable by the majority of MCs.

The replacement measures announced by the Minister of Finance can at best be only described as the lesser evil of the two measures which can be better sustained by the industry.

We appeal to the Minister to use the funds generated by the increase in fees solely for the promotion and development of the Global Business sector.