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C O N T E N T

An Informative Review of Selected Aspects of The Legislative Framework on The Banking Sector of Mauritius

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ABSTRACT: Considering the immense significance of the banking industry, and specifically the Bank of Mauritius as the apex banking organisation of the country, this article tries to give an overall understanding of selected aspects of banking, including licensing procedures, gaining control of a bank, protecting depositors, bank secrecy requirements, insolvency-related issues, and environmental, social, and governance (ESG) requirements. This paper's main goal is to update and inform people with a keen interest in Mauritius' banking industry on the most current changes and advancements in the aforementioned areas.

Introduction

There are 19 banks in Mauritius, including 5 local banks, 12 foreign banks (mostly subsidiaries and a few branches), 1 joint venture, and 1 private bank with a license. The Bank of Mauritius (BoM) has granted each bank a license to conduct banking operations both domestically and abroad. The breadth of services offered in the banking sector sets it apart. Banks provide card-based payment services, such as credit and debit cards, internet banking, and phone banking, in addition to traditional banking services (Mauritius Bankers Associations). Banks also provide specialized services including fund management, custodial services, trusteeship, structured lending, structured trade finance, international portfolio management, investment banking, private client operations, treasury, and specialized finance. Corporate, institutional, and private clients can choose from a variety of foreign banking and financial services provided by the international banks. In Mauritius, some of the biggest and most reputable international banks can be found operating actively across international borders. The domestic banking sector has performed satisfactorily, as revealed by the official data from the Bank of Mauritius' Financial Stability Report for December 2020, despite the severe shocks that have recently affected the global banking scene (Mauritius Bankers' Association).

As the specifically assigned AML/CFT supervisory body for the financial institutions that fall under its jurisdiction, the Bank of Mauritius is obligated to oversee those institutions with regard to the AML/CFT regulations. Bank of Mauritius licensees under the National Payment Systems Act 2018 and all banks, non-bank deposit taking institutions, cash dealers, and money lenders are referred to as "Financial Institutions" and are subject to regulation by the bank (Ramphul, 1998). Given the huge importance of the banking sector and the Bank of Mauritius in particularly in Mauritius, this article attempts at providing an overview of selected aspects such as licensing procedures, acquiring control over a bank, protection of depositors, bank secrecy requirements and insolvency-related issues and Environmental, Social and Governance (ESG) Requirements. The primary purpose of this paper is to inform stakeholders interested in the banking sector of Mauritius about the recent developments and updates regarding the above mentioned aspects.

Research Methodology

This article adopts a doctrinal legal research methodology which focuses on the analysis of legal provisions from legislations, followed by a critical assessment of the scope and substantive contents of the laws. The legal provisions pertaining to the selected aspects of the banking sector of Mauritius have been critically read and analysed in view of gauging its effectiveness and relevance in the modern set-up within which the banking sector currently operates. By so doing,

recommendations can then be formulated based on the criticisms that are highlighted from the doctrinal legal approach.

Results and Discussions

Legislative Framework on Banking in Mauritius

The Bank of Mauritius Act of 2004, the Banking Act of 2004, and any regulations or guidelines issued by the Bank of Mauritius (BoM) pursuant to those Acts serve as the primary regulatory framework for the banking industry in Mauritius. The Bank of Mauritius Act of 2004 established the BoM as the nation's central bank and outlines its goals, prerogatives, and duties. The licensing, operation, regulation, and supervision of banks and other financial institutions (such as non-bank deposit taking institutions and cash dealers) are outlined in the Banking Act of 2004. According to this Act, the BoM has broad authority and the right to impose rules relating to the operations, activities, and standards those banks and other financial institutions must uphold. The BoM may also provide instructions or guidelines. The use of cloud services, governance, ESG, capital adequacy, outsourcing, liquidity risk management and other prudential measures, application of Basel III, and AML/CFT, among other topics, are just a few of the guidelines that have been released thus far and are regularly updated.

The Financial Intelligence and Anti-Money Laundering Act, the Prevention of Terrorism Act, the Prevention of Terrorism (International Obligations) Act, and the United Nations (Financial Prohibitions, Arms Embargo, and Travel Ban) Act are among the additional laws that apply to the banking industry and are referred to as "banking laws" under The Banking Act and are related to AML/CFT under the supervision of the BoM. Other laws that are pertinent to the banking part are included below in addition to the basic laws such the Companies Act, the Insolvency Act, and Income Tax.

