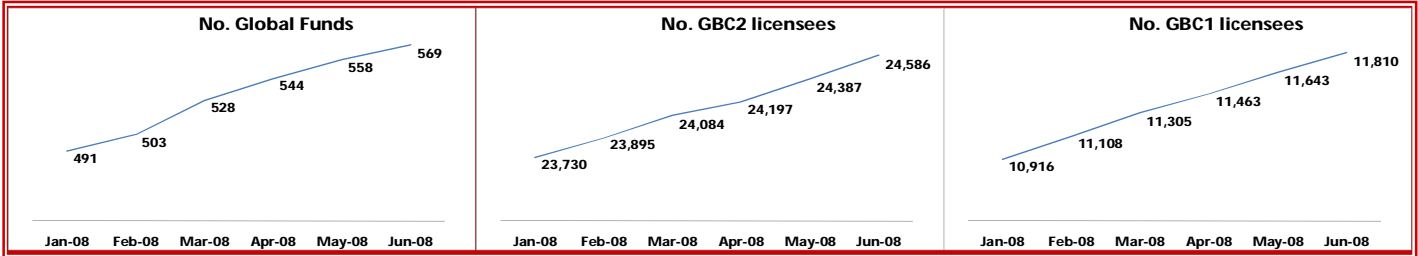




DEDICATED PROFESSIONALS AT  
YOUR SERVICE



Dear Readers

At the launch of the global business sector in Mauritius some fifteen years ago, there were wide expectations that Mauritius would become the natural financial services centre for investments into Africa given its geographical proximity. These expectations have not been fulfilled to their fullest extent thus far, for a number of reasons.

We are now witnessing a surge in investments into natural resources rich countries of Africa. Mauritius is attracting more and more attention as THE RIGHT jurisdiction to hold these investments. The expanding number of tax treaties with a number of African countries, its membership to the two main regional organisations namely the Southern African Development Community ("SADC") and the Common Market for Eastern and Southern Africa ("COMESA") will all contribute to enable Mauritius to fulfill its promise to be THE gateway to Africa.

**Jimmy Wong**

*Managing Director*

## Mauritius Expands Financial Services Industry

The Financial Services Commission of Mauritius has announced that new rules opening up the jurisdiction's financial services industry to four new types of business have been published in the government gazette.

The new rules, drafted by the FSC, include the Financial Services (Other financial business activity) Rules 2008 and the Financial Services (Consolidated licensing and fees)(Amendment) Rules 2008.

The Financial Services (Other financial business activity) Rules 2008 provide for four new activities in addition to the financial business activities set out in the Second Schedule of the Financial Services Act 2007: Credit Rating Agencies/Rating Agencies; Payment Intermediary Services; Actuarial Services; and Representative Offices (for financial services provided by a person established in a foreign jurisdiction).

The Financial Services (Consolidated licensing and fees) (Amendment) Rules 2008 amend Part 1 of the First Schedule of the Financial Services (Consolidated licensing and fees) Rules 2008. The amendments provide the appropriate fees for the new activities and certain adjustments in the presentation of the fee schedule for other activities.

According to the Commission, the amendments will not affect existing licensees and will not change the existing fee structure, except in some limited cases where alignments were considered necessary.

### Contents

Financial Services Industry in Mauritius.....	1
Guest Article .....	2
Mauritius - A route for investments in Africa .....	4
News at a glance.....	6
Third party Fund administration.. .....	7

### Leaders Meet To Discuss Pan-African FTA

For details please refer to page 6

### Mauritius - A route for investments in Africa

(Full article on page 4)

## Recent developments in Trusts Law in Mauritius

Following the OECD Report on harmful tax competition issued in 1998, the Government of Mauritius took the decision to integrate the onshore and offshore trust business. Consequently the Trust Act 1989 and the Offshore Trust Act 1992 have been repealed by the Trusts Act 2001 ("TA 2001").

One of the major developments is that TA 2001 has amended Articles 893, 896, 931 and 1130 of the Civil Code of Mauritius. These articles deal with donation, will, notarial deeds and future assets and the formalities of transfer, which do not apply to property and rights, transferred to a trust under TA 2001. This is a novelty, since it simplifies the formality for the creation of a trust.

