



INDIA ISSUES DRAFT PROPOSALS TO RESTRICT THE USE OF PARTICIPATORY NOTES

India is proposing to restrict the use of P-Notes in Indian stock Market. P-Notes with derivatives as underlying are proposed to be banned and open positions need to be phased out in 18 months. Also, it is proposed to restrict FII to issue P-notes only up to 40% of their holdings. In that respect, there might be a migration of Mauritian entities to register themselves as sub-account of the FII, rather than hold P-Notes. **DTOS with its strategic network can provide services required for registration as sub-account of FII.**

Dear Readers

The Global Business sector is now operating under a new legislative framework. This should provide new opportunities to investors and fund managers as the new conceptual approach as described by the regulator is more business friendly. In order to better support our clients in this new environment, we have put in place a new division within DTOS to coordinate the legal issues of our clients and to provide up to date and comprehensive technical support to our clients as well as our professional staff. It is also worth noting the recent assurances given by the Indian government to their Mauritius counterparts regarding the India/Mauritius tax treaty. We are also watching closely the developments in India on the P-Notes and shall keep you updated

Jimmy Wong

Managing Director

FINANCIAL SERVICES ACT 2007

The Financial Services Act 2007 was proclaimed on 28 September 2007.

“The scope of the Act clearly specifies the regime for financial services and global business, and distinguishes between service providers and investors,” said Mr Meetarbhan, Chief Executive of the Financial Services Commission (FSC).

The FSA 2007 also distinguishes the legal regimes for (i) Mauritian companies conducting business in Mauritius, and (ii) Mauritian companies conducting business outside Mauritius. This will be decided by a newly added provision called “**Ultimate Purpose Test.**”

The new conceptual approach will require a new mindset – a change in how industry operators advise their clients.

Mr Meetarbhan said that the Financial Services Act 2007 “will enhance substance and promote value-addition by allowing a larger scope of work to be conducted in Mauritius by a Category 1 Global Business Company”.

The FSC will issue a Practice Note and a new guide to global business that will set out upfront how the Commission will apply the new law.

The Financial Services Act (FSA) 2007 will inter alia:

- Consolidate all amendments brought to the Financial Services Development Act since it was enacted in 2001 in a single statement of law;
- Streamline and consolidate the whole licensing framework for various financial services other than banking;
- Revisit and update the conceptual approach to global business;
- Guarantee the independence of the FSC as a Regulator with a broad supervisory mandate which cuts across the non-bank financial services sector and global business;

The FSA 2007 further provides for a consolidated licensing and surveillance regime for financial services other than banking (except for the licensing of insurance entities which is governed by the Insurance Act 2005), as well as a distinct regime for the Licensing and Surveillance of Global Business Companies;

Under the FSA 2007, the FSC may declare or recognise an industry association as a Self Regulatory Organisation (SRO), and may delegate certain powers to an industry association declared or designated as an SRO to assist in supervising and regulating the activities of the sector.

Contents

Financial Services Act.....	1
Guest Article	2
Tax Residence Certificate.....	3
News at a glance	4
New division at DTOS.....	4
Microgen 4Series at DTOS	5
Third party Fund administration ..	5

PRE-EMPTION CLAUSES AND THE PERMISSIBILITY OF RESTRICTIONS ON SHARE TRANSFERS UNDER INDIAN COMPANY LAW*

Pre-emption clauses are the most common form of share transfer restrictions. The typical pre-emption clause will obligate a joint venture partner to offer his shares to one or more pre-determine persons before he can sell them to any other person. Such clauses are an almost invariable feature in private equity and strategic investments. The reasons why contracting parties place a premium on pre-emption clauses are diverse. For commercial and regulatory reasons, parties to a joint venture would ordinarily want to restrict the entry of third parties into the venture. In this context, pre-emption clauses are generally milder than a total prohibition on the joint venture partner's exit and therefore more considered more reasonable. Also, in the commercial world, the incumbency of a joint venture partner itself raises an expectation of a right of first refusal over the other partner's shares. A pre-emption clause gives contractual form to this expectation.

The legal issues involved in restricting the transferability of shares differ between private companies and public companies.

In private companies, the only contentious issue emanates from the following widely quoted words of a 1991 ruling of the Supreme Court "*A restriction which is not specified in the Articles is, therefore, not binding either on the company or on the shareholders.*" Most subordinate courts have interpreted this ruling as denying enforceability to transfer restrictions (even as between the parties to the agreement which contains the transfer restrictions) unless they are contained in the charter documents of the company. The writers propose that the ruling only prevents the enforcement of restrictions on shareholders as a class unless they are contained in the articles of association of the company but does not prevent the enforcement of an agreement as between the parties to the agreement. The writers believe that this interpretation of the ruling is in line with contract law and company law.