Another important piece of legislation is the National Payment Systems Act. The primary goal of this Act is to ensure the public's safety, security, efficiency, and accessibility of the national payment systems and payment systems being operated in Mauritius. This Act also places these systems under the BoM's control. The Public Debt Management Act, which gives the BoM authority to issue and oversee government-issued loans. The Mauritius Deposit Insurance Scheme Act establishes a program to: (a) safeguard insured depositors of a bank or non-bank deposit-taking institution by offering insurance against the loss of insured deposits; and (b) By ensuring that depositors quickly have access to their insured deposits in the case of a bank or non-bank deposit taking institution failure, you may help maintain the stability of Mauritius' financial system. The Financial Services Act of 2018 enables the creation of the Office of the Ombudsperson for Financial Services, which will accept and handle consumer complaints about financial companies.

Licenses and Application Process

The "banking business" (as defined below) is a regulated activity in Mauritius, and any firm wishing to engage in such business operations must first get a license from the BoM. A potential applicant may work in the financial industry, Islamic banking, digital banking, or private banking (Ayadi et al, 2016). .

The term "banking business" refers to the following: "(i) the business of accepting sums of money in the form of deposits or other funds, whether or not such deposits or funds involve the issue of securities or other obligations howsoever described, withdrawable or repayable on demand or after a fixed period of time or after notice; and (ii) the use of such deposits or funds, either in whole or in part, for: - (A) loans, advances or investments, on the own account and at (B) the business of purchasing an asset from a supplier pursuant to an agreement with a person for the purpose of

leasing the asset to the person, subject to payment of installments and the option to retain ownership of the asset at the conclusion of the contractual period; (iii) paying and collecting checks drawn on or paid into bank accounts by customers and making other payment instruments available to customers; and (iv) incidental and necessary banking services.
Islamic banking refers to any financial enterprise whose goals and operations, in addition to following the generally accepted principles of sound governance and risk management, are in line with Islam's ethos and value system (Beck et al, 2013). According to the Act, "banking business carried exclusively through digital means or electronically" means "banking business carried on." The term "private banking business" refers to the activity of providing high-net-worth clients with banking and financial services and products, including but not limited to an all-inclusive money-management relationship. A bank with a license to conduct only private banking business or strictly Islamic banking activity may submit an application to the BoM to only carry out its licensed activities via digital or electronic delivery channels. As a result, a license for banking, Islamic banking, digital banking, private banking, or all of the above may be issued to an applicant.

A body corporate, which can assume various forms in this context, is required to apply for a banking license. The applicant may be a standalone organization, a branch of a foreign bank, or a subsidiary. The BoM may define additional requirements or exemptions from the appropriate legal, regulatory, and supervisory framework, depending on the form the applicant chooses to take. Any application for a banking license, regardless of type, must be submitted to the BoM together with a MUR250, 000 non-refundable processing fee and a properly completed application form. The BoM will examine and approve the application. Therefore, it is advised that the applicant interact with the BoM to make sure that it receives all of the information it needs.

In order to evaluate whether the applicant is suitable for a banking license, the BoM also has broad authority to seek any material it thinks essential. Typically, this information would be substantial information regarding the applicant's competence and skill to meet the relevant licensing standards. A business plan outlining the prospective company's nature, organizational structure, internal controls, and projected financial statements, including anticipated cash flow statements, must be submitted by the applicant, among other things. The applicant must show that it has at least ten full-time officers who are appropriately qualified, including the CEO, the deputy CEO, and important functional heads. Additionally, the applicant must have its main office in Mauritius, and its annual operational expenses must be less than MUR25, 000,000.

An applicant will need to show that it has the necessary policies, practices, and controls in place to satisfy the licensing criteria, including the minimum capital and liquidity ratio and other regulatory, statutory, and prudential specifications as may be specified by the BoM (Repullo, 2004). The BoM may give an in-principle permission subject to the terms and conditions it deems appropriate while awaiting the application's final decision. However, the applicant must not interpret an in-principle approval as a license to conduct banking activity or as giving rise to any justifiable hope that the application would be approved in its entirety. If the applicant fails to meet the requirements set forth in the permission's terms and conditions, the in-principal approval will automatically expire.

