Industry Update – Special Purpose Funds

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AGENDA

1. Regulatory Framework of Funds
2. Functionaries
3. Special Purpose Funds
4. The Rules
5. Implementation
Legislations

Securities Act 2005

The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008
Legislations

Securities Act and Securities (Collective Investment Schemes and Closed-end funds) Regulations

- Licensing and Supervisory Framework for Funds and Intermediaries
- Funds operating in Mauritius and in the Global Business sector
- Framework provides for varying and well balanced level of regulations
- Provide for the safeguard of the investing public’s interest
- In line with international norms, standards and practices
Type of Funds under the Securities Act

Collective Investment Schemes

Funds are categorised under two types; and

Closed-end Funds
Collective Investment Schemes

- **Legal form** - company, a trust, or any other legal entity prescribed or approved by the FSC;
- **Purpose** - the collective investment of funds;
- **Investment type** - portfolio of securities, or other financial assets, property or non-financial assets approved by the FSC;
- **Operation** - based on the principle of diversification of risk;
- **Obligation** - redeem them at their net assets value at request of participant;
- **Management of the property** – participants do not have day to day control.

Authorisation of the FSC required before promotion or operation.
Closed-end Funds

- Arrangement or a scheme, other than a collective investment scheme;
- **Legal form** - approved by the FSC;
- **Object** - invest funds, collected from subscribers (public offering or from sophisticated investors);
- **Investment type** - portfolio of securities, or other financial assets, real property or non-financial assets approved by the FSC.

Authorisation of the FSC required before promotion or operation.
Classifications under the Securities (Collective Investment Schemes and Closed–end funds) Regulations

To address regulatory and supervisory requirements at different levels in terms of type of investors in a CIS and nature of investment

- Retail Scheme
- Global Scheme
- Professional CIS
- Specialised CIS
- Expert Funds
Classifications under the Securities (Collective Investment Schemes and Closed-end funds) Regulations

- Authorised under the Securities Act;
- Subject to whole of CIS Regulations
Means a CIS authorised under the Securities Act and holding a Category 1 Global Business Licence;

The regulatory framework is similar to a CIS, but streamlined in terms of its operation in the Global Business Sector (i.e. conducting business outside Mauritius)
Subject to adherence to conditions set out in the Regulations, lighter regulatory requirements will apply.

CIS where shares are offered
- solely to sophisticated investors (incl. Governmental bodies, banks, investment manager, etc); or
- as private placements.
Caters for a category of Fund investing in high risk or illiquid asset types, such as Real estate and Derivatives.

The FSC has the discretion to determine the rules that should apply, impose conditions it deems appropriate.

The FSC may further issue specific rules to provide for requirements applicable to such investments.

Classifications under the Securities (Collective Investment Schemes and Closed-end funds) Regulations
The FSC can authorise a CIS to operate as an Expert Fund;
One that is available and restricted to Expert Investors, i.e.
- an investor who makes an initial investment, or his own account, of no less than US $ 100,000; or
- a sophisticated investor (incl. Governmental bodies, banks, investment)

A lighter regulatory approach will apply.
Classifications under the Securities (Collective Investment Schemes and Closed–end funds) Regulations

To address regulatory and supervisory requirements at different levels in terms of type of investors in a CEF and nature of investment

CEF (Reporting Issuer)  Professional CIS
CEF which is a reporting issuer (i.e. listed on a securities exchange in Mauritius, has more than 100 participants or offer is made by way of prospectus to the public)
Classifications under the Securities (Collective Investment Schemes and Closed–end funds) Regulations

Professional CIS

Lighter regulatory requirements will apply.
FUNCTIONARIES OF CIS
## Functionaries of CIS

<table>
<thead>
<tr>
<th>CIS Manager</th>
<th>Custodian</th>
<th>Administrator</th>
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<tbody>
<tr>
<td>• Licensed by the FSC</td>
<td>• Licensed by the FSC;</td>
<td>• Where a person proposes to provide specified administrative services to a CIS, the FSC’s approval as CIS Administrator must be sought;</td>
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<tr>
<td>• Subject to regulatory and supervisory purview of the FSC;</td>
<td>• The Act and Regulations provide for norms for safekeeping of assets.</td>
<td>• Administrative services include – accounting, valuation or reporting amongst others.</td>
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<td>• Prudential norms, Conduct of business and other operational requirements expected;</td>
<td>• Foreign Custodian</td>
<td></td>
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<td>• Foreign Investment Manager</td>
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SPECIAL PURPOSE FUNDS
Special Purpose Funds

- Mauritius – Attracts Treaty based Funds
- Funds – Invest also in Non-Treaty countries
- Disadvantage treatment – Funds are using the tax neutral jurisdictions
Special Purpose Funds

• National Budget 2013

• Creation of a regime for non treaty based Funds
Amendments to Income Tax Act

- Finance (Miscellaneous Provisions) Act 2012

- Amendment to Income Tax Act
  - Part I of 2nd Schedule
  - Part II of 2nd Schedule
  - Section 73 A
Section 7

- Exempt body of persons and exempt income

- (1) Any body of persons specified in Part I of the Second Schedule shall be exempt from income tax.

- (2) Any income specified in Part II of the Second Schedule shall be exempt from income tax.
Amendments to Part I of Second Schedule

• *Part I of the Second Schedule*

• *New Item 16 – Special Purpose Fund (SPF)*

• *No income tax for SPF*
Amendments to Part II of Second Schedule

• *Part II (Sub-Part C) of the 2nd Schedule (Exempt income)*

• *Item 6 – Amounts paid by a special purpose fund established to a non-resident*

• *Non resident investors will not pay income tax on income derived from SPF*
Section 73A

• Residence status

Thus will not be able to benefit from DTAs - similar as GBC2
Financial Services (Special Purpose Fund) Rules 2013

• Made under Section 93 of the FSA

• Collaboration with MoFED and MRA

• Effective 01 June 2013
Special Purpose Fund

- CIS/CEF
- Meet criteria in Rule 3(1)
- Approved as SPF
- Exempted from Income Tax
Special Purpose Fund

Criteria to be qualified as a SPF

- Invest solely in countries which do not have Tax treaty with Mauritius
- Invest mainly in securities which are tax exempt
- All investors are pension schemes or entitled to tax exemption
Special Purpose Fund

- SPF cannot hold a Global Business Licence
- FSC may impose terms and conditions
IMPLEMENTATION PROCESS
Compliance

• Local Fund - Comply with Securities Act 2005 and the Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008; and

• Other legislations
Implementation

• Application - submitted by CIS Manager or Proposed CIS Manager or Promoter

• Investment Manager outside Mauritius, scheme to appoint a CIS Administrator based in Mauritius
Implementation

• An existing Fund meeting any of criteria as set out in Rules 3 – can submit application to be approved as a SPF.

• Application accompanied by a Director’s Certificate and Auditor’s Certificate
Implementation

• AFS accompanied by a Director’s Certificate and Auditor’s Certificate evidencing that the SPF has met one of the criteria as per Rules.
THANK YOU
FOR YOUR KIND ATTENTION

Vision

“To be an internationally recognised Financial Supervisor committed to the sustained development of Mauritius as a sound and competitive Financial Services Centre”