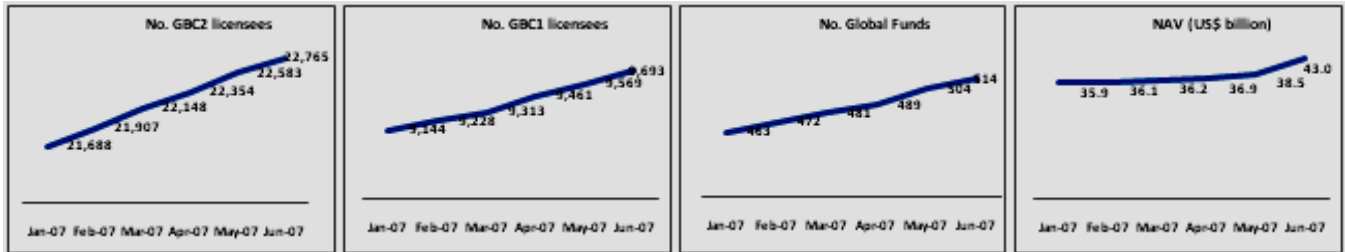




DEDICATED PROFESSIONALS AT YOUR SERVICE



Dear Readers

Fifteen years of existence for an international financial services centre is in many respects quite a long time, considering the dynamism and constantly evolving environment of this industry. Mauritius has gained maturity as a financial centre in this period of time and has positioned itself as a serious, reliable and reputable jurisdiction. In other aspects, fifteen years is a short time in the life of a jurisdiction and there is still a very long way to go.

The introduction of a new comprehensive legal framework for the global business sectors marks a new stage in the life of the industry as new opportunities and avenues are opening up.

To be at the forefront of these developments, we at DTOS, are investing heavily in our people and in technology in order to service our clients better.

We are also delighted to welcome our guest columnists from Khaitan & Co, Advocates from Mumbai. This will be a regular feature of our newsletter.

*Jimmy Wong*

*Managing Director*

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**Restriction on approved activities for GBC1 is history**

Much awaited bills regulating global business sector have been passed in the parliament

- The Financial Services Bill**
- The Securities (Amendment) Bill**

The **Financial Services Bill** will replace the Financial Services Development Act 2001 and provide a common framework for licensing and supervision of all financial services including global business sector other than banking.

The new law specifically provides for the independence of the Financial Services Commission as a regulatory body.

**The Financial Service Bill redefines the concept of global business. Under the new provisions, all resident companies conducting business outside Mauritius may opt for an alternative legal regime. The former restrictions on approved activities conducted by Category 1 Global Business Companies are being removed.**

The Bill also provides for the designation of industry associations in all financial services sectors as Self Regulatory Organisations.

The **Securities (Amendment) Bill** amend the Insurance Act 2005 and the Securities Act respectively and pave the way for coming into force of the 2005 Acts.

The Securities (Amendment) Bill extends the scope of “securities” and “exchanges”, thus enabling the Commission to approve the trading of a wider range of instruments and license Commodity and other exchanges.

**DTOS invests in Microgen 4Series to provide superior Fund Administration Services ([Read back page](#))**

## RAISING FOREIGN INVESTMENT IN INDIA: RISING FROM THE ASHES

Investment by way of subscription and/or purchase of securities of an Indian company by persons resident outside India is foreign direct investment (FDI) and the raising of debt by Indian companies from persons resident outside India is external commercial borrowing (ECB).

The Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India (SIA) and the Reserve Bank of India (RBI), India's central bank notify the policy for FDI (FDI Policy) and ECBs (ECB Guidelines) in India, from time to time under the Foreign Exchange Management Act, 1999 (FEMA), which provides the framework regulating foreign exchange dealings in India. The FDI Policy and ECB Guidelines are reviewed on a continuous basis and changes in policy are notified through Notifications/Press Notes/Circulars issued by SIA and/or RBI.

The FDI Policy contemplates automatic and approval routes for investment. Investments under the former are, in certain cases, subject to ceilings for identified sectors of the Indian economy (sectoral caps), minimum capitalisation norms for companies operating in certain sectors and certain filings must be made with the regional offices of the RBI or such persons as the RBI authorizes in this respect.

FDI in sectors which do not fall under the automatic route would require that an application be made to the Foreign Investment Promotion Board ("FIPB"); the FIPB considers the applications and grants approval on a case to case basis.

ECB in India may also be raised under the automatic and the approval routes. Even under the automatic route, ECB is subject to specific eligibility criteria, maturity caps, and restrictions on the end use of proceeds of the ECB. Hurdles to raising and using ECB render it an unpopular option with domestic Indian companies seeking to raise foreign monies. End use of ECB proceeds for instance, is prohibited in the real estate sector. The exemption available, till recently, allowing the application of ECB proceeds to integrated townships as a subset of real estate has been withdrawn making this restriction exhaustive.