Requirements for Acquiring or Increasing Control over a Bank

According to Section 33 of the Banking Act of 2004, the BoM must be consulted before any individual intends to acquire or enhance their influence over a bank in a way that results in that person directly or indirectly acquiring (a "significant interest”). Important interest in this context is defined as directly or indirectly owning, alone or jointly with an associated party, or otherwise possessing a beneficial interest amounting to, 10% or more of the capital or of the voting rights of a financial institution; directly or indirectly having the authority to appoint, alone or jointly with a

related party, 20% or more of the total membership of the board of a financial institution; or directly or indirectly applying a substantial interest.
Any person wishing to acquire a significant interest in a bank must notify the BoM at least 30 days in advance. This notice must include, among other things, the name, background in business, personal history, and experience of the person making the acquisition as well as any other parties involved. It must also be accompanied by a certificate of good standing from a competent authority attesting to the applicant's and any other parties' financial standing, as well as any intentions or suggestions that the party making the acquisition may have to liquidate the financial institution, sell its assets, merge it with another business, or make any other significant changes to its operations, organisational structure, or management.

The BoM also has the discretionary authority to request any further information it sees fit. Before approving a proposed acquisition, the BoM must take into account a number of factors, such as (a) whether the proposed acquisition would result in undue influence, a monopoly, or substantially lessen competition; (b) whether the financial situation of any acquiring person might jeopardize the financial stability of the financial institution or prejudice the interests of its depositors; and (c) the competence, experience, or integrity of any acquiring person, or of any proponent. The convenience and needs of the community or market to be served will not be met by the proposed acquisition, and many purchasing parties fail to provide the BoM with all the necessary information. In Mauritius, there are no limitations on foreign stockholders. Any acquisition that violates Section 33 of the Banking Act would be regarded as void and without the right to vote or receive dividends.

Anti-Money Laundering and ML and Combating the Financing of Terrorism Requirements

As an associate member of the Financial Action Task Force (FATF), Mauritius is an original founding nation of the Eastern and Southern Africa Anti-Money Laundering Group. In order to demonstrate its commitment to the global community and the fight against money laundering and terrorism financing (ML/TF), Mauritius has also approved and joined a number of global conventions, protocols, and treaties (Ramlall et al, 2017).. The Financial Intelligence and Anti-Money Laundering Act of 2002, the Financial Intelligence and Anti-Money Laundering Regulations of 2018, the United Nations (Financial Prohibitions, Arms Embargo, and Travel Ban) Sanctions Act of 2019, the Prevention of Terrorism Act of 2002, the Convention for the Suppression of the Financing of Terrorism Act of 2003, the Financial Services Act of 2007, and Part VIIIA of the Ban are the various legislations.

The BoM is expected to oversee financial institutions with regard to the AML/CFT requirements outlined in the banking regulations since it is the designated AML/CFT supervisory authority of the financial institutions falling under its scope. The BoM has released a guideline on "Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation" (the "BOM Guideline") to provide direction and aid banks in complying with their AML/CFT duties. The Guideline outlines the general guidelines for how financial institutions (including their branches and subsidiaries), members of their board of directors, management, and staff members should conduct themselves in order to fend off ML/TF.

The BOM Guideline emphasises that in order to comply with the pertinent AML/CFT statutory and regulatory obligations, financial institutions and their senior management have to establish and enforce their own policies, procedures, and controls (Beebeejaun, 2020). In order to reduce and successfully manage the risks of ML/TF, banks must, among other things, undertake risk assessments and use a risk-based approach to their client due diligence protocols, controls, and procedures (Ross et al, 2007). Any examination of ML/TF risks must take into consideration all other pertinent risk variables, including the type of transaction or product offered, the size and location of the customer, as well as the nature, scale, and scope of the bank's operation.