Section 6 of TA 2001, provides that a trust must be created by an instrument in writing. The instrument creating a trust must state: (a) the name of the trustee; (b) the intention of the settlor to create a trust, or the declaration of the trustee that he holds property on trust; (c) the object of the trust, the beneficiaries or class of beneficiaries, as the case may be; (d) the property transferred or held on trust; and (e) the duration of the trust. The trust instrument or the disposition or transfer of the trust property to the trustee must be registered with the Registrar General.

The trust property may consist of any movable or immovable property and any interest in such property. There are, however, a number of restrictions. No transfer or disposal to a trust shall be valid in respect of property, which is inalienable under the laws of Mauritius. A leasehold interest the unexpired term of which is less than 18 years cannot be transferable on trust. Any disposal to a trust of any immovable property in Mauritius shall be invalid where the trust is a non-charitable purpose trust. Furthermore, section 22 of TA 2001 provides that no person shall create a trust of immovable property located in Mauritius for the benefit of a non-citizen or a person who is a non-resident of Mauritius except with the authority of the Prime Minister. TA 2001 further provides that the appointment of a non-citizen as beneficiary of a trust, the trust property of which includes immovable property situated in Mauritius, shall be void and of no effect. A major novation and derogation to the Non-Citizen (Property Restrictions) Act 1975 as amended is that a trust can now be set up by a non-citizen of Mauritius to own immovable property in Mauritius within the IRS or RES Schemes pursuant to the Investment and Promotion Act 2002, as amended.

The duration of a trust other than a purpose trust shall not exceed ninety-nine years from the date of its coming into existence unless it is terminated earlier. A charitable trust may be of perpetual duration. A non-charitable trust shall limit its duration to a term not exceeding 25 years. The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of the trust. However where the trust property includes immovable property situated in Mauritius, the accumulation period shall not exceed 25 years.

Under TA 2001, the settlor may set up any of the following types of trust: protective trust or spendthrift trust, maintenance and accumulation trust, interest in possession trust, discretionary trust, charitable trust, purpose trust and commercial and trading trust. A trust is a protective or spendthrift trust where the terms of the trust make the interest of a beneficiary subject to (a) termination; restriction on alienation of or dealing in that interest or any part of that interest; (b) diminution, suspension or termination in the event of the beneficiary becoming insolvent or (c) any of his property becoming liable to seizure or sequestration for the benefits of his creditors.

A trust shall be deemed to be charitable where the trust has its exclusive purpose or object (a) the relief of poverty; (b) the advancement of education; (c) the advancement of religion; (d) the protection of the environment; (e) the advancement of human rights and fundamental freedoms; and (f) any other purpose beneficial to the public in general.

A purpose trust is one, which is created for a purpose notwithstanding the trust does not have any beneficiary. A purpose trust shall not be valid and enforceable except where (a) the purpose, whether charitable or not, for which the trust is created is specific, reasonable and capable of fulfilment, not immoral, unlawful or contrary to public policy; (b) the terms of the trust provide for the appointment of an enforcer who is capable of enforcing the trust and for the appointment of a successor to an enforcer; (c) at one trustee is a qualified trustee; and (d) the instrument creating the trust provides for the disposition of surplus of the trust upon its termination whether by expiry, on a specified date or on the occurrence of a specified event, or for any other cause.

TA 2001 provides for setting up “ La Fiducie”, a concept akin to the civil law “la fiducie” or “fidéicommis”. CA 2001 defines “ la fiducie” as a contract by which the constituent ( the settlor ) transfers all or part of his assets and rights to a fiduciaire (the trustee) stipulating that the latter acts to administer and manage them so as to achieve a pre-determined aim or aims for the benefit or in the general interest of beneficiaries. The settlor and the beneficiary may be the same person. “Fiducie” can arise by contract, by operation of the law or by judicial decision. “ Fiducie” may create for valuable consideration, without valuable consideration or by will. The main governing principle behind the “fiducie” under the TA 2001 is that property transferred constitutes a separate and autonomous part of the settlor estate, the fiduciaire’s estate and the beneficiary’s estate on which neither the settlor nor the “fiduciaire” nor the beneficiary will have legal rights. On the death of the fiduciaire, any property subject to the fiducie doesn’t form part of the latter’s estate. The fiduciary property can only be seized by a creditor whose rights derive from the management or the preservation of that property. The “ fiducie has to respect the “ reserve hereditaire” and its ambit is therefore limited to the “ quotité disponible”. Where the value of the property transferred to the fiduciaire exceeds this reserved portion, the “fiducie” is reduced according to the legal rules which apply to gifts inter vivos in accordance with articles 864 and 865 of the Code.

