

# Newsletter

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Dear Readers

We are pleased to circulate our May 2019 newsletter.

As from 01 March 2019, Mauritius IFC has position itself as the first jurisdiction globally to offer a regulated landscape for the custody of Digital Assets. This regulatory framework demonstrates that Mauritius is an avant-garde jurisdiction and possesses the ecosystem to assist the global ambitions of Fintech companies.

Mauritius as an IFC continue to ride high despite challenges from international organisations such as the OECD, FATF, EU, etc. and also as 'international norm setters'. Mauritius are receptive and committed to an international playing field and adopting international norms and best practices and continue to be a resilient, strong and stable economy.

Hoping that you will find the information contained therein interesting and useful, we will be pleased to hear any feedback from our readers and thank them for their continued support.

Best wishes

The Editorial Team

## Regulatory / Product Update – Mauritius IFC as the FinTech hub, in and for, Africa – Mauritius, the first jurisdiction to issue Digital Assets Custody Service Licences

Following the issue of the Guidance Notes on the Recognition of Digital Assets as an asset-class for investment by Sophisticated and Expert Investors by the Financial Services Commission (FSC) on 17 September 2018, the FSC has now issued a new regulatory framework in relation to the Custodian Services (Digital Asset) Licence, effective 01 March 2019.

This regulatory framework positions Mauritius International Financial Centre (IFC) as the first jurisdiction globally to offer a regulated landscape for the custody of digital assets. Holders of the Custodian Services (Digital Asset) Licence will equally have to comply with the applicable framework for AML/CFT, in line with international best practices.

Digital Assets are electronic tokens, developed as part of FinTech initiatives, which are used as a medium of exchange, or store of value; the most common form of which are Cryptocurrencies. Digital Assets can also be used to provide access to blockchain-based applications and services.

The regulatory framework for the Custodian Services (Digital Asset) Licence has been developed by the FSC with reference to international consultations held at the level of the Organisation for Economic Cooperation and Development (OECD). This enables enhanced standing to this innovative licence.

According to the New World Wealth, the Mauritius IFC has been the fastest growing financial centre in Africa. FinTech will undoubtedly contribute to further grow the Mauritius IFC by offering value-added activities in addition to unearthing and tapping into exciting opportunities to further enhance our attractiveness and competitiveness, as a jurisdiction of choice for FinTech related activities. The Digital Assets segment is reflective of the technological innovations taking place worldwide and Mauritius is at pace with these latest advancements in the FinTech ecosystem. This new segment will attract more Fintech activities to Mauritius and help develop and expand such activities in the region.

Operators wishing to obtain a licence for the custody of Digital Assets, may now do so in Mauritius with the FSC.

### How can CKLB help?

CKLB can help clients with the appropriate corporate structure, assist them in completing the application documentation pack and business plan, and especially what is needed to be considered under the Custodian Services (Digital Asset) Licence application, etc. Besides, CKLB will provide management, administration, company secretarial and accounting services to the corporate structure and other ancillary services.

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## Country Update – IMF Executive Board concludes 2019 Article IV Consultation with Mauritius

On April 22, 2019, the Executive Board of the International Monetary Fund (IMF) concluded the Article IV consultation with Mauritius and commented as follows:

The Mauritian economy continues to grow at a steady pace, benefiting from a vibrant services sector and strong domestic demand. Real GDP expanded by 3.8 percent in 2017 and is estimated to have grown at a similar rate in 2018. Inflationary pressures are contained, and the unemployment rate has fallen to about 6.9 percent. The external balance continues to deteriorate due to a rising trade deficit in goods, but the overall balance of payments remains in surplus. International reserves have improved significantly since 2016, supported by continued financial inflows. Monetary policy remains accommodative, while the fiscal stance continues to be expansionary.

A prudent stance by financial services firms and supervisory agencies has helped to maintain financial stability. Activity in the offshore global business sector has been broadly resilient while reforms to the sector are underway. Notable efforts are being pursued to

meet the international anti-tax avoidance initiatives and to strengthen the AML/CFT framework in line with the Financial Action Task Force (FATF) recommendations, though further reforms are needed to fully meet them.

