



Choosing an SPV Jurisdiction

for Structured Finance Transactions

Mauritius: An ideal alternative

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Why Mauritius?

Strategically located in the Indian Ocean, perched on the axis of international investments, Mauritius has throughout the last decade forged a strong reputation as a premier International Financial Centre. Through the right mix of inherent and carefully crafted attributes, Mauritius has become a very popular jurisdiction in which to establish special purpose vehicles (SPVs) for use in structured finance transactions.

Mauritius is a hybrid jurisdiction borrowing legal concepts and traditions from both common and civil law. This allows Mauritian lawyers to avail themselves of the flexibility which structured finance transactions often require for the benefit of the client.

This flexibility can first be felt from the nature of the SPV chosen in the structuring of the transactions, where a global client would find himself before a choice of various types of vehicles, starting with what the industry would describe as the plain vanilla private company with liability limited by shares to more exotic vehicles such as the Protected Cell Company (PCC), or a Purpose Trust. The Mauritian civil law venue could also open a client's doors to the Mauritian equivalent to the French 'sociétés'.

Mauritius also provides an array of classic common law security interests such as fixed and floating charges,

assignment by way of security, lien, pledges and their civil law counterparts, as well as the civil law equivalent of 'gages' and 'hypothèque'. Their combination and interplay provides the global client with a unique solution, specifically tailored to his needs.

Additionally, Mauritian SPVs can avail of a Global Business Licence which allows them to take advantage of special tax regimes. The jurisdiction also benefits from a robust but business-friendly regulatory framework and an extensive tax treaty network.

Key Advantages of a Mauritian SPV

Mauritius has a number of features which make it an attractive jurisdiction for the location of SPVs. These include the following:

- A plethora of SPV structures
- Timing of establishment – 3-7 business days
- Minimum capitalisation
- Legal system – hybrid (common and civil)
- No thin capitalisation rules
- Low/Nil Corporate Taxation
- No withholding tax
- Tax Treaty Network

The Regime for Structured Finance SPVs in Mauritius

SPVs may be set up as private limited companies under the Companies Act 2001. The Companies Act 2001 is a modern and forward looking piece of legislation. It provides for a core statement of company law that applies to all companies. The core statement provides the basic framework for incorporation, internal management and winding up. A company wishing to depart from this core statement may, if so permitted, provide alternatively in its constitution. Under the Companies Act, the constitution is a single document replacing the traditional Memorandum & Articles of Association. A number of the provisions of the Companies Act may also be disapplied by inserting the relevant provisions in the constitution of the company.

An SPV may also be set up as a Protected Cell Company (PCC) under the Protected Cell Companies Act 1999, which allows for the creation and the legal segregation of an indefinite number of cells within the one and same company. Each cell has assets and liabilities attributed to it, and its assets cannot be used to meet the liabilities of any other cell. The PCC also has non-cellular (core) assets which may be available to meet the liabilities that cannot be attributed to any individual cell. Thus, different risks within one company can be ring-fenced through the use of cells. This feature makes the PCC very attractive for structured finance businesses.

A trust structure in the form of a purpose trust may also be used as an SPV. Indeed the Trust Act 2001 permits the creation of a trust for a purpose, notwithstanding the absence of any beneficiary. The Trust Act contains interesting anti-avoidance provisions, the effect of which is to ring-fence the SPV's property against any claim pursuant to the law of another jurisdiction or the order of a court of another jurisdiction in respect of the claim of creditors in the case of insolvency. Therefore, by using a purpose trust it is possible to have a bankruptcy remote structure.

A société can also be used as an SPV. The société is effectively an unlimited liability partnership. The advantage of the société is that it is fiscally transparent. It is possible to limit the liability of all the partners save that of the general partner. However, even its liability can be limited by having a limited liability company interposed between the société and the general partner such that the general partner holds its shares in a limited liability company who in turn is a partner in the société.

Taxation of SPVs

An SPV set up to undertake global activities, i.e. activities conducted outside Mauritius, may apply for a Category 1 or Category 2 Global Business Licence (GBL). An SPV structured as a PCC, Société or Trust may only apply for a Category 1 GBL. When organized as a private company, an SPV may apply either for a Category 1 or a Category 2 Global Business Licence. An SPV holding a Category 1 Global Business Licence is taxed at the corporate rate of 15%, but through a generous mechanism of automatic tax credits of 80% the tax rate is brought down to a maximum of 3%. On the other hand, an SPV holding a Category 2 Global Business Licence is exempt from tax. GBL entities have to be set up and managed by a licensed Corporate Services Provider (CSP).

How can Axis assist?

Axis is licensed by the Financial Services Commission of Mauritius, the regulator for all non-bank financial services. At Axis we have experience in setting up GBL companies and Trusts efficiently and rapidly. We provide our clients with corporate and fiduciary services to ensure that their entity complies with the regulations of the relevant jurisdictions. Our strategic partnership with BLC Chambers - a leading Mauritian law chambers specialising in the areas of corporate law, project and trade finance, banking, tax, real-estate, capital markets, collective investment schemes and cross-border transactions - helps us provide a flawless and comprehensive service to our clients. Axis is perfectly positioned to navigate its clients to the best global business opportunities and structures, and fully equipped to provide the impeccable service and support its clients require.

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