TA 2001 provides for asset protection. A trust shall not be void or voidable in the event of or by reason of the settlor’s bankruptcy or liquidation of his property or in any action or proceedings against the settlor at the suit of his creditors. However the court may declare a trust void or voidable where it is proved beyond reasonable doubt that the trust was made with intent to defraud persons who were creditors of the settlor at the time when the trust property was vested in the trustee. Such action must be brought against the trustee within two years from the date of the transfer or disposal of the assets of the trust..

The new law still preserve protection against forced heirship rule and non-recognition of the foreign rule of forced heirship. Section 8(3) of TA 2001, provides that notwithstanding any enactment, where a non-citizen transfers or disposes of property on trust, the transfer or disposition shall not be set aside, avoided, or otherwise declared invalid or ineffective by virtue of any rule or law of his domicile or nationality relating to inheritance or succession or any rule or law of a similar nature. Section 11(5) provides that:

“ Notwithstanding any rule or law relating to enforcement of judgments given by the court of another jurisdiction, where the law of Mauritius is the proper law of a trust, the Court shall not vary it or set it aside or recognise the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of another jurisdiction in respect of:-

- a) the personal and proprietary consequences of marriage or the dissolution of marriage;
- b) succession rights (whether testate or intestate) including the fixed shares of spouses, ascendants and descendants or relatives; or
- c) the claim of creditors in an insolvency.”

As regards confidentiality in trust business, section 33 of TA 2001 imposes a very strict duty of confidentiality on trustees and other persons dealing with trust matters. Disclosure of information or of documents concerning the trust is possible under TA 2001. The Court or the Judge in Chambers may make such order of disclosure upon the application of the Director of Public Prosecution and on proof beyond reasonable doubt that the confidential information is bona fide required for the purpose of any enquiry or trial into or relating to (a) the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering under the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAL 2002).

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## **Mauritius- A route for investments in Africa**

Africa is another preferred destination for foreign investments. We would like to inform our readers that Mauritius is one of the preferred jurisdictions for routing investments into Africa. Mauritius has all the advantages of a traditional international financial services centre namely:

1. Flexible and appropriate legislation for establishment and administration of various forms of investment businesses.
2. Exchange liberalization, free repatriation of profits & capital.
3. No withholding tax
4. No capital gains tax
5. No capital duty on issued capital

Confidentiality of global company information and banking secrecy.

### **Capital Gains tax**

Capital gains tax where imposed in Africa are usually imposed between 30% to 35%. However, the Mauritius treaty with the African countries restricts taxing rights of capital gains to the country of residence of the seller of the assets. Since there are no capital gains tax in Mauritius, investors would benefit from a significant tax savings. Mauritius currently has tax treaties with 12 African countries namely:

- |               |               |              |
|---------------|---------------|--------------|
| 1. Botswana   | 5. Namibia    | 9. Swaziland |
| 2. Lesotho    | 6. Rwanda     | 10. Tunisia  |
| 3. Madagascar | 7. Senegal    | 11. Uganda   |
| 4. Mozambique | 8. Seychelles | 12. Zimbabwe |

The other treaties which have been signed but are awaiting ratification are namely:

1. Malawi
2. Nigeria
3. Zambia.

### **Dividend withholding tax**

Almost all African nations impose dividend withholding tax on dividend paid to non residents which normally ranges from 10% to 20%. The Mauritius treaty with the African countries limits the dividend withholding tax to 0%, 5% or 10% depending on the country. Thus, a potential tax savings can be availed by the treaty.