Additionally, banks are required to notify the Financial Intelligence Unit (created under FIAMLA) of any transactions that raise a plausible suspicion of money laundering or terrorist financing. Banks are legally required to designate a compliance officer and a money laundering reporting officer (MLRO) as part of corporate governance. The BOM Guideline suggests that the MLRO and compliance officer be two different people. The choice of whether the compliance officer can additionally perform MLRO duties is left up to the financial institutions. If found guilty of violating the BOM Guideline, the offender faces a fine of up to MUR1 million and an additional MUR100,000 penalties for each day or portion of a day that the offense goes unpunished if it is not corrected.

Depositor Protection

In order to give depositors with security, up to a specific amount, in the event that one of the licensed banks or non-bank deposit taking institutions fails (Garcia, 1997), the Mauritius Deposit Insurance Scheme was established under the Mauritius Deposit Insurance Scheme Act 2019 (the "Act").The Mauritius Deposit Insurance Corporation Ltd, frequently referred to as the agency, is in charge of managing and administering the program. The agency's duties and responsibilities include, among others, managing the funds deposited into the deposit insurance fund, accumulating premium payments, paying compensation for insured deposits, and giving depositors other ways of getting their insured funds. The depositor protection scheme's coverage area includes any Mauritius resident who is qualified to receive compensation for an insured deposit in the event that a deposit-taking institution fails.

Deposits made in local and international currencies are both protected under the program, up to a specific amount. Yet they have to fall into the following categories: time deposits that are made in Mauritian currency and foreign currencies; deposits in current accounts in both Mauritian currency and foreign currencies; and other similar deposits or amounts as the agency's board can decide on.

Any deposit of no more than the amount of any debt owing by a depositor to the deposit taking institution if such debt is matured or past due, or the highest amount that would otherwise be eligible for compensation, whichever is lower, is not protected under the scheme. Additionally, any deposit of a related party, any deposit that is frozen by a court order, and sui generis deposits are not protected under the scheme. The maximum amount of coverage per insured depositor is MUR300,000 or any other sum that may be required by law. The insured depositor may be entitled to deposits in excess of the coverage restricted or insured amount if sufficient money are recovered after the sale of the failing deposit taking institution's assets.

Payments for insured foreign currency deposits are made in Mauritius rupees, with the agency setting the exchange rate. Banks and non-bank deposit taking entities pay the majority of the scheme's premium contributions. These financial institutions are expected to contribute to the fund a premium of 20 cents per 100 rupees on their insurable deposits, or any other permitted premium amount. It receives funds in addition from interest or other income from investments made with the fund. Any investment made with money from the fund must adhere to the investment guidelines established by the plan and endorsed by the agency's board. Investments in deposit-taking institutions and high-risk securities are expressly prohibited by the investment policy.

Bank Secrecy Requirements

In addition to being strictly governed by legislation that has been created with that goal in mind, common law in Mauritius also governs bank secrecy (Rahman, 2014). English and French common law duties of confidentiality served as major sources of inspiration for the common law concepts. In a nutshell, the jurisprudence holds that the prohibition against disclosing information about a customer's account or any transactions with the bank to a third party is an implied term of the contract between a bank and its customer. A rigorous duty of confidentiality and non-

disclosure of any information that the bank holds about the customer is imposed under Section 64 of the Banking Act legally. According to Section 64(1) of the Banking Act, this obligation extends to everyone who has access to customer information while working with the bank on a professional basis, including service providers like accountants or external auditors. Additionally, according to Section 64(1), banking officers must swear an oath of confidentiality in the manner specified in the Banking Act's schedules.

There are some circumstances in which a bank may be allowed to divulge information about a customer, which qualifies the bank's obligation of confidentiality to its customers (Latimer, 1995). If the customer has given their express or implicit agreement, if there is a public responsibility to reveal, if the revelation will safeguard the bank's interests, or if the bank is required to do so by law or court order, information may be disclosed by the bank. A further law has been passed to provide additional regulators the authority to order a bank to reveal private information in response to a court order when there are good reasons to suspect severe crime, tax evasion, money laundering, fraud, corruption, or financing of terrorism. Among these regulators are the commissioner of police, the director-general of the Mauritius Revenue Authority established under the Mauritius Revenue Authority Act, the Enforcement Authority established under the Asset Recovery Act of 2011, the director-general under the Prevention of Corruption Act of 2002, and the chief executive of the Financial Services Commission established under the Financial Services Act of 2007.

