



Dear Readers

The recent official visit of the Minister of Finance and Economic Development and his delegation to India demonstrates once more how valuable the ties are between India and Mauritius. This was an opportunity for the delegation from Mauritius to reiterate the many possibilities that our country has to offer to Indian investors in various fields such as hotels and property as well as for structuring their outbound investments into various countries in the African continent. Mauritius is firmly engaged in playing an active role in African regional cooperation and is proud to host the World Bank's "Doing Business 2010 in Africa" conference.

Jimmy Wong
Managing Director

World Bank's "Doing Business 2010 in Africa" conference opens in Mauritius

Some 150 participants from across Africa reunited during the three-day conference at Balaclava, Mauritius, seeking to promote South-South cooperation and share lessons of experience with a view to encouraging trade, improving competitiveness and catalyzing economic growth necessary to achieve sustainable development in the continent. The conference also served as a platform to strengthen national capacities for undertaking pro-business reforms.

World Bank Country Director Kagia was confident on the need for African countries to undertake reforms to improve technological and business innovation in order to combat the global crisis more effectively as the world economy is showing reluctant signs of recovery from the financial crisis.

Mauritian Finance Minister – Rama Sithanen – outlined the benefits of the reform of the country's taxation. There was a need to cut down on the too many tax scales, rates and appendices, and therefore a harmonized tax rate of 15% (instead of 30%) was introduced for both businesses and individuals with a minimal number of exceptions. Revenue collection was also improved and consequently increased FDI. These reforms have cushioned the Mauritian economy from the worst effects of the current recession and places it in good position for a quick rebound when the recovery begins. The World Bank has been working very closely with the Board of Investment, which is leading these reforms, together with the different line ministries, agencies and the private sector. The Prime Minister also emphasized that since the reforms were introduced in 2006, the Mauritian economy had resisted well from external shocks, including surging oil and food prices, financial crisis and the global economic recession.

Concurrently, according to *Doing Business 2010: Reforming through Difficult Times*, the seventh in a series of annual reports published by the International Finance Corporation and the World Bank, Mauritius was ranked 17 out of 183 economies. It is the top Sub-Saharan economy for the second year in a row in terms of the overall regulatory ease of doing business. It adopted a new insolvency law, established a specialized commercial division within the court, eased property transfers, and expedited trade processes.

Mauritian Prime Minister -Navin Ramgoolam - stressed that the ranking exercise of the World Bank had been a very useful yardstick to measure the country's performance and to set realistic targets, especially by benchmarking on the country that scores highest in each criterion.

Several topics were discussed during the conference: political economy of reforms, implementation of broad reforms, broadening and deepening investment climate reforms and the global trends in the doing business 10 indicators.

Contents

World Bank's "Doing Business 2010 in Africa" conference opens in Mauritius. 1
Guest Article 2
News at a glance 4
Third party Fund administration 5
Microgen 4Series at DTOS 5

The FVCI Conundrum

Private equity and venture capital deal making may not have yet reached the frenzy that India witnessed prior to the Global Financial Crisis, but the last quarter of 2009 has witnessed deals being announced at a robust pace of a deal a day spelling a clear improvement in investor confidence in Indian businesses presenting interesting and lucrative investment opportunities.

One of the preferred routes for Indian investments by foreign investors has been through entities registered with the Securities and Exchange Board of India ("SEBI") as Foreign Venture Capital Investors ("FVCI"s), as both the SEBI and the Reserve Bank of India ("RBI") have extended certain benefits to FVCIs which are not available to other foreign investors. These benefits include: (i) exemption from the minimum entry pricing and maximum exit pricing restrictions that are applicable to all foreign investors buying shares from, or selling shares to, Indian residents; (ii) exemption from having to procure prior permission of the Foreign Investment Promotion Board in accordance with Press Note 1 of 2005 for investments in the same field as that of any existing investments made by the FVCI; (iii) exemption from the 1 year post-IPO lock-in prescribed by the SEBI Regulations which is applicable to all other pre-IPO share capital of an Indian company; (iv) exemption from the requirements for the promoters of an Indian company from making a public tender offer as required by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 where the promoters acquire additional shares by way of purchase from FVCIs; and (v) Qualified Institutional Buyer ("QIB") status and therefore eligibility to (a) subscribe to securities at an IPO through the book-building route; and (b) comply with a minimum pricing requirement based on a 2 week historical price for PIPE deals rather than a minimum pricing computation which takes into consideration the higher of a six month historical price and a 2 week historical price.