### **Interest and Royalties**

The Mauritius-Africa treaty restricts the withholding taxes on interest and royalties from 5% to 15% depending on the state. Thus, investors can again benefit from the treaty.

In addition to the above taxation benefits, investors can avail of other benefits like:

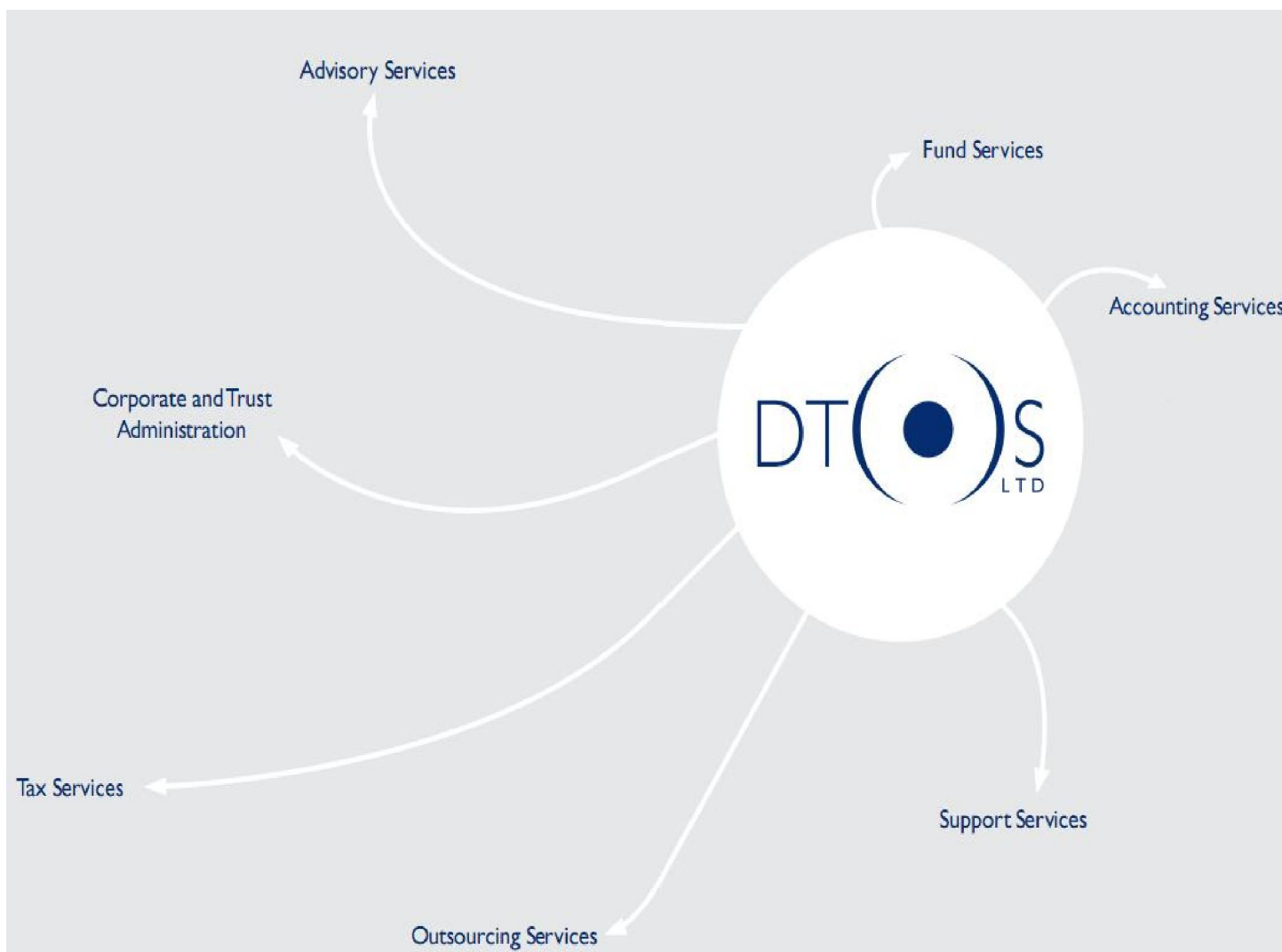
1. Cost efficient professional services rendered in Mauritius.
2. Foreign tax credit of 80% which results to a maximum tax liability of 3%.
3. Ideal time zone of GMT+5 (Summer time) which facilitates business transactions.