When these statutory authorities have the right to request information disclosure from a bank, they are also subject to a confidentiality obligation when performing their statutory tasks. Any unauthorised disclosure of such information to a third party could constitute a serious criminal offence with harsh punishments. Both the Banking Act and the Mauritian Criminal Code have penalties for breaches of banking confidentiality. A violation of Section 64 is a crime under the Banking Act, punishable by a fine not to exceed MUR1 million and a sentence of imprisonment not to exceed five years. According to the Criminal Code, the violation is punishable by a fine of up to MUR 100,000 and a sentence of up to two years in prison.

Insolvency, Recovery and Resolution

The Financial Stability Board's Key Elements of Effective Resolution Regimes have not yet been applied in Mauritius. Conservatorship (Todd, 1994) is the primary tool for resolving a failing or bank that is likely to fail under the current legal system. If the BoM has good reason to believe that: the bank's capital has been harmed or that such impairment is imminent, it may appoint a conservator according to Section 65 of the Banking Act to safeguard the assets of the financial institution for the sake of its clients as well as other creditors. A conservator can additionally be appointed if the financial institution, its directors, or senior management officers participated in actions that are harmful to the interests of the bank's depositors, infringed any AML/CFT obligations or guidelines, or if the financial institution's assets are insufficient to adequately safeguard the bank's depositors or creditors. Upon the appointment of the conservator , the latter assumes complete control over the bank and is given the authority required to preserve, defend, and reclaim any of the financial institution's assets as well as to collect all money owed to the bank as well as any obligations owed to it. The conservator additionally enjoys the authority to completely or partially halt the repayment of any debts and current deposits of the financial institution. There is a 180-day deadline for the conservator to rescue the financial institution, unless the BoM decides otherwise.

When there is proof that a bank's capital is impaired or unsound, its capital-to-assets ratio is less than 2%, its operations are hazardous or illegal, their continued operation would be harmful to their clients' interests, or their license has been withdrawn, the BoM will appoint a receiver to manage and govern the bank. According to Section 77 of the Banking Act, the receiver must start the legal processes leading to the financial institution's assets being forcedly liquidated or take any

other actions necessary with regard to the financial institution within 30 days of taking possession, at the latest. The receiver has a broad spectrum of powers during the receivership, including the ability to manage, control, or shut down the activities of the financial institution, halt or restrict the financial institution's payment commitments, start, defend, and conduct any legal proceedings, suspend, in entirety or in part, the repayment or withdrawal of deposits and other liabilities of the financial institution, and interrupt or reduce the right of creditors to claim or obtain interest on any money owed to the financial institution.

During a forced liquidation, claims made against a financial institution's assets are resolved in the following priority order: necessary and reasonable costs, charges and expenses incurred by the receiver, including their remuneration; wages and salaries of officers and employees of the financial institution in liquidation for the three-month period preceding the taking possession of the financial institution; taxes, rates and deposits owed to the government of Mauritius; savings and time deposits not exceeding in amount MUR100,000 per account; other deposits; and other liabilities. According to the guidelines of Sub-Part II of Part III of the Insolvency Act 2009 (Insolvency Act), a financial institution may also be closed down. According to Section 100 of the Insolvency Act, a business may be wound up in one of three ways: through a court-issued winding-up order; a voluntary winding-up initiated by a resolution adopted by the company; or through a resolution of creditors adopted at the watershed meeting. A voluntary winding-up may take the form of either a shareholders' voluntary winding-up, in which case the liquidator is chosen at a shareholders' meeting when the business is solvent, or a creditors' voluntary winding-up, in which case the company is insolvent and the liquidator is chosen at a creditors' meeting. A liquidator is appointed and has custody and control over the financial institution's assets as of the start of a voluntary winding-up.

According to Section 91 of the Banking Act, in the event that a financial institution is wound up, all of its assets must be made available in the following priority sequence to pay off all of its deposit liabilities: deposit liabilities incurred by the financial institution with its customers; deposit liabilities incurred by the financial institution with other financial institutions; and other liabilities of the financial institution.

