

Dear Readers

The classification by OECD of Mauritius on its "white list" published on 2<sup>nd</sup> April 2009 is a testimony of the tremendous progress made by our jurisdiction in constantly improving its legal and regulatory framework to make our financial services sector a highly regarded competitive centre. As the global financial infrastructure is constantly changing, we are confident that Mauritius can attract a substantial number of new players.

The China/Africa axis is continuing to strengthen and Mauritius is playing an active role as a platform for Chinese investments into Africa. This is demonstrated by the recently signed MOU between Mauritius and the CAD Fund.

As our international financial services centre is continuing to expand its range of activities, a lot of emphasis is being placed by both the authorities and the service providers on the development of Islamic Finance products.

**Jimmy Wong**  
Managing Director

**Mauritius appears on the "White List" of jurisdictions prepared by the Organisation of Economic Cooperation and Development on the 2nd April 2009.**

**MOU to foster cooperation between Mauritius and the CAD Fund**

Mauritius and the China-Africa Development (CAD) Fund have signed a Memorandum of Understanding (MOU) on cooperation in Financial Advisory for Infrastructure Development and Investment. The signature ceremony was presided over by the Vice-Prime Minister and Minister of Finance and Economic Empowerment, Dr. Rama Sithanen, G.C.S.K., and the chairman of the CAD Fund, Mr. Zhao Jianping.

**The MOU aims at providing possibilities of joint ventures and joint initiatives between Mauritian and Chinese enterprises. It will also leverage Chinese experience in Mauritius in areas of infrastructure with regard to planning, building, financing and operation.**

**Mauritius has proposed that a CAD Fund office be set up locally. This will not only help to bring the long standing cooperation between Mauritius and the Peoples' Republic of China to new heights but also use Mauritius as a gateway for investment in Africa.**

The CAD Fund has been set up by the Chinese Development Bank to provide equity for investment in Africa to support African countries' agriculture, manufacture, energy sector, transportation, telecommunications, urban infrastructure and resource exploration. The establishment of the Fund is a key measure of the Chinese Government's forging of the Sino-African new Strategic Partnership announced at the Beijing Summit of the forum on China-Africa Cooperation in November 2006.

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## India-Japan Investments

### **Introduction**

Japanese corporations have a history of successful engagements with the Indian economy. While historically, Japanese companies have primarily dabbled in India through manufacturing joint ventures and technology transfers / licensing agreements, recent investments by Japanese companies in large Indian companies across sectors, including pharmaceuticals and telecom suggest that large scale and public M&A activity between Japan and India is gaining momentum. India's popularity as a viable investment destination for Japanese corporations is evidenced by recent surveys<sup>1</sup> and news-making deals such as Daiichi Sankyo Company, Limited's acquisition of Ranbaxy Laboratories Limited and NTT Docomo, Inc.'s acquisition of a 26% stake in Tata Teleservices Limited.

In anticipation of the prophesied increase in strategic M&A activity and investments from Japan into India, some key considerations for a Japanese investor, from an Indian legal and regulatory perspective have been discussed below:

### **Investment avenues and conditions**

Foreign investments in India may be made by a subscription to the shares of an Indian company or by a purchase of shares from a shareholder of the company. Two primary modes of foreign direct investment in India are: (a) the automatic route; and (b) the approval route. As the name suggests the 'automatic' route does not envisage the approval of the investment regulatory authorities in India whereas the approval route requires the approval of the Foreign Investment Promotion Board (FIPB) and in some cases, the Reserve Bank of India (RBI).

### Sectoral caps

The quantum of foreign investment which can be made in a company is capped in certain cases and these caps vary depending on the nature of activities/ business conducted by the company. There are several sectors, including manufacturing, alcohol distillation and brewing, where up to 100% foreign investment is permitted under the automatic route. In sectors such as insurance and telecommunications investment upto a certain percentage, 26% and 49% respectively, is permitted under the automatic route. Investment beyond the percentage specified for the automatic route requires prior approval / is not allowed. In certain key sectors, investment is capped and also requires the prior approval of the FIPB, illustratively, the print media sector where up to 26% foreign investment is permitted in the publishing of news and current affairs newspapers with the prior approval of the FIPB.