Going forward, the growth momentum is expected to continue. Real GDP growth is projected at about 4 percent in the medium term. Without fiscal consolidation, the authorities' debt target of 60 percent of GDP by FY2020/21 is unlikely to be met. Rather, public debt is projected to stay elevated over the forecast horizon, with the debt outlook being susceptible to a range of macro-fiscal shocks. As the revised tax treaty with India comes into effect, the global business sector is entering a transition phase, with efforts underway to move into high-value added services and tap into other markets, notably in the region.

### Executive Board Assessment Summary

- Executive Directors welcomed Mauritius' steady economic growth momentum and broadly positive macroeconomic outlook.
- Directors underscored the need for fiscal adjustment to enhance fiscal credibility, preserve debt sustainability, and reduce the external imbalance.
- Directors agreed that the monetary policy stance is broadly appropriate at the current juncture.
- Directors highlighted the widening external imbalance. While international reserves have improved significantly on the back of strong financial inflows, given the large size of the offshore sector, Directors agreed that the foreign exchange intervention policy should continue to build reserves buffers as conditions permit, to strengthen resilience to shocks.

- Maintaining strong and independent institutions is essential to ensure the country remains an attractive investment and employment destination.

Directors stressed the importance of implementing the outstanding FSAP recommendations for further strengthening financial stability. They also welcomed the steps taken to comply with the international anti-tax avoidance initiatives and the efforts to strengthen the AML/CFT framework. In this context, they underscored the need to expeditiously implement the remaining recommendations of the Eastern and Southern African Anti Money Laundering Group (ESAAMLG). Directors also encouraged the authorities to continue to improve data quality.

### Country Update – The ESAAMLG 2019 Report– Mauritius largely compliant with FATF Recommendations

The 2019 Eastern and Southern Africa Anti-Money Laundering Group, (ESAAMLG) Report was published recently and according to the report, Mauritius continues to be a compliant, secure and safe business and investment destination. The report further indicates that Mauritius is largely compliant with respect to all the 40 recommendations of the Financial Action Task Force (FATF).

In the last evaluation report on Mauritius, ESAAMLG highlighted that the country was mostly compliant with the 40 recommendations of the FATF but requested some improvement in respect to 12 specific areas defined by the international organisation. The Mauritian Government took into consideration their comments and brought some amendments to the Anti Money Laundering /Combating the Financing of Terrorism (AML/CFT) Framework in the Finance (Miscellaneous Provisions) Act 2018. In addition to this, the Financial Intelligence and Anti-Money Laundering Regulations 2018 have been promulgated to address the requirements of the FATF.

Following the changes made in the legislative framework, Mauritius has submitted to the ESAAMLG secretariat a first application for a technical compliance rating on the 12 recommendations, among which 10 have been successfully upgraded from Non-Compliant or Partially Compliant to Largely Compliant and one from Non-Compliant to Partially Compliant. Thus, the country's rating, as per the norms and standards of the FATF, is Largely Compliant.

This improvement in the evaluation of Mauritius in the ESSAAML report reinforce the Financial Centre of Mauritius for being of good international repute and a Financial Centre with substance requirements.

The ESAAMLG, a FATF-style regional body was founded in August 1999 and Mauritius is a member state. The purpose of the group is to combat money laundering and terrorism financing by implementing the FATF Recommendations.

### Country Update – Mauritius not on the European Union (EU) list of non-cooperative tax jurisdictions

**O**n 12 March 2019, the European Union (EU) list has been updated with respect to the blacklisting of non-cooperative jurisdictions for tax purposes.

The EU list of non-cooperative tax jurisdictions is composed of countries that have either failed to deliver on their commitments to comply with required good governance criteria or did not commit to do so at all.

The overall goal of the EU list is to improve tax good governance globally, and to ensure that the EU's international partners respect the same standards as EU Member States do.

According to the revised list, 15 countries, namely American Samoa, Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Guam, Marshall Islands, Oman, Samoa, Trinidad & Tobago, United Arab Emirates, US Virgin Islands and Vanuatu, have been blacklisted.

The fact that Mauritius does not appear on this list is testimony to the country's continuous determination in ensuring that it remains in line with international standards in respect of governance, tax transparency and compliance. Mauritius adherence to best practices further reinforces the country's reputation as a leading International Financial Centre.

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## Treaty Update – Kenya and Mauritius sign new tax treaty after court ruling

**M**auritius signed a new double taxation agreement (DTA) with Kenya on 10 April 2019. It will replace the previous 2012 treaty, which was invalidated by the Kenyan High Court in March as a result of a legal challenge brought by Tax Justice Network Africa.