Besides, being an African nation, Mauritius has signed Investment Promotion and Protection Agreements (IPPA) with 15 African member states out of which South Africa is already in force. Thus, under the IPPA, the Mauritius vehicle can avail of other benefits like free repatriation of investment capital & returns, etc. Mauritius is also a member of African Union, SADC, COMESA, etc, investors can therefore ensure a smooth business relationship via Mauritius. The membership of Mauritius in these regional organizations and its signatory to all major African conventions makes Mauritius the best offshore financial services centre for the establishment of any Africa fund. One of the important factors for selecting a domicile is the comfort level and maximum benefit of investors. During the last few years, numerous Africa funds have been set up in Mauritius and thus the Mauritius gateway is one of the best routes for investments into Africa.

...P.T.O

Country	Project Duration for Permanent Establishment Purposes	Maximum tax rates applicable in the country of source		
		Dividends	Interest	Royalties
Botswana	>12 months	5% & 10% (a)	12%	12.50%
Lesotho	>6 months	10%	10%	10%
Madagascar	>6 months	5% & 15% (a)	10%	5%
Mozambique	>6 months	8%, 10% & 15% (a) & (b)	8%	5%
Namibia	>6 months	5% & 10% (a)	10%	5%
Rwanda	>12 months	Exempt	Exempt	Exempt
Senegal	>9 months	Exempt	Exempt	Exempt
Seychelles	>12 months	Exempt	Exempt	Exempt
Swaziland	>6 months	7.50%	5%	7.50%
Uganda	>6 months	10%	10%	10%
Zimbabwe	>6 months	10% & 20% (a)	10%	15%

- a) Lower rates apply to companies holding at least 25% capital.
- b) Higher rates apply to companies holding investment other than portfolio investment.



### Leaders Meet To Discuss Pan-African FTA

Galema Motlanthe, the President of South Africa met regional economic bodies in Kampala, Uganda, to discuss the possibility of creating a Free Trade Area (FTA) incorporating 26 African states.

President Motlanthe attended a Tripartite meeting in Uganda with the South African Development Community (SADC), The Common Market for Eastern and Southern Africa (COMESA), as well as the East African Community (EAC). The aim of the meeting was to discuss the declared intention of SADC to establish a customs union by 2010.

The meeting in Kampala considered the possibility of establishing a pan-regional FTA. For South Africa, the opening up of markets in SADC would provide access to an additional population of over 200 million people.

Foreign Affairs Director General, Ayanda Ntsaluba, said on Wednesday: "The general sense in Kampala is that there needs to be some detailed work done to look at all the elements that will help shape the FTA."

There would be 26 member states included in the FTA, said the Director General, adding that their combined Gross Domestic Product (GDP) would amount to about \$650 billion.

"For countries in the SADC region, it is consistent with what the African Union has advocated with regard to how we should move toward substantive regional integration."

"We have always argued that we need to establish strong Regional Economic Communities (REC), and secondly you must encourage those communities to interact among themselves as an intermediate step to the creation of an African common market."

"The RECs are key to implementing regional integration programmes in trade and economic development including the establishment of the FTA and a common customs union."

### Mauritius And UAE Added To Dow Jones Wilshire Index

Mauritius, Qatar, Oman and the United Arab Emirates (UAE) will be added to the Dow Jones Wilshire Global IndexSM family, effective from the start of trading on October 1, 2008, Dow Jones Indexes and Wilshire Associates have announced.

"Including Mauritius, Qatar, Oman, and the UAE in the Dow Jones Wilshire Global index family reflects the growing importance of these emerging markets to the world's investment community and ensures the Dow Jones Wilshire Global Total Market Index provides institutional investors with the broadest coverage of international equities," said Michael A. Petronella, president, Dow Jones Indexes.

"Adding Mauritius, Qatar, Oman and the UAE to the Dow Jones Wilshire Global Total Market index recognizes not only growing investor interest in, but also their investment in these previously sparsely covered countries," he added.