While it is not mandatory for offshore funds to register as FVCIs with the SEBI, many offshore funds choose to seek registration with the SEBI and make investments in accordance with the FVCI Regulations to avail the aforementioned benefits. Further, the registration procedure prescribed under the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("FVCI Regulations") is relatively straightforward, involving the filing of an application to the SEBI in a prescribed form along with the application fee. Upon being satisfied with the eligibility of the applicant, the SEBI forwards a copy of the application to the RBI for its approval, upon receipt of which the SEBI issues the FVCI license.

Though the registration process appears to be fairly simple and used to have a relatively short timeline (about 4 weeks in all), of late, numerous FVCI applications have been hanging fire for several months, and in a few cases for as much as a couple of years, principally due to certain concerns of the RBI.

One of these concerns has been thin capitalization of the entities seeking registration as FVCIs which is common to most offshore fund structures, i.e. the investment entity has a very low capital base and only draws down funds immediately prior to the consummation of an investment. To address this concern, the SEBI has issued a circular in 2009 requiring all applicants to furnish confirmation of a firm commitment of at least USD 1 million at the time of application for registration as an FVCI. It is key to note that only documentary

proof of the firm commitment is required and not a requirement to bring in actual funds.

Another key concern has been investment in real estate by FVCIs that are not bound by the safeguards and controls applicable to similar investments through the plain vanilla foreign direct investment ("FDI") route. Although the SEBI amended the FVCI regulations in 2004 to exclude real estate from the list of sectors in which investment by FVCIs were prohibited, the RBI takes the view that real estate investment without the controls applicable to FDI is not desirable. Accordingly, the RBI requires that an undertaking to the effect that no real estate investments will be made is submitted along with the application for registration as an FVCI.

A study of FVCI applications that have been approved in the last few months indicate that the RBI has sought to restrict FVCIs benefits to investments in just 9 sectors, viz., nanotechnology; information technology; bio-technology; seed research and development; research and development of new chemical entities in the pharmaceutical sector; production of bio-fuels; building and operating hotel-cum-convention centres with more than 3,000 seats; developing, operating and maintaining certain infrastructure facilities; and dairy and poultry. This appears to echo the Union Budget, 2007-08, which sought to encourage development of entrepreneurial capabilities in certain high-risk, technology-intensive ventures and in greenfield projects by restricting the tax benefits available to domestic venture funds to the aforementioned sectors. Accordingly, it is learnt that the RBI has been selectively granting approval to applicants that undertake to restrict their investment focus to the aforementioned sectors. It is pertinent to note here that these restrictions are being imposed by the RBI by including these as conditions to its approval, and the FVCI Regulations have not been amended to reflect these restrictions.

It is also important to note that while the FVCI Regulations does not prohibit investment secondary purchases by FVCIs, the RBI has been taking the view that investments by way of secondary purchases will not be entitled to FVCI benefits.

That said, the FVCI route continues to be attractive to investors that are able to find the investment restrictions detailed above palatable, as the benefits available to an FVCI can prove to be significant.

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1. Mauritius and Bangladesh Sign Double Tax Agreement.

The Convention was signed on 21 Dec 2009 in Mauritius to avoid double taxation and fiscal evasion. Furthermore, during her visit here, Bangladeshi Foreign Minister Dr. Dipu Moni held bilateral meetings with Mauritian Minister for Finance and Economic Rama Sithanen, discussing possible new areas of cooperation between the two countries in the area of tourism, commerce, investment and trade. The establishment of Joint Working Groups was agreed upon to implement and soothe the process of implementation of these projects. A MoU on manpower is expected to be signed soon. Mauritius was the first African nation to recognize the independence of Bangladesh.