In the case of public companies, Section 111A of the Companies Act provides that the shares of a public company are "freely transferable". This provision has been interpreted by Indian courts and jurists to make it altogether unlawful for there to be any restrictions on the transferability of shares of public companies- irrespective of whether they are contained in the articles of association of the concerned company or not.

The writers point to pressing need for an interpretation of section 111A, which is both legally tenable and commercially feasible, because the traditional view of this provision leads to the rather harsh consequence that there can never be pre-emptive restrictions on the transfer of shares of a public company. The problem is exacerbated because persons who wish to be bound by an obligation of pre-emption, do not always have the liberty to set up a private company.

The article examines the various authorities on this point and based on a 1928 ruling of the Privy Council proposes the alternative view that section 111A only prevents a public company from preventing the free transferability of its shares without preventing the shareholders themselves from agreeing to restrict their ability to transfer their shares.

In light of the large volume of case-law where the law has been differently interpreted, the writers conclude with a recommendation that the correct position be clarified by a higher bench of the Supreme Court

This is a summary of an unpublished article on the law governing restrictions on transferability of shares of Indian companies. For the complete text of the article please write to svayttaden@luthra.com.

*Anil K. Rai, Partner,
Sundeep Dudeja, Partner Equal and
Shishir J. Vayttaden, Associate,
Luthra & Luthra Law Offices, India

TAX RESIDENCE CERTIFICATE (TRC)

Prior to October 2006, Category 1 Global Business Licence (GBL1) companies were granted a TRC which remained valid with no set expiry date by giving an undertaking for certain conditions to be adhered to.

Since October 2006, a TRC shall be issued on an annual basis at the effective date of the GBL1 licence and remains valid until the expiry of the validity date of the GBL1 licence.

All applications for a TRC would be made to the Director-General of the Mauritius Revenue Authority (MRA) through the FSC, by the Management Company and be supported by:-

1. A statement as to the DTAA under which the TRC is being applied for;
2. A statement to the effect that the tax return that the company is required to submit, has been filed.
3. Undertakings (to be signed by any two resident directors and the secretary of the company) that;
 - (i) The Company shall at all times have at least two Directors resident in Mauritius. The resident directors shall be of appropriate calibre who can exercise independence of mind and judgement.
 - (ii) All meetings of the Board of Directors shall be held, chaired and minuted in Mauritius.
 - (iii) The Company shall at all times keep all its accounting records at its registered office in Mauritius.
 - (iv) The Company shall ensure that all its banking transactions are channelled through a bank account in Mauritius.
4. Certified copy of the company's certificate of incorporation and GBL1 licence (for the records of the Director-General – MRA), certified copy of Board Minutes evidencing resolutions passed to satisfy the requirements set out in the point 3 above would have to be submitted

- ✓ TRC is renewed on an annual basis
- ✓ TRC is specific to DTAA
- ✓ Mandatory filing of tax return and audited accounts

The FSC shall recommend the application for a TRC to the Director-General of the MRA upon being satisfied that:

- a) the above has been fulfilled ;
- b) and that the GBL1 company is in good standing.

To be in good standing, it is imperative that all GBL 1 companies settle their annual licence fees and file their **latest audited financial statements** within the prescribed time frame.

In order to further demonstrate that effective management is being carried out from Mauritius, some GBL1 companies can set up their operating offices in Mauritius. This will add more substance in Mauritius. We shall be pleased to assist those who wish to have a physical presence here in Mauritius and offer the following services:

- Identifying suitable office space, including assisting with furnishing, IT facilities, telephone /fax, etc.
- IT ongoing support
- Recruitment of staff according to the client's job description
- Payroll administration
- Payment of PAYE and Pension Contribution
- Accounting services

Our Business Development team will be pleased to assist you with your specific needs.

Mauritius-India Double Taxation Avoidance Agreement

Pranab Mukherjee: *India will do nothing that will adversely affect the interests of Mauritius*

Following a meeting between the Indian External Affairs Minister, Mr Pranab Mukherjee and the Mauritian Prime Minister, Dr Navinchandra Ramgoolam, during the 62nd Session of the United Nations General Assembly, in New York, Mr Mukherjee made the following statement to the Mauritius Broadcasting Corporation:

"In matters of the avoidance of double taxation agreement, which we have entered into with Mauritius, this issue was discussed in greater details during the visit of His Excellency the (Mauritian) Prime Minister (Dr Ramgoolam) in Delhi. At that point of time, the (Indian) Prime Minister, Dr Manmohan Singh, assured him that nothing will be done to adversely affect the interests of Mauritius. And I also reiterated that".

DTAA between Mauritius and the United Arab Emirates

The DTAA between Mauritius and the United Arab Emirates has come into force on 31 July 2007, following the completion of necessary internal legal procedures by both parties and reciprocal notification. In accordance with Article 28(2) of the Agreement, the provisions of the DTAA shall, however, apply as follows:

- (a) in Mauritius, on income for any income year beginning on or after 1 July 2008; and
- (b) in the United Arab Emirates, on income for any income year beginning on or after 1 January 2008.