Horizon Scanning and Environmental, Social and Governance (ESG) Requirements

Globally, digital transformation and ESG have been recognized as essential to banks' continued existence and growth to meet client demand, new financing methods, and market expectations (Azmi et al, 2021). The government, the BoM, and the Financial Services Commission have been highly active in enacting laws regarding fintech, digital banking, the selling of virtual assets and tokens, ESG, climate change, green bonds, and sustainable bonds over the previous two years. A report on the "Future of Banking in Mauritius," written in partnership with the Mauritius Bankers Association and a global consulting firm, was released by the BoM in October 2022. The report lays out a clear strategy for the banking industry's future, which includes expanding in Asia and Africa as well as maintaining and upgrading services for domestic customers. Innovative goods and services, new technologies, and business models, as well as adherence to international norms and laws, environmental sustainability, and human capital development, are the main areas of development that have been recognised as being essential to achieving the goal. In these sectors, regulatory developments are anticipated.

The BoM has launched the following activities in relation to the financial risks brought on by climate change and environmental deterioration from the beginning of 2020. The Network of Central Bank and Supervisors for Greening the Financial System has welcomed it as a member. It published a Guide for the Issue of Sustainable Bonds in 2021. This guide was created to give a general overview of the procedures and guidelines for the issuing of sustainable bonds and their listing on markets authorized to operate in Mauritius. In keeping with this, the Financial Services Commission's Guidelines for the Issue of Corporate and Green Bonds in Mauritius, released in

2021, add to the Guide by expanding on different regulatory standards that issuers must adopt in accordance with global best practices for the issuance of green bonds.

The BoM opened its Centre for Climate Change. The second deputy governor serves as the chairman of the Centre's main committee, which has four task teams. The goals include incorporating climate-related and environmental financial risks into the BoM's regulatory, supervisory, and monetary policy frameworks; reviewing the BoM's internal operations with a view to reducing its carbon footprint and becoming a more sustainable organisation; looking into improving disclosures on climate-related and environmental financial risks; supporting the development of sustainable finance; building capacity and raising awareness for climate-related environmental and financial risks.

The BoM published a Guideline on Climate-related and Environmental Financial Risk Management in 2022, which took into account the proposals made by the Network of Central Banks and Supervisors for Greening the Financial System (NGFS) in its Supervisors' Guide, "Integrating climate-related and environmental risks into prudential supervision", published in May of 2020, in addition to other pertinent guidance published by the NGFS, the Financial Stability Board, and the Basel Commitment. To increase the banking industry's resistance to these risks, the Guideline outlines the expectations for a sensible approach to financial risks related to the environment and the climate. Its goal is to help financial institutions integrate strong governance and risk management frameworks for financial risks associated with the environment and the climate into their current risk management frameworks. Additionally, banks will be in a better position to recognize the opportunities and hazards associated with the shift to a low-carbon and more circular economy and take those factors into account in their strategy, interactions with counterparts, and other decision-making procedures.

The Guideline also defines the basic guidelines that banks may follow when creating their financial disclosures relating to the environment and the climate. The requirements of the Guidelines apply to various aspects of the organization and operation of the banks, including their business model and strategy, governance, internal control structure, and risk management. They additionally apply to the use of scenario analysis and stress testing, as well as the disclosure of information about the financial risks related to climate change and the environment to which they are exposed, as well as the potential effects of material risks and their risk management strategies. The disclosure requirement will go into effect for the fiscal year ending December 31, 2023.

Conclusion

It can be safely stated that the legislative framework on the selected aspects of the Mauritian banking sector are aligned with international norms and standards. The banking sector in Mauritius offers numerous dependable advantages that have aided in its success. With one of the most stable and business-friendly economies in the region, it has been directing investments for decades as it sits at the intersection of Asia and Africa. The banking industry in Mauritius, however, also faces a number of difficulties and dangers. To guarantee Mauritius retains its position and development as a desirable International Financial Centre, these issues must be resolved. Delivering world-class services to African and Asian clients while serving as one of the primary bridges linking the rest of the world to Africa is the worldwide vision for the future role of the Mauritius banking sector. The banking industry in Mauritius has outlined a distinct, aspirational, and achievable strategy for the future: to keep enhancing the home market's level of service and to broaden its reach internationally, particularly in Asia and Africa.

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