Hybrid instruments like convertible preference shares and debentures were issued to foreign investors seeking a guaranteed return on their investment, in addition to these instruments being tax efficient. These 'hybrids' were a convenient option because they were classified, sometimes by implication, as FDI, did not always count towards determining sectoral caps and all the while, retained the economic benefits of debt without falling within the mischief of the ECB Guidelines.

Very recently, the RBI issued the Circulars No 73 and 74 observing that these 'hybrids' were in violation of the spirit of the FDI Policy and that from 8 June 2007 onwards, only fully and compulsorily convertible preference shares (CCPS) and fully and convertible debentures (CCDS) would be deemed equity in the issuing company and that these instruments would be counted towards determining sectoral caps in accordance with the FDI Policy.

The implications? Fewer grey areas, and plugging a loop-hole that was happily used to issue these 'hybrids'. So, CCPS/CCDS is either FDI or ECB, leaving little, or no scope for an economic upside beyond the express permitted earnings off these instruments.

Having said this, a commonly resorted to structure that took form almost immediately after the aforesaid Circulars No 73 and 74 were issued, is the 'put option'. The structures are almost uniform: a Holding Company (HoldCo) overseas (usually promoted by the promoter group of the Issuer) avails debt overseas. This HoldCo invests in CCPS/CCDS of the Issuer, a company in India. Another promoter of the Issuer executes a 'put option' agreement with the HoldCo granting an option to such HoldCo to transfer its CCPS/CCDS to the 'put option' obligor at the predetermined value or price, or a formula to determine this. This 'put option' is, very simply, granted in consideration for a 'call option' in favour of the 'put option' obligor. The document under which HoldCo avails debt will have provisions allowing the HoldCo to exercise its 'put option' upon the happening of a specified event. This structure contemplates intricate securities and obligations and documentation that may be complex. The result really, is instruments issued under the FDI Policy (and not under the ECB Guidelines) retain the possibilities of a guaranteed return under the 'put option' agreement operating quite like the 'hybrids' that the RBI sought to defeat.

This structure is drawing some flak for having defeated the intent of the Circulars No 73 and 74 and the Indian exchange control regime, in general.

## RAISING FOREIGN INVESTMENT IN INDIA: RISING FROM THE ASHES ...Contd

The risk this structure runs is that the securities and obligations are purely contractual, as is their enforcement; and the claims of the lender are indirect and unsecured. This is why it is more likely to be used between parties sharing high comfort levels, in addition to the covenants and guarantees of the complex but enforceable contractual engagements.

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Khaitan & Co.

Advocates, Mumbai, India

## DTOS to push harder with its new Business Development Division

DTOS has set up a Business Development Division under leadership of Amit Verma, the BD director. This new division would help DTOS to engage existing and potential clients in a much more customer focussed fashion and would take the value offering of DTOS to a new high. DTOS has aggressive business development plans by offering newer products and improving the service delivery platforms. Amit and his team would work towards cementing older ties and also developing a strong new network of associations with Legal firms and accounting teams.

*"This investment into business development would further enhance the solid presence of DTOS Ltd in key markets when we start developing and engaging key partners like legal and accounting firms aggressively. The winner in the market place would be the one with strongest distribution channel and network. We also need to channelize the energy and knowledge of whole firm into developing the markets and building the networks. Our new investment into fund management software 'Microgen 4series' would provide us with necessary firepower to take our funds business into a new trajectory of growth"* adds Amit.

## Annual Income Tax Deadline Approaches in September

The Global Business Licence - Category 1 companies (GBL 1 companies) have a statutory obligation to submit their income tax return to the Mauritius Revenue Authority (MRA) by 30 September 2007. This would include GBL 1 companies that have their accounting year end ranging from 31 July 2006 to 31 May 2007.

Prior to the Finance Act 2006, GBL 1 companies were liable to a penalty of Rs 5,000 per month or part of the month up to a maximum of Rs 50,000 for late filing of their income tax return. Moreover, they are liable to penalties of 2% per month or part of the month, of the unpaid tax up to a maximum of 100%.

Subsequent to the Finance Act 2006, in case of late submission of the income tax return, a penalty of Rs2,000 per month or part of the month, subject to a maximum of Rs 20,000 will be applicable. Moreover, should the GBL 1 companies fail to pay any tax due, a penalty of 5% of the unpaid tax and an interest of 1% of the unpaid tax per month or part of the month, will be applicable,

GBL 1 companies can carry forward unrelieved tax losses and set them off against their net income derived in the following 5 income years. However the time limit of 5 years shall not apply for the carry forward of any amount of loss that is attributable to annual allowance claimed in respect of capital expenditure incurred on or after 1 July 2006.