DTAA and IPPA between Mauritius and the State of Qatar

Negotiations for the conclusion of a DTAA and an IPPA with the State of Qatar were held in Doha, Qatar

The Mauritian delegation was led by Mr. M. Mo-safeer, Director, Large Taxpayer Department, Mauritius Revenue Authority and the Qatari delegation by Mr. Moftah Jassim Al Moftah, Director of Public Revenues and Taxes Department, Ministry of Finance for the DTAA and Mr. Saoud J. Al-Jufairi, Director of the Economic Affairs Department, Ministry of Economy and Commerce for the IPPA.

Negotiations on both Agreements were successfully completed and it is expected that these will be signed by early December of this year.

Opening of a new bank in Mauritius- AfrAsia Bank

AfrAsia Bank Limited was launched and its first branch inaugurated on 2nd October 2007.

Africa & Asia as two blocks are also becoming more and more economically integrated with growing investment and trade flows between these two continents. Mauritius is the ideal conduit to capture these flows with its comprehensive network of Double Taxation Avoidance (DTA) agreements, its geographical positioning, bilingual skilled work force and strong cultural ties. AfrAsia Bank intends to capitalize on these unique opportunities. AfrAsia Bank will also be working extensively with other parts of the world, especially Europe and the USA. Mauritius is at the crossroads of many economies and cultures and increasingly, its economic growth will be generated via Africa and Asia

DTOS GEARS FOR LEGISLATION CHANGES BY LAUNCHING ITS LEGAL, TECHNICAL, AND SPECIAL PROJECTS DIVISION

With changes in the legislation through Financial Services Act 2007 and Securities Amended Act 2007 providing ideal backdrop for increased attractiveness of Mauritius as offshore financial services center, DTOS is gearing up to reforms by constituting a legal, technical and special projects division. This division will provide technical support to clients and in-house, do the coordination for legal matters and be responsible for special projects. This division will also be responsible for all aspects of the Anti-Money Laundering and Prevention of Terrorism Act. The team would be headed by an experienced manager, Chaya Subramanien, and would have an in-house legal person supporting the division.

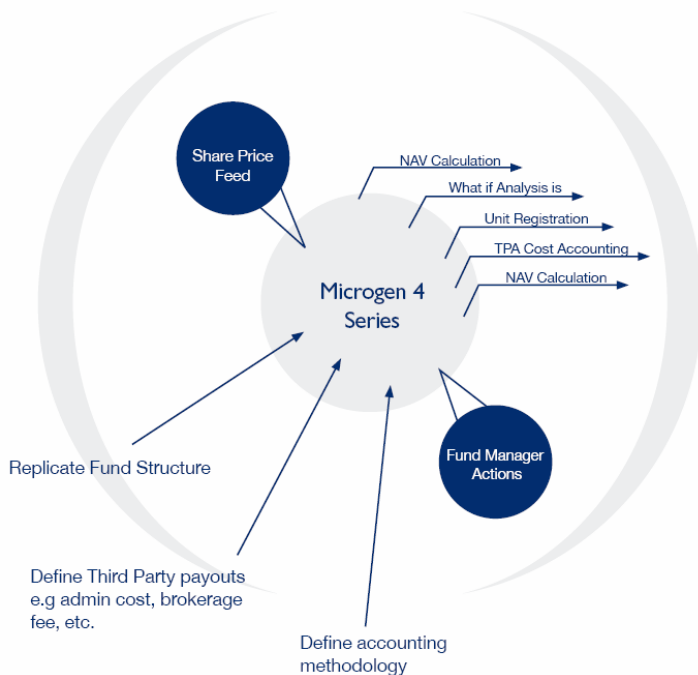
THIRD PARTY FUND ADMINISTRATION

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.

Board of Directors

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

Jimmy Wong, FCA, TEP
Amit Verma

DTOS Ltd
4th Floor, IBL House, Caudan
Port Louis
Republic of Mauritius

Your Contacts

You may have specific business requirements, in which case you should contact:

Telephone: +230 203 2020
Facsimile +230 212 6149
Email: info@dtos-mu.com
bd@dtos-mu.com
Website <http://www.dtos-mu.com>

Editorial Team

Jimmy Wong
Amit Verma
Kevin Allagapen
Andy Pun Sin

Disclaimer

The information in this newsletter was prepared by the professional staff of DTOS Ltd. The information given is not exhaustive and readers are advised to consult with professionals such as independent accountants, legal counsel and investment bankers before taking any formal action. DTOS Ltd will be pleased to discuss specific problems.

Whilst all reasonable care has been taken in the preparation of this newsletter, DTOS Ltd accepts no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however caused, sustained by any person that relies on it.