ICSA Mauritius Conference 2023

Creating Resilience through Governance –

the Regulator's perspective

Address by Mr Dhanesswurnath Thakoor

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Honourable Mahen Kumar SEERUTTUN, Minister of Financial Services and Good Governance

Ms Victoria PENRICE, President of the Chartered Governance Institute UK & Ireland

Mr Roodesh MUTTYLALL, President of the Institute of Chartered Secretaries and Administrators (Mauritius) Branch

Mr Neill Mc WILLIAMS, FCG – Researcher and Lecturer at Kensington College of Business, UK

Mr Christian ANGSEESING, Committee Member and other Committee Members of ICSA, Mauritius Branch

Captains of the Industry;

Distinguished speakers;

Members of the Press;

Distinguished Guests;

Ladies and Gentlemen;

All protocols observed;
Warm greetings to all of you.

I wish to express my heartfelt gratitude to the Chartered Governance Institute for inviting me today for the ICSA Mauritius Conference to speak on a theme *"Creating Resilience through Governance* - *from the Regulator's perspective*". It is indeed a great honour and pleasure to be present for this leading annual professional development event for company secretaries and other professionals with an interest in corporate governance.

The theme for this conference has also been beautifully coined. Before we delve further on the subject, let me share that, over the past couple of months, we have noted with utmost satisfaction, the holding of a number of workshops, seminars, and awareness sessions on the subject of corporate governance, a theme which is catching the eyes of all of us. ESG is fast becoming a household word and ‘G’ the governance part ESG, is now getting momentum in the world of finance. And I am also pleased to note that today's event is about how resilience can be created into the system. In fact one key word which we retained during our exit phase from the FATF Grey list, is ‘sustainability of our processes and resilience of our systems to face future shocks, and sound governance is key to achieving both.

So, before I bring in, the regulator's perspective on the resilience building through corporate governance, please allow me to address the theme from another angle. Let me share a small secret about the way regulations operate. Let us imagine what would happen if there is a complete absence of corporate governance in any organisation and it is through this analogy that regulators instil the right dose of corporate governance.

As you are aware, an organisation is setup for a purpose and has to be relevant in the socio-economic environment, has to maximize the shareholders’ value, has a social responsibility of its own and has to fulfil the purpose for which it was set up. If enterprises are run without adequate or with poor knowledge of corporate governance, we may encounter a situation where there can be quite a number of disastrous outcomes. Let me enumerate some of these.

- First, **lack of accountability**. Sound corporate governance advocates the need to have accountability at every level else there is a risk that the decision making process could be flawed or there could be inadequate controls on it. And that is very harmful for an organization.

- The next outcome would be a **financial mismanagement**. Effective corporate governance help clearing out situations of connivance and situations where financial malpractices are prevented through clearly laid down processes that ensure that at each level, there is adequate control and relates again back to the first disastrous outcome I was mentioning, that is lack of accountability.
- Another disastrous outcome of a lack of corporate governance would be **conflict of interest**. Conflict of interest arises not always with criminal intention, but sometimes unknowingly. Let us take a simple example. It has been observed that very often, through lack of resources being provided by the top management, a person is required to do several pieces of tasks whereby the person happens to be himself the initiator, the creator, the approver. And even without the bad intentions, these are potential conflicts of interest where financial mismanagement is just bound to happen at some point in time. The bigger the organization, the bigger there is the potential for these things to happen.
- Another consequence would be **decreased investor confidence.** When the three above mentioned situations are united, definitely the investors will lose confidence on the system, especially when instances of mismanagement have occurred, or even have the potential to occur. If a company would go towards listing, then one can be sure that the share prices would plummet down. This goes without mentioning that poor corporate governance eventually leads to damage to the reputation of the company for the reasons that the ingredients that should be reunited for a company to flourish and attain its purpose are absent, and the value of the wealth generation mechanism of the company is tainted by the fact that external stakeholders would fear away or would not consider these companies to invest or to deal with.
- Last but not least, ineffective corporate governance leads to **poor strategic decisions and poor long term planning** and therefore the organisations might find themselves in a situation where a catastrophe is just waiting to happen.

Therefore, ladies and gentleman, we see that there is no other means to manage an organisation but through implementing sound corporate governance principles. But these sound corporate governance principles are very often ignored due to costs. But as I previously mentioned, there is no other cost higher than the cost associated with reputational damage and the cost behind the risk that the company may altogether cease to exist. A well-developed corporate governance framework plays a huge role not only with respect to transparency but also in creating resilience. In today's business climate, you will agree with me that many unforeseen challenges like evolving technologies, environmental risk, ongoing geopolitical risk, regulatory hurdles and changing customer demands are ever present and all these challenges need to be addressed through a sound corporate governance culture.