***"IT Return  
Deadline is on  
30<sup>th</sup> September,  
2007. Our  
resident expert  
on taxation,  
Pinpin Kweton,  
reminds you of  
key statutes on  
taxation"***

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## News at Glance

### IPPA with Korea may lead to DTAA between two nations

An Investment Promotion and Protection Agreements (IPPAs) was signed with the Republic of Korea on 18 June 2007 in Port-Louis.

The IPPAs have proved to be useful policy tools for governments who wish to ensure sound treatment and protection for FDI. The IPPAs typically provide the following guarantees to investors from the contracting states:-

- a) free repatriation of investment capital and returns;
- b) guarantee against expropriation;
- c) most favoured nation rule with respect to treatment of investment, compensation for losses in case of war or armed conflict or riot etc;
- d) arrangement for settlement of disputes between investors and the contracting states

It is hoped that this Agreement may lead to a Double taxation Avoidance Agreement between the two countries. This would enhance the position of Mauritius as a platform for the region and a bridge between Asia and Africa.

Other IPPAs awaiting for signature are Chile, Malawi, Turkey and Uganda

### Mauritius signs PTA with Pakistan to improve bilateral trade

Mauritius and Pakistan has signed a Preferential Trade Agreement (PTA) between two nations on 30th July 2007. The PTA focuses on tariff reductions and preferential tariffs for an extensive list of products.

According to Hon Minister Dulloo, "The PTA is going to pave the way for an eventual Free Trade Area between our two countries and will open the vista for wider cooperation. While market access remains an important objective, the Joint Working Group will pursue its work on a broad-based agenda of trade and economic collaboration for the mutual benefits of our two people".

The PTA Agreement between Mauritius & Pakistan should be implemented by mid-2009 and will result in removal of duties on almost all products traded between the two countries. It will also impact on services and trade-related investments.

### Islamic Financial Services

Amendment of the Mauritius law to allow the provision of Islamic Financial Services will add another dimension to the bank and non-bank financial services as Islamic banking and Finance has developed from a conceptual framework to an alternative and complementary system that have gained global acceptance and recognition.

### Real Estate Investment Trust

The possibility to set-up Real Estate Investment Trust (REITs) in Mauritius will also add to the bouquet of financial products already available on the financial services marketplace. REITs will provide another sophisticated investment vehicle to both attract major international property developers as well as provide a means to broaden access to property ownership and development in Mauritius.

### Legal profession

The opening of the legal profession will give a new dynamism to the sector by bringing in international expertise, business and added credibility to the sector and enable Mauritius to benefit from the global network of these international law firms.



Wait for our special edition on Financial Services Bill and Securities Bill bringing Industry views on its impact by 27<sup>th</sup> of Au-

## DTOS Launches Microgen 4Series for Superior Fund Administration

DTOS is dedicated to use state of the art platform for providing best service to its expanding family of clients. Launching Microgen 4Series is one more step in its journey to excel in customer service.

Each fund manager wants his energy to be directed towards his key objective of maximizing returns on portfolio while the basic administration like NAV calculation, share purchase update, accounting entries, dividend accounting and other MIS is best left to the trusted fund administrator who can provide real time, accurate and detailed analysis of statements.

Microgen 4Series through its suite of applications provides just that. It records, processes and maintains a register of all holder (investment) transactions in each Fund administered by 4Series. This includes processing for issues, redemptions, conversions, transfers and dividends. The system produces Contract notes and Certificates, and analysis and statements of holdings and transactions. All modules integrate seamlessly to ensure that data processes are performed only once, with each module performing the tasks of a specific business function.

For calculating NAV direct feeds from systems like Reuters etc. can be configured for online accounting without manual intervention at predefined intervals. This ensures the readiness of data at all times and takes away the manual interface which may lead to some errors and voluminous update of data. It has boundless possibilities in terms of computation of NAVs and supports multiple frequencies.

*"Microgen 4Series would not only help my team in providing fast updates to the fund manager but also allow us more time in responding to other key queries of the fund managers thus magnifying our value added potential to a relationship"* adds Lina How, DTOS resident expert on Fund Administration.

*"Microgen 4Series is a key investment in improving our fund administration services. DTOS is committed to build key relationship with its customers especially fund managers, and would keep on adding superior platforms to base our fund administrator services on. 4Series is a right investment in this pursuit and I hope that our customers will like the new system"* says Jimmy Wong, MD, DTOS LTD.

**Watch out this space for illustration on major features of Microgen 4Series to support fund administration in our upcoming newsletters**

### Board of Directors

Patrice d'Hotman de Villiers (Chairman)  
Jimmy Wong (Managing Director)  
Eric Venpin  
Gaëtan Lan  
Simon Pierre Rey  
Amit Verma

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