On 15 March, the Kenyan High Court held that the 2012 DTA, which was purportedly ratified by legal notice published in the Kenya Gazette in May 2014, was in fact invalid. The Kenyan government had failed to follow the correct ratification procedures because the agreement had not been properly laid before Parliament.

Tax Justice Network Africa also claimed that the 2012 treaty was harmful to Kenya because it reduced withholding tax on services, management fees and insurance commissions from 20% to 0% and provided for the right to tax capital gains from stock sales of Kenyan companies to reside with Mauritius, which does not levy any capital gains tax.

The new DTA has not yet been published, so it not known whether the disputed provisions have been included in the new treaty. It was one of six agreements, including an Investment Protection and Promotion Agreement, signed by Kenyan President Uhuru Muigai Kenyatta during a 4-day state visit in Mauritius in April 2019.

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## Treaty Update – Major relief for FPIs from Mauritius claiming DTAA treaty benefit

**"Bombay HC says Tax Dept. must prove 'colourable device' at assessment stage"**

The Hindu Business Line newspaper in its edition of 9<sup>th</sup> May 2019 reported that in a major relief for Foreign Portfolio Investors (FPIs) coming via Mauritius or Singapore, the Bombay High Court has quashed an order by the Mumbai office of the Income-Tax Department that had denied any treaty benefits under the 'grandfathering clause' to investors, and withheld ₹800-crore of capital gains made from the selling of shares of an NBFC as tax deducted at source (TDS).

The High Court said that the theory of 'colourable device' is to be established by the Income-Tax Department at the time of assessment and if, *prima facie*, the transaction satisfies the Double Taxation Avoidance Agreement (DTAA) with Mauritius, then the TDS should not be withheld.

### 'Grandfathering clause'

Under the 'grandfathering clause' in the amended tax treaty, the government allowed 7.5 per cent tax till 2019 only to those registered FPIs that could prove commercial substance in Singapore or Mauritius. The rest were to be charged at 15 per cent. But for investors' gains from share-sale arising from an investment prior to March 2017, when the grandfathering clause was inserted, the profits cannot be taxed in India.

The Mauritius investor in this particular case claimed benefit under the DTAA and sought to repatriate gains made from sale of an NBFC's shares. The assessee made an application for 'nil' withholding tax certificate under Section 197, which was rejected by the Assessing Officer. Section 197 permits certain tax-payers to get relief from TDS at a lower or nil rate.

The AO reasoned that the entire transaction was not genuine merely on the fact that the investor had not transacted any other business by itself and held the deal a 'colourable device,' which is nothing but a transaction structured with the sole purpose of avoiding tax.

The High Court said the Tax Department in the present case did not provide sufficient *prima facie* material to demonstrate that the entire transaction was a sham and a colourable device. The Court was mainly of the view that such a matter should be dealt with during the assessment.

### No concrete proof

But the High Court also acknowledged that "Despite the existence of DTAA, despite the availability of the TRC (tax residency certificate) and despite the CBDT circular that such certificate, as long as in operation, would be a valid consideration for applying the DTAA, we do not find that as laid down by the Supreme Court through a series of judgments, has shut out the case of the revenue totally when it comes to a fraudulent or fictitious transaction."

The High Court clarified that the mere fact that the assessee company has not transacted any other business by itself may not be conclusive, and the assessee's inability to produce TRC of the companies that hold shares in the assessee company, the extent of administrative expenditure and the employment structure can be some of the factors which eventually would go to establish whether the transaction was a sham. But all these aspects can and need to be gone into during the assessment and not when claiming DTAA benefits.

A lawyer who deals with treaty cases said that "The ruling will mainly curtail the Tax Department's bullying



that goes on without any concrete proof to establish tax avoidance and impacts a large number of investors."

### International Index Update – Mauritius only "Very Stable" African country, according to Fragile States Index



The Fund for Peace, a non-governmental organisation, publishes each year its Fragile States Index. The index compares the social, economic, political, and security challenges facing 178 countries. The Index provides a vocabulary for discussion of these challenges. A primary purpose is to improve early warning for conflict, promote improvements in governance, and recognize social and economic progress. African states have tended to be toward the bottom of the list.