In these circumstances, what is the responsibility of the regulator and how does the regulator see the problem? While regulators have a duty responsibility to ensure implementation of sound governance principles, it should not be construed that if one organisation has poor corporate governance practices, it is because the regulator might have failed in its duties. Implementation of sound corporate governance practices is, first and foremost, the responsibility of the Board of an organisation. In the domain of Corporate Governance, there are a number of obligations that not only required by the FSC as a regulator, but also under the National Committee on Corporate Governance and some of the practices that are here to guide organisations how to adhere to the principles. I will during the course of my intervention, and numerate what are the obligations *vis-a-vis* the regulator, but before I move to that, let me first share with you some of the best international practices in this area.

Distinguished audience

As you are aware, the most prominent corporate governance principles which have inspired various jurisdictions to set up their own corporate governance framework is the G20/OECD Principles of Corporate Governance. Some of you, I am sure, participated in the joint FSC's Regional Centre of Excellence and OECD workshop organised on this very theme last week. These principles act as the international standards for corporate governance. The Principles help policy makers evaluate and improve the legal, regulatory and institutional framework for corporate governance, with a view to supporting economic efficiency, sustainable growth and financial stability. First issued in 1999 and endorsed by G20 Leaders in 2015, the Principles are currently being reviewed and revised Principles will be issued this year. One of the major objectives of the revision of the G20/OECD Principles of Corporate Governance is to promote corporate governance policies that support the sustainability and resilience of corporations.

The OECD's Corporate Governance Committee identified a range of 10 priority areas to take into consideration during the review, including the management of environmental, social and governance risks; digitalisation; corporate ownership and concentration; and institutional investors and stewardship, among others. It is important to note that the revised Principles, also include a chapter on sustainability and resilience, which would act as a guiding principle with respect to corporate governance matters related to sustainability.

Over recent years, corporations have been more conscious about implementing business models which are more climate-neutral and sustainable to the global economy. In this respect, this review to the G20 OECD Principles comes at an opportune time as this will set a global language that companies need to ensure that the governance practices and business making decisions are societal and environment conscious.

Ladies and Gentlemen

Let me now come back to our approach towards Corporate Governance as a regulator. By way of a circular letter dated 28 October 2021, the FSC informed its licensees who have an obligation to comply with the Code under the Financial Reporting Act, the Companies Act, the relevant Acts or any other enactment(s). As the regulator of non-banking financial services and global business, the FSC monitors the application of the Code and adherence to corporate governance principles by its licensees. The FSC's supervisory powers allow it to direct a licensee to comply with any of the principles and practices of corporate governance laid down in the Code and allow the imposition of other regulatory sanctions where non-compliance with the Code amounts to a breach of the relevant Acts or licensing conditions. Even if certain categories of licensees are not required to comply with the Code, I would encourage them to implement the Principles of the Code and set up appropriate corporate governance measures.

The approach adopted in the Code depends significantly on reporting and disclosure of Corporate Governance practices to stakeholders. Relevant licensees are required to disclose compliance with the Code on an 'apply and explain' basis in the manner laid out in the Code. Also, relevant licensees have to inspire themselves from the generic guidance provided in the Code as well as guidance specific to relevant sectors.

In the same vein, all relevant licensees should ensure that their Annual Reports/Audited Financial Statements are accompanied by a Director's Statement of Compliance with the Code in the form and manner as provided in the Code. The auditors of the relevant licensees are also required to assess any explanation in cases of non-compliance and shall make a report in the form and manner as provided in the Code.

In addition, relevant Acts and legislations such as Insurance Act, Virtual Asset and Initial Token Offerings Services Act, Securities Act, and others, impose an obligation on specific licensees such as insurance companies, virtual asset service providers and issuers of initial token offerings, securities exchanges and others to have effective corporate governance arrangements in place or to establish adequate internal controls and adopt strategies, policies, processes and procedures in accordance with principles of sound corporate governance.

I would also like to point out that Financial Services Supervision is not a ‘tick-the-box exercise’ which only focus on the implementation, monitoring, and enforcement of the regulatory framework. It is also essential to assess whether an institution has the right corporate governance structure in place to prevent any risk to consumers/investors as well as to the reputation of the jurisdiction.

Ladies and Gentlemen

As a concluding note to my speech, I wish to re-emphasise that corporate governance is an utmost important institutional framework which, if implemented efficiently, will be highly impactful on making a jurisdiction a sound financial hub for investors.

In this day and age, we are global citizens with global responsibilities. We live in a world today where there is more prosperity as well as greater interconnected risks than ever before. In this respect, a resilient corporate governance framework will need to be implemented and maintained in order to ensure a sound financial services system. In view of this vital objective, rest assured, the FSC will spare no means in terms of resources, knowledge and expertise to ensure a corporate governance framework which gives due importance to resilience.

Thanking you all for your kind attention and I wish you a very successful conference.

Mr Dhanesswurnath Thakoor
22 May 2023