



Financial Services Commission

Mauritius

Workshop on “Financial Services for Lawyers”

Speech by Ms. Clairette Ah-Hen, Chief Executive, Financial Services Commission

FSC House, 26 July 2012

Honourable Judges

Mr. Marc Hein, Chairman of the Financial Services Commission

Members of the Board of the Financial Services Commission

Learned members of the Legal Profession

Distinguished guests

Ladies and Gentlemen

Good afternoon to you all.

I am pleased to welcome you at the FSC House for the workshop on “***Financial Services for Lawyers***”. The objective of the workshop is two-fold; familiarising lawyers with the main stakeholders of the financial services sector and its regulatory perimeters; and to unfold the opportunities that exist for the legal profession in the financial services sector.

The financial services sector in Mauritius is regulated by two bodies – each with specific statutory objectives:-

- The Bank of Mauritius (BOM), set up in 1966, well known to all, and which is responsible for the regulation of banking services and
- The Financial Services Commission (FSC), set up in 2001, as an integrated regulator for non-banking financial institutions and global business.

The FSC took over the regulatory responsibilities of (a) Insurance previously carried out by the Controller of Insurance – a division of the Ministry of Finance, (b) Capital Markets previously done by the Stock Exchange Commission (SEC) and (c) Global Business – otherwise also known as the offshore sector – regulated by MOBAA.

The FSC is mandated, *inter alia*, to ensure soundness and financial stability of the financial sector in Mauritius. Over these past ten years, the FSC, in collaboration with Government, has endeavoured to strengthen and modernize our legal framework to allow for growth of the sector, new product development and disclosure of information for more efficient supervision. It is in this perspective that new laws were recently enacted – the Limited Partnership and the Foundations and the Private Pension Schemes which is yet to be proclaimed. These last years have seen the growth of the financial services sector and an increase in its contribution to the economic development, to make the sector the 4th pillar of the Mauritian economy. Needless to say that if Mauritius is to progress further there is a need for a pool of talented professionals to service the sector.

One of the main stakeholders called to contribute to the development of the financial services sector is the legal profession – be it - for drafting of the legislative framework, for ensuring appropriate implementation and for compliance with the laws in place – whether as staff with legal expertise at the FSC; whether as corporate, business or financial lawyers acting as advisers in the industry or whether as the magistrates / judges in courts. The laws need to provide for the creation (initial stage), operation (on-going) as well as dissolution (end process) of businesses. Unfortunately, in the World Bank report “Ease of doing Business 2012”, Mauritius is ranked 79th out of 183 in respect to Resolving Insolvency criteria while overall Mauritius is ranked 23rd. A small improvement in that area – to bring an entity to its end in an orderly manner within an acceptable time frame – will greatly improve our ranking.

The financial services sector is a truly global sector and knows no boundaries. In such a dynamic and highly competitive sector, resting on our laurels is not an option. The Mauritian jurisdiction needs to continuously evolve to keep pace with international standards and the sector requires law practitioners to keep abreast with the latest developments. For the Mauritian financial services sector to achieve further recognition as a well-regulated jurisdiction, we need to boost the confidence of investors in the Mauritian jurisdiction. For this to happen, there is a need for the development and establishment of the proper legal framework as well as its implementation.

I would like, here, to share with you a quote made by Prof. Andrew Morriss, University of Alabama, Editor of Offshore Financial Centres and Regulatory Competition:-

“Any state can make rules, but not every state legitimately can enforce them in all circumstances, especially those involving people or assets outside the state.

Because no single government can extend its courts and enforcement powers to cover the world, multiple states end up competing with no state able to exercise effective monopoly power over mobile entities.

In the end, states compete for mobile parties and their assets by attempting to provide the laws people want.”

Erin O’Hara & Larry Ribstein, *The Law Market (OUP 2009)*

I do believe this quote is most appropriate for policy and law makers and all stakeholders operating in the Global business sector to ponder on.

I should not miss this remarkable opportunity provided to me today, with so learned members of the legal profession in the same room, to share the challenges that the FSC faces in order to demonstrate the application of the international principles and standards in Mauritius.

Fortunately, we do have some positive examples to give:-

- (a) The OECD peer review report, in October 2011, mentions that Mauritius has over the years developed a sound legal and regulatory framework, being categorized as a jurisdiction which has a trusted, transparent and well-established International Financial Centre.
- (b) For global flow of funds – which I earlier stated as knowing no frontiers - it is not enough for the FSC to be a member of the IOSCO – the International Organization of Securities Commissions (IOSCO), it is crucial that the FSC is a signatory of the Multilateral Memorandum of Understanding (MMoU). *“Comme on dit “un vrai parcours de combattants de 5 années”* and “a major achievement” when amendments to the laws to enable Mauritius to meet the stringent legal requirements of IOSCO were made and FSC became one of the 86 IOSCO MMoU signatories in May 2012.

It is to be noted that the quality of legal advice and service given to operators greatly contribute to compliance, adherence to laws and standards and to enabling FSC demonstrate their application during peer assessments and reviews (such as FSAP, ROSC etc...) carried out on an almost continuous basis.

Ladies and Gentlemen,

I would like to share a few FSC’s observations on the financial services sector:-

- For Mauritius to position itself as an international platform for investment into other countries, we need to maximize on all advantages that our system, history and heritage have to offer – be it - (i) a democratic country or (ii) a stable, credible and trustworthy centre for doing business or (iii) a mixed legal system of common and civil law with legal practitioners in Mauritius well versed in these two traditions.
- To develop the IFC, we need to be able to meet the needs of investors, that is we need the expertise of barristers / lawyers involved in international practice.
- With the global financial crisis, investors have accumulated enormous losses of wealth worldwide and there is now a strong need for regulators to promote higher standards of conduct which encourage efficient and well-functioning markets as well as for all professionals to uphold the highest standards and ensure compliance (no cutting corners) with rules which are of law rather than of man.
- In this rapidly changing environment, the development of the sector, even survival, depends upon our ability to operate as effectively as our competitors. Dynamics change and time is of the essence – we all know the saying “*justice delayed is justice denied*”. For economists, there is a time value of money and for investors, timing is crucial and investors usually walk away from jurisdictions which do not meet their expectations.
- As a developing country, we are competing with many other jurisdictions - having more international law firms will provide an important support to position Mauritius as one of the leading global financial centres.
- For the Mauritian financial services sector to achieve further recognition as a well regulated jurisdiction, it needs the expertise and experience of the legal community to boost the confidence of investors in the Mauritian jurisdiction. Members of the legal profession must look beyond the legal technicalities and aim to offer services to preserve the reputation of our financial system. Lawyers can become a strong ‘*maillon de la chaine*’ in our common fight against money laundering and terrorism.

To conclude, the FSC is fully committed to consolidating Mauritius as a stable, credible and trustworthy centre for doing business. The regulatory nature of our work and the factors to be taken into consideration are changing. Our collective efforts will be key to maintaining our competitive edge with emerging regional financial centers.

This workshop is but a start in this direction. I am now pleased to officially launch the workshop and the panel discussion.

Thank you.