### Existing ventures

The prior approval of the FIPB is also required in cases where the foreign investor has an existing investment or venture with another company (in India) in the same field as the proposed investment as on January 12, 2005. Existing ventures that are sick / defunct and ventures in which either party holds a less than 3% stake are exempt.

### Recent changes

The foreign investment regime in India underwent certain important changes in the recent past through the introduction of Press notes 2, 3 and 4 of 2009. The key implications of these changes include:

- Downstream investments by Indian companies which are 'owned and controlled' by resident Indians (i.e. where the majority of the share capital of the company is held by resident Indian

<sup>1</sup> <http://www.jbic.go.jp/en/about/press/2008/1125-02/index.html>

citizens and where the resident Indian citizens have the right to appoint the majority of directors on the board of directors of the company) are not considered as foreign investments.

- In sectors where the extent of foreign participation has been capped, any foreign investment that results in an Indian company being 'owned' or 'controlled' by a non-resident (including by a secondary purchase / transfer of shares) requires the prior approval of the FIPB.
- Foreign Investment in Investment / Holding companies requires the prior approval of the FIPB.

#### Mandatory Pricing Guidelines

The investments are also required to comply with certain mandatory pricing guidelines, which specify the manner in which the sale / purchase price of the shares on an Indian company will be determined in transactions between residents and non-residents.

#### **Indian Corporate Law Perspective**

##### Types of companies in India

There are two types of companies in India namely a 'public company' and a 'private company'. A public company is subject to more stringent conditions under the (Indian) Companies Act, 1956 (the **Act**) and greater scrutiny as compared to a private company. Further, in certain circumstances a subsidiary of a public company, even though incorporated as private company may be required to comply with all the provisions applicable to a public company under the Act. Separately, in the event shares of a public, listed company in India are sought to be acquired, the provisions of the Indian Takeover Regulations (the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997) would have to be considered.

##### Being a shareholder in an Indian company and types of resolutions

The rights of a Japanese investor in a given company will depend on the quantum of the investor's shareholding in the company. Some of the key thresholds for a shareholder of an Indian company are 75 %, 50 %, 25% and 10 %. These thresholds determine the ability of a shareholder to approve, veto or block resolutions on different matters and the ability to bring claims of mismanagement and oppression. These thresholds assume significance as under Indian law decisions of the company are either passed by a 75% majority (special resolutions) or by a simple majority which is just beyond 50% (ordinary resolutions). Therefore, an investor with just over 25% will have the ability to block a special resolution and is provided with some sort of control over the material decisions of the company. Minority protection is available from 10%.

While a Japanese investor may be provided certain additional voting rights under the investment documentation, it is important to ensure that such rights are captured under the articles of association of the relevant company as well as only then will such rights be enforceable and binding against the Indian company.

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**Mauritius with its highly beneficial Double Tax Avoidance Treaty with India provides good financial infrastructure to route investments into India**

## Islamic Finance: The emerging industry

Islamic Finance and securities is a new concept which is different from the traditional approach and is gradually spreading its roots worldwide. Islamic Finance operates on a no-interest principle. The industry is currently growing at about 15% p/a and has a total worth of about USD 800 billion. The industry is estimated to reach a total worth of around USD 4 trillion by the year 2020. According to Kuwait Finance House, this growth is expected to be strengthened further by improvements in the Islamic Finance Industry architecture, development of Government-backed Islamic financial centres as well as greater awareness and global technological development.

The Islamic Finance Industry covers a wide range of financial products and services like banking, capital markets and all types of financial transactions. Broadly, the Islamic Finance & Banking has the following features:

1. There is no interest on deposits but capital is guaranteed.
2. Lending & Investing are treated differently.
3. Value erosion of capital due to inflation is compensated.

### No interest on deposit but capital is guaranteed

Muslims are prohibited by their religion to deal in interest (*riba*) in any way. Giving and receiving as well as witnessing are all prohibited. Thus an Islamic banking system cannot pay any interest to its depositors; neither can it demand or receive any interest from the borrowers. Nor could the banks witness or keep accounts of these transactions. But the lender is entitled to the return of his capital in full.