However, this year's 2019 Index accorded Mauritius "very stable" status, essentially the same as the United Kingdom or the United States. This is a first-time for an African state. The Index also listed Botswana and the Seychelles as "stable," the next highest category. Ethiopia, Gambia, and Kenya, all of whom emerged from recent political tumult, were among the Index's most improved states, though they still are among the world's most fragile states.

The Index's finding underscore the diversity characteristic of Africa. If Zimbabwe, Somalia, eastern

Congo and parts of the Sahel are wracked with violence, Botswana, Mauritius, and Seychelles are characterized by democracy, protection of human rights, and social and economic progress.



It is true that Mauritius, Seychelles, Botswana are all small states with relatively little internal fractures. Governance has been consistent, with less alienation of the governed from the government that is so characteristic of other parts of Africa. None have suffered from the "oil curse," and in all the security services have only a small footprint. However, South Africa, a large country with the continent's most developed economy also scores well, despite its history of apartheid and ongoing extreme wealth inequality.

### Tax Update – Mauritius Revenue Authority provides clarification on POEM

According to the Financial Services Act 2007 (FSA) as amended by the Finance (Miscellaneous Provisions) Act 2018 (the "Finance Act 2018"), an Authorised Company is required to:

- (a) be owned or controlled in majority by non-citizen(s) of Mauritius;
- (b) conduct business principally outside Mauritius or with such category of persons as may be specified in FSC Rules\*; and
- (c) have its Place of Effective Management (POEM) outside Mauritius.

The Mauritius Revenue Authority issued a Statement of Practice to clarify on the factors to be taken into account in determining the POEM of a company. Generally, a company shall be deemed to have its place of effective management in Mauritius if:

- (a) the strategic decisions relating to the company's core income generating activities are taken in, or from, Mauritius; and
- (b) any one of the following conditions is met: (i) the majority of the Board of directors' meetings are held in

Mauritius; or (ii) the executive management of the company is regularly exercised in Mauritius.

Therefore, for an Authorised Company to have its POEM outside of Mauritius, it is recommended that its Board comprises mostly foreign directors and that the majority of its directors meetings are held outside the Mauritian territory.

However, the above proposals also raised uncertainties as to whether the selected jurisdiction(s) in which the Authorised Company chooses to have its POEM will entail any tax implications in these jurisdictions as well.

#### How can CKLB help?

Given that CKLB have offices outside Mauritius, we are well placed to offer and provide solutions to our clients and prospective clients wishing to take advantage and set up Authorised Companies.

\* According to the Rules, the category of persons include:  
- A holder of GBL - An Authorised Company - A holder of a GBL1 or GBL2 issued on or before 16 October 2017.

# our services

CKLB is independently owned and being of medium size, we pride ourselves in our ability to remaining committed to provide a personal and tailor-made service to clients. We understand well the particular requirements and needs of clients and the key to our successful development has been our commitment to satisfy these needs at high standard. We provide a one-stop quality service with emphasis on local presence and substance. Our varied client base includes HNW / Ultra HNW Individuals, private companies as well as companies listed on major stock exchanges. Our range of services includes:

- our core service, advice to HNWI's and family offices in developing efficient estate planning solutions
- management and family office support structures
- focus on a complete set of fund structuring and administration services
- corporate structuring and advice
- company formation and corporate management
- administration and accounting
- establishment of trusts and provision of trustee services
- back office administration and accounting services
- outsourcing and payroll services
- business administration services, including international trading, licensing and financing
- expatriates occupation and residence permits
- group investment holding and management services

## Connecting our clients to international networks to facilitate cross-border business

CKLB interacts with several professional firms and services group, and is member of the International Grouping of Accountants and Lawyers (IGAL), a well-established association boasting 107 member firms located in 41 countries throughout the world, with 170 offices worldwide. IGAL has developed into a leading business network of legal and accounting firms whose members offer superior services related to legal, financial, tax and insolvency matters to companies and individuals with international activities; as well as expert and personal assistance to reduce the obstacles of doing business in a foreign environment and at a distance. IGAL provides CKLBs valued clients with a wide network for assistance in their cross-border businesses through privileged access to experienced professionals and technical expertise in relevant countries. CKLB will be pleased to co-ordinate any assistance you may require in these countries as an extension of our one-stop shop service.

## Disclaimer

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