

Address of the Chief Executive

Director's duties and responsibilities under Companies Act and FIAMLA

05 May 2022

Mr Samade Jhummun, Chief Executive Officer of Mauritius Finance

Facilitators for this Workshop

Distinguished participants

Ladies and Gentlemen

Good Morning and welcome to this workshop on “*Directors Duties and Responsibilities under Companies Act and FIAMLA*” and I am pleased to be amongst you today.

Ladies and Gentlemen

Following our exit from the FATF Grey list and the EU blacklist, we regulators, are laying much emphasis on the sustainability of the processes we have put in place to ensure that we remain a jurisdiction compliant with international norms. In this context, at the FSC, we have stressed throughout that we need to instill a culture of compliance, which does not come at the mere adherence to the requirements of the laws, but also, through applying the spirit of the law in our daily activities. This workshop on the duties of directors under both, the Companies Act and the FIAMLA comes at a very opportune moment and I would like to commend Mauritius Finance for this initiative and we at the FSC, are very supportive.

Ladies and Gentlemen

The financial services sector is one of the most important pillars of our economy. For the year 2021, the contribution of financial services to GDP was estimated at 12.3%. Moreover, the Global Business (GB) Sector, on its own, contributed 6.5% to GDP in that same period. The aggregated assets of entities operating under the GB regime are valued at around 682 billion US Dollars representing approximately 63 times the size of our GDP. Direct employment in the GB sector is estimated to be more than 6,000 and many more, indirectly, through services contracted from accounting and audit firms, legal advisors and banks. Now that we have been whitelisted, we have a duty to ensure that we also sustain a new growth in this sector, and we have the potential to do it amidst fierce competition.

I wish to highlight that our model of global business, which is in some way unique to our jurisdiction, rests on the concept of Management Companies which act as the gatekeepers of the global business sector. Primarily, Management Companies are required to set-up, administer and manage Global Business Corporations (GBCs) and Authorised Companies as well as to act as corporate or qualified trustees. In the delivery of these duties, due care and diligence are expected at all levels from the officers governing these entities. On top of the technical expertise required and expected, there is also a strong focus on their duties as per the legislations, governance as well as AML/CFT matters.

Dear Audience,

The Companies Act, clearly lays down the duties of directors and their expectations to act in good faith and in the best interests of a company. Let me draw your attention on a few requirements:

1. To emphasize on the degree of care, diligence and skills required by directors in delivering their duties;
2. Not to make use of or disclose any confidential information received by them on behalf of the company as directors otherwise than as permitted;
3. To disclose such interest where directors are interested in a transaction to which the company is a party;
4. To keep proper accounting records and make such records available for inspection; and
5. To at all times act in a manner which is not oppressive, unfairly discriminatory or unfairly prejudicial to shareholders.

The reason I am highlighting these specifics, is because, unfortunately, over the years, non-adherence to the above have been the major roots for concern for companies.

Ladies and Gentlemen,

With respect to the topical issue of AML/CFT, directors need to ensure that the financial institutions as reporting persons are meeting their obligations under the relevant laws, namely:

- The FIAMLA;
- The Prevention of Terrorism Act;
- The United Nations (Financial Prohibitions, Arms Embargo, Travel Ban) Act;
- The AML/CFT and Proliferation (Miscellaneous) Acts

I am mentioning the relevant legislations, because those new legislations and the compliance to them are often overlooked by boards who are trapped in the comfort zone of what used to be their traditional roles. However, since 2018, the Government has

been revamping the Mauritian AML/CFT/Proliferation financing framework and the role of directors has, as a result, widened.

On a more specific basis, the Financial Intelligence and Anti-Money Laundering Regulations 2018, in the context of the role of Directors, amongst others, require them to:

- Be able to recognise transactions and actions that may be linked to money laundering or terrorism financing;
- Be aware of the procedures to be followed where any probable links to money laundering and terrorism financing have been found with respect to their financial institution's transactions and actions;
- Know to whom to report in case they come across knowledge or suspicion of money laundering or terrorist financing;
- Be accessible to the MLROs and DMLROs;
- Oversee the functions of the Compliance Officer on an ongoing basis; and
- Require them to be provided with ongoing training programme with respect to AML/CFT laws and regulations.

Dear Audience,

I believe it is equally important that I bring today's topic into our context - the Financial Services Act introduced that a holder of a global business licence shall have 'at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement'. You will note that the legislation is not requiring that a 'mere' resident officer to be appointed by a GBC, but directors. Directorship should be undertaken solely on the basis that the person providing such services is aware of the activities of the company. The law further requires that the persons appointed as directors have sufficient skill and knowledge to carry out the duties expected of them and to do so with

independence of mind and judgement. Locally appointed directors must therefore ensure that they are comfortable with fellow board members and should ensure they partake in decisions.