### Lending & Investing

In conventional banking, depositing is a form of investment for the savers where the capital remains intact while a known income (in the form of interest) is promised. To the banks lending is a form of investment where the capital and a known return are assured; the return will also cover all their costs. In Islamic banking, lending can be done only on the basis of zero interest and capital guarantee, and investing only on the basis of *mudaraba* (profit-and-loss-sharing).

It should be noted that that in the years to come, Islamic Funds will spread and grow its roots in several other countries. For instance, U.K opened its first sharia-compliant bank in 2004 and other countries like Singapore, Hong-kong, etc are likely to follow. Moreover, the International Capital Market Association (ICMA) & the International Islamic Financial Market (IIFM) agreed to develop standard contracts and common best practices for trading of Islamic instruments.

**In his budget for the year 2007/2008, the vice Prime Minister & the Minister of Finance, Dr Rama Sithanen provided measures to promote Islamic Finance & Banking in Mauritius. The International Islamic Financial Services Ltd (IIFS) was incorporated in Mauritius in Nov 2007 to promote Islamic Financial services. Ammendments were made in the Finance Act 2007 & the Banking Act 2004 to further promote Islamic Banking in Mauritius. The vice Prime Minister & the Minister of Finance, Dr Rama Sithanen stated that “Mauritius has a great opportunity to diversify its financial sectors and provide foreigners with new services in the fields of wealth management & investment. Existing and new banks will now be able to provide such services”.**

**HSBC LAUNCHES HSBC AMANAH  
ISLAMIC FINANCE FOR LIFE  
ON MAY 5TH, 2009.**

### Working Groups Assess Competitiveness Of Mauritian Global Business Sector

Established to determine the international competitiveness of the Mauritian Global Business Sector, two joint working groups, comprising representatives of the Financial Services Commission (FSC), its licensees and other stakeholders, recently delivered presentations on Global Business diversification and funds in Mauritius, and on developing the country's legislative framework, most notably Limited Partnership and Foundation Laws.

Following the presentations and proposals set forth by the working groups, Chief Executive of the FSC, Mr Milan Meetarbhan explained that a sub-committee has been set up to devise a strategy regarding implementation of Double Tax Agreements (DTAs). The overarching aim of the committee is to identify countries with which DTAs should be signed, and to ensure that the negotiated agreements meet the specific needs of the Mauritian business community.

Given Mauritius's recent commitment to comply with the Organisation of Economic Cooperation and Development's standards in terms of both transparency and exchange of information, Mr Meetarbhan also emphasised the need to amend accordingly the country's Trust Act and companies holding a GBC2 license.

The FSC's Chief Executive then alluded to the Global Business Task Force, which will serve as a permanent platform for discussions between the global business industry – Management Companies and banks – and the regulator.

In his concluding statement, Mr Meetarbhan confirmed that, in a drive to expand the financial services sector and improve Mauritius's competitive edge, laws relating to Limited Partnerships and Foundations are currently being scrutinised. Netting provisions have also been included in the Insolvency Bill, he added, and presented in the National Assembly.

Issues currently awaiting clarification by the FSC include the use of Mauritius as a Regional Headquarters by companies wishing to invest in the region – and the FSC's existing determining criterion the 'ultimate purpose test', and the structuring of master/feeder funds and associated use of treaties.

### Mauritius-US Relations: Third TIFA Council Meeting

The third meeting of the Council of the Trade and Investment Framework Agreement (TIFA) between Mauritius and the United States was opened recently by the Minister of Foreign Affairs, Regional Integration and International Trade, Dr. Arvin Boolell.

In his speech, Minister Boolell expressed Mauritius' concern about the effects of the global economic slowdown and stated Government's determination to continue with its pursuit of sound macro-economic policies where entrepreneurship, trade, the creation of jobs & good governance have a crucial role to play.

With regard to the TIFA Work Plan, Minister Boolell pointed

out that over the past two years, concrete steps have been taken in the implementation of the priority areas as outlined in the Work Plan. "We should work towards achieving some tangible quick gains in order to improve business confidence and unleash the potential for increased trade", stated the Minister.