2. Mauritius - Heaven, not haven.

“Mauritius is definitely not a tax haven”, was the firm declaration of the Sithanen – Mauritius’ Finance and Economic Development Minister, on a recent visit to India to forge trade and economic ties between the two countries.

The written parliamentary answer has records of 60% of the USD80bn FDI flooding India coming from so called “tax havens” like Mauritius, Singapore and Cyprus amongst others, with 40% of the total FDI coming from Mauritius because of tax benefits related to the double taxation treaty between the two countries.

Sithanen was firm on his stance to cooperate with India to combat tax evasion, and tackle money laundering through enforcing regulation to verify the identity and source of funds of clients. Should Mauritian entities licensed by the Financial Services Commission (FSC) of Mauritius be suspected by foreign authorities of being involved in misusing the tax treaty, the FSC would be the first to investigate and take necessary regulatory actions. In such cases, the FSC would even cooperate with its foreign counterparts to the fullest extent permitted by law.

3. Mauritius’ Board of Investment introduces Integrated Resort Scheme (IRS) and Invest-Hotel Scheme (IHS) to Indian investors.

The official investment promotion agency of Mauritius government held an “Investors Roundtable Meet on Mauritius” recently in Delhi with the aim to draw more hospitality investors to the country. Through these schemes, Mauritius grants automatic residence permit on the island, and investors. The minimum investment price of a luxury villa under IRS or IHS is USD500 000. The IHS scheme differs in that it is shared ownership through equity participation. It offers investors all the facilities and services of a sumptuous hotel including the spas, gym centres, pools.

Indian carriers are being considered to operate in Mauritius such as Jet Airways and Kingfisher to increase air connectivity between the two countries.

4. South Africa: African Tax Administration Forum (ATAF)

The Commissioner for the South African Revenue Service (SARS), Mr Oupa Magashula, was elected as chairperson of ATAF at its inaugural conference in Kampala, Uganda in November 2009. This event marked a milestone for a stronger cooperation in tax policy among African countries. Mr Magashula was confident that by working together, they would build effective and efficient tax administrations that would further the sustainable development of Africa to build capable States.

The 28 members of ATAF to this date are: Botswana, Benin, Cameroon, Coite d'Ivoire, Chad, Egypt, Eritrea, Ghana, Gabon, Kenya, Malawi, Mauritania, **Mauritius**, Morocco, Namibia, Nigeria, Niger, Lesotho, Liberia, Rwanda, Sierra Leone, South Africa, Sudan, Tanzania, The Gambia, Uganda, Zambia, and Zimbabwe.

5. Mauritius: GDP 2009 and expectations 2010.

The Mauritius GDP growth was revised up to 2.8% in the year 2009 from the 2.7% growth forecasted last September. The upward revision was mostly attributed to the agriculture, manufacturing and construction industries which improved. Furthermore, there was a less severe contraction in the tourism industry. The economic growth for 2010 is expected to be considerably stronger. Finance Minister Rama Sithanen predicts a growth 4.5-5% as the tourism, construction and export industries pick up and global economy rebounds.

Consumption expenditure of households and the government grew by 2.5% in 2009, lower than the 6% achieved in 2008. Investments probably rose by 6.1% in 2009 compared with 3.6% the previous year, the Central statistics office said.

Mauritius should hold its benchmark lending rate steady at 5.75%. The IMF said Mauritius' prompt, coordinated response to the global downturn – which included the \$340 million stimulus package and monetary loosening, had mitigated the crisis' impact and better positioned the population of 1.3m people to recover from an upturn in the world economy.

6. Changes brought to the Income Tax by Finance Act 2009 in respect of tax year

Previously a **tax year** was defined as a period of 12 months commencing on *1 July*. The Finance Act 2009 has now defined a tax year as being a period of 12 months commencing on *1 January* (Section 21 (a) (iv) of the F.A 2009). Please note that every company (both domestic and Global Business Company Category 1) has the statutory obligation to file its tax return not later than 6 months from the end of the month in which the accounting year ends.

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Microgen 4 Series Powers DTOS Funds Services



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