The inclusion of the four new countries to the Dow Jones Wilshire Global Index family increases the total number of countries in the index from 61 to 65 on October 1, 2008. All four new countries will be added to the Dow Jones Wilshire Emerging Markets, Dow Jones Wilshire Global ex-US and Dow Jones Wilshire Middle East & Africa indexes.

As of July 1, 2008, 23 companies from Mauritius, 25 companies from Qatar, 38 companies from Oman and 28 companies from the UAE were due to be added to the Dow Jones Wilshire Global Total Market Index and respective regional and country indexes in October 2008. The final component count will be known on October 1.

Dow Jones Wilshire Indexes are global benchmarks which serve as informational tools to assist plan sponsors, asset managers and institutional investors fulfil fiduciary responsibilities. As of the close of trading of June 30, 2008, the Dow Jones Wilshire Global Total Market Index measures 12,782 stocks in 61 countries with a float-adjusted market capitalization of USD34.7tn.

### Mauritius to host a Public-Private Partnership Africa Summit in April 2009

City & Financial Conferences, a leading UK research-based conference organizer, will hold a Public Private Partnership (PPP) Africa Summit in Mauritius in April 2009.

In view of the fact that Government plans to utilize PPP to develop the country's infrastructure, City & Financial Conferences has identified Mauritius to host the Summit. It will provide benefits to participants in terms of:

1. Latest opportunities and developments regionally as well as globally;
2. Cutting-edge thinking on how the more difficult issues associated with structuring PPPs can be resolved;
3. Practical examples of best practices to adapt and to learn from; and network with peers in the public and private sectors.

Since 2000, City & Financial Conferences has been hosting PPP Summits in Europe, America, Asia, North Africa and the Middle East.

### Transparency International Report

The latest report of Transparency International has revealed that Mauritius has gone up in the index concerning the perception of corruption. Mauritius is now at the 41st place against 53rd in 2007.

The index rates the countries according to the degree of perceived corruption. It ranges from 0 (high degree) to 10. Mauritius, which obtained 4.7 points in 2007, is now at 5.5. In Mauritius, the report underlines that reforms of the Mauritius Revenue Authority were carried out over the past two years with the aim of ensuring greater transparency and integrity.

Where transparency and accountability mechanisms are weak or lacking, public financial management and development outcomes suffer as a result. Transparency International's 2008 Corruption Perceptions Index shows that Mauritius has done a great job in achieving a higher level and shows the interest of Mauritius in striving to become a more transparent country.

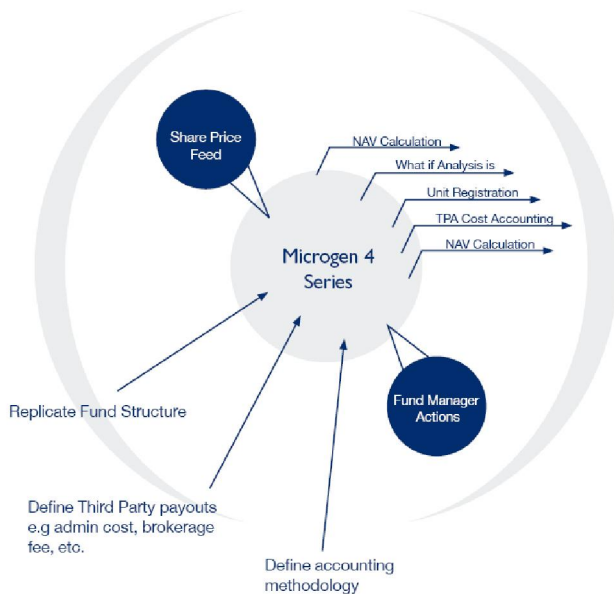
### THIRD PARTY FUND ADMINISTRATION

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.

DTOS Ltd is a leading service provider in the global financial services centre of Mauritius. It is a management company duly licensed by the Financial Services Commission (FSC) to provide inter alia, corporate, trustee and fund administration services.

DTOS Trustees Ltd is a wholly owned subsidiary of DTOS Ltd and licensed by the FSC to act as qualified trustee and to provide trust related services.

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