The TIFA Work Plan focuses on the priorities and business realities of Mauritius and the US and aims at developing competitiveness strategies, establishing private sector networking, addressing the issues of trade capacity building and market intelligence, identifying priority sectors, exploiting niche market and improving visibility of products and services.

**The US Embassy's Chargé D'Affaires, Ms. Virginia Blaser, also present at the opening ceremony, said that TIFA is the concrete example of the United States' commitment to partner with Mauritius in exploring avenues of cooperation, strengthening trade and expanding investment relations between both countries.** The TIFA was signed on 18 September 2006, in Washington. It is an effective way for Mauritius and the US to expand bilateral trade and investment. It also represents a structured dialogue process allowing Governments of both countries to take stock of current trade development challenges, find new perspectives for trade development programmes, broaden the scope of partnership and forge investment linkages.

### China Implements Measures To Combat Tax Evasion

The Chinese State Administration of Taxation has removed tax privileges afforded under various double taxation treaties to foreign investors who misuse the system of 'special purpose vehicles' as a means of reducing their tax liabilities or circumventing exchange controls.

Since the issue of Tax Notice 81 of February 20, 2009 there have been a number of cases where the non-resident status of these entities has been disregarded for tax purposes.

The Special Purpose Vehicle (SPV) allows foreign investors, who create business ventures with local partners in China, two main tax advantages - to apply withholding tax on dividends remitted abroad at a lower rate where this applies under an applicable double taxation treaty and exemption from Chinese capital gains tax on sale of their holdings. At present tax on dividends in China is at the rate of 10% but Singapore and Hong Kong double taxation treaties allow this to be reduced to 5%. Lower treaty rates apply for Mauritius.

The tax authorities are now empowered to scrutinise not just the form but also the substance of the ownership structures of SPVs to satisfy themselves that the investors have bona fide residence in the tax havens and that the SPVs are not merely established for the purpose of avoiding tax or remitting funds out of China.

**Mauritius with its emphasis on substance as compared to various other jurisdictions provides better avenues for holding foreign investments into China.**

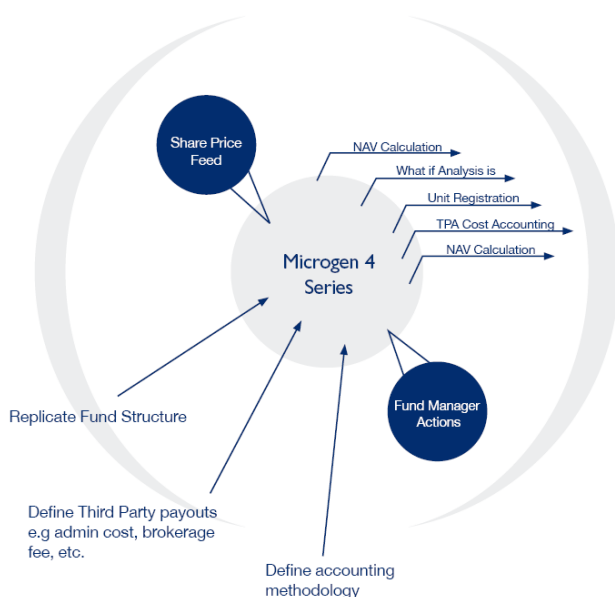
## THIRD PARTY FUND ADMINISTRATION

DTOS Ltd has extensive experience in the administration of different types of funds that covers the traditional one tiered structure funds, master feeder funds, private equity funds, hedge funds. It offers an array of services to funds located in other jurisdictions. The services encompass the following areas:

- Fund accounting (NAV)
- Financial accounting
- Compliance
- Registrar and transfer agency
- Reporting and client services

With the proven capability to deliver high quality services for any size of fund, we offer a truly integrated service that can vary from fund accounting and administration amongst others. Our team services a vast client base including large pension funds, mutual funds, reputable international banks, Fortune 500 companies, institutional investors and their investment managers throughout the world

### Microgen 4 Series Powers DTOS Funds Services



DTOS Fund Services provides a complete and comprehensive range of services regarding set up and administration of funds. Accounting and fund valuation services are provided for funds located in Mauritius and other jurisdictions.

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