Traditionally, such 2 directors were provided by the Management Companies, even if from the FSC, we are seeing more and more non-MC related directors now being proposed. However, it cannot be denied that in the global business sector, directors serve on multiple boards. In such cases, it is important that the director ensures that sufficient time and attention is given to the affairs of each Board. The director should take into consideration the nature and complexity of the business as well as whether he/she has the support of suitably qualified and experienced support staff to assist in the performance of his / her duties.

I will not complete the cycle, if I do not briefly touch on the governance requirements for directors. The FSC, in its Circular Letter on National Code of Corporate Governance, encourages all its Licensees providing financial services, including Management Companies to follow the principles of the Code. The Code advocates for an appropriate combination of executive directors, independent directors and non-independent non-executive directors to prevent one individual or a small group of individuals from dominating the board's decision taking. The board should be of a size and level of diversity that commensurates with the sophistication and scale of the organisation. The board should also be responsible for risk governance and should ensure that the organisation develops and executes a comprehensive and robust system of risk management.

Ladies and Gentlemen,

As a regulator, the FSC's aim is to ensure that the directors of licencees act with integrity and do not collude with criminals, or act corruptly. As such, the FSC applies market entry controls and monitors through KPIs that all directors are identified and screened not only at time of initial licencing or authorisation or registration but also on a continuous basis. The FSC also engages with the directors through outreach and on-site inspections to make sure that the respective responsibilities and duties of the directors are well understood and upheld by the licensees.

Since the beginning of the first supervisory cycle for AML/CFT in March 2020, the FSC has conducted 718 on-site inspections which included the verification of the involvement of the directors in maintaining an oversight of the AML/CFT compliance programme of their institutions. In so doing, the FSC is able to instill a compliance culture amongst directors which is supported by a general increase in compliance rate being observed across sectors. One example would be the approval of AML/CFT policies and procedures by the board of licensees whereby the compliance rate has increased significantly to reach 82% by end of Cycle 2. Similar improvements were observed with respect to the application of enhanced measures in high risk situations.

Depending on the outcome of the inspections, the FSC takes supervisory actions including issue of deficiency letters to apprise licensees on their breaches and referrals to enforcement in the event of serious breaches. In fact, a director being an approved officer of the FSC, may indeed be personally liable to regulatory sanctions which pursuant to Section 7 of the FSA may be a private warning, a public censure, disqualification or imposition of an administrative penalty. I wish to highlight that as part of our RBS cycle, the FSC has issued 9 private warnings against Directors since 2020.

Ladies and Gentlemen,

Directors of licensees and reporting issuers are reminded that, upon signing the ‘Consent & Certificate of Director Form’, they have confirmed their agreement to abide by all the provisions of the Companies Act which include acting in good faith, in the best interests of the company and for the respective purposes which have been explicitly or impliedly conferred to them. As such, if the directors are found to be in contravention of their statutory obligations, they may be held personally liable.

Furthermore, as a company is managed by its directors, the latter may also face consequences should the company be found to have committed breaches or engaged in unsound business conducts. However, it has been commonly noted that directors, in an attempt to be discharged of their liability, tend to resign from their positions in instances where the licensed entities are under scrutiny or have been subject to enforcement sanctions or hide behind the ‘corporate veil’. Directors complain about being scapegoated while the regulator is often blamed for not holding to account those who are supposedly ‘responsible’ for the corporate misconduct. Consonant with today’s theme, I wish to highlight that the FSC has recently taken a decisive shift in tackling these issues and has expanded the scope of individual liability for corporate misconduct where there is the evidence of personal culpability in the discharge of directors’ responsibilities and duties as may be demonstrated by the recent enforcement decisions.

Ladies and Gentlemen,

On a concluding note, I will stress again that the reputation of Mauritius as an International Financial Centre rests on the quality of its services and its pool of highly qualified professionals. More so, the importance of the Global Business Sector to our economy cannot be undermined. From its contribution to the Mauritian GDP, to its high

employability status and to the positive impact on the banking sector, no doubt that we have to preserve this Sector by all means. To ensure we achieve this, our expertise has to be aligned with the requirements, high standards and demands of the Sector. This initiative by Mauritius Finance, with the assistance of the FSC, is geared towards the up-skilling of senior officers in the financial sector.

Ladies and Gentlemen,

With these words, I wish you all a successful session and fruitful deliberations.

Thank you for your attention.

Dhanesswurnath Thakoor

05 May 2022