

Facts

A (the "Fund") will be established as a limited partnership formed under the laws of the Province of Ontario, Canada. Under the Canadian Tax Act a partnership does not have legal capacity and is not treated as a separate legal person. The Fund would therefore not be subject to income tax in Canada. Partners of the Fund who are tax resident in Canada would, however, be liable to tax in Canada on their share of profit from the Fund.

The Fund will seek to achieve long-term capital appreciation through investing directly or indirectly in a balanced portfolio of investments generating income and capital gains in medium-sized enterprises, or having their principal operations in south-east Asia. Certain investments will be made by the Fund through a Singapore holding vehicle. The Singapore holding company will be wholly owned by the Fund for purposes of investing into portfolio companies. The Singapore holding company will be managed and operated from Singapore by a Singapore management company.

The Fund will not derive income from Mauritius and will not invest in shares, debentures or other securities in Mauritius. All the income it will derive will be derived from Singapore or, where investments are made by the Fund directly, from other target countries in south-east Asia.

The General Partner of the Fund will be a Cayman Islands exempted limited company. The officers and directors of the General Partner will be Mauritius-resident and its board meetings will be held in Mauritius. The General Partner will be entitled to delegate powers to a manager, provided that the management and conduct of the activities of the Fund shall remain the sole responsibility of the General Partner and all decisions relating to the selection and disposal of the Fund's investments shall be made exclusively by the General Partner.

The Manager of the Fund will be established as a limited company under the laws of Mauritius and will apply for a GBL 1 Licence with the Financial Services Commission. It will operate from Mauritius and its board will mainly comprise Mauritius-resident directors. Board meetings of the Manager will be held in Mauritius. The persons who will be directors on the board of the Manager will be different from those on the board of the General Partner. It will, under a management agreement entered into with the General Partner, provide portfolio management services for the benefit of the Fund including investigating, analysing, structuring and negotiating potential investments, monitoring the performance of portfolio companies and effecting the disposal of investments. The Manager will receive an annual management fee payable by the Fund.

Points in issue

Confirmation that -

- 1) the Fund would be treated as a société for tax purposes in Mauritius;
- 2) the Fund would be treated as a resident société for tax purposes in Mauritius;
- 3) the partners of the Fund who are not tax resident in Mauritius would not be liable to income tax in Mauritius in respect of their share of income in the Fund.

Rulings

It is confirmed that-

- 1) the Fund would be treated as a société for tax purposes in Mauritius, in accordance with the definition given to the term in Section 2 of the Income Tax Act.
- 2) the Fund would be treated as a resident société for tax purposes in Mauritius in accordance with the definition assigned to the term in Section 73 (c) (ii) of the Act.
- 3) the partners of the Fund who are not resident in Mauritius would not be liable to income tax in Mauritius in respect of their share of income in the Fund, being given that the Fund will not derive any income from Mauritius.

Please note, however, that the Manager of the Fund will be liable to income tax on the fees it will derive from Mauritius, in accordance with the provisions of Section 5 (1) of the Act. The General Partner will on the other hand be liable to income tax in respect of the share of income the Fund will derive from Singapore or from other target countries, as it will be resident for tax purposes in Mauritius.