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Banking & Finance Insights

By BLC CHAMBERS

Contents

Welcome to this third edition of Banking & Finance Insights, our periodical publication addressing topical issues in the areas of banking and finance both in Mauritius and globally.

In this edition, we introduce a new feature, Locus, which aims to examine newsworthy developments in the banking and finance sphere. For its first outing, we take a look at the evolution of a hot topic of our times; international banking regulation and its impact on the Mauritian finance sector. In the recent EU Bank Recovery and Resolution Directive (2014/59/EU), the European Banking Authority has set the tone for firmer supervision of financial institutions with wide ranging powers for the recovery and resolution of financial institutions of the European Economic Area. Banking regulation, as a concept is not a novel feature of financial systems but what is striking about the EU Bank Recovery and Resolution Directive is two-fold; the extraterritorial application of the regulators' powers in writing down the liabilities of European financial institutions

and, in framing the scope of liabilities, the impact of the directive can be surprising. We continue in our efforts to keep you on top of various developments in the banking and finance sector. In Legal Updates, we highlight a new initiative by the Bank of Mauritius seeking to tackle distressed assets through the establishment of an asset management company in consultation with the banking sector. The proposal addresses the level of non-performing loans on the books of Mauritian banks and recognises the failings of the current asset recovery mechanisms. We also examine the new roadmap on the evolution of ICE LIBOR proposed by its administrators.

In the Five Things to Know feature, we look at guarantees governed under the Mauritian Civil Code; the suretyship. We also address a recurring question on corporate filings by a Mauritian company when encumbering its assets. We wrap up this edition by keeping you abreast of the latest developments in the Mauritian financial sector in Country Updates.

Wishing you an enjoyable reading.

LOCUS

THE EUROPEAN DIRECTIVE ON BAIL-IN REQUIREMENT REACHING MAURITIAN SHORES

The EU Bank Recovery and Resolution Directive (2014/59/EU) (the BRRD) establishes the framework for the resolution of failing EEA financial institutions. BRRD gives regulators a range of powers including bail-in powers to write-down and/or convert liabilities of a failing institution into equity (the Powers).

01 January 2016 was the deadline for EEA member states to implement the bail-in provisions set out in articles 43 to 55 of BRRD. The regulator's exercise of the write-down and conversion powers will be effective in respect of any liabilities of an EEA financial institution under a document governed by the laws of an EEA country regardless of the terms of that document. It is less certain that the Powers will be recognised and enforced by a foreign court where the document is governed by the law of a non-EEA country (the Foreign Law).

To ensure the cross-border effectiveness of the regulator's Powers, article 55(1) BRRD requires in-scope financial institutions[1] (an EEA Institution) to include a term in contracts governed by a Foreign Law to which they are a party (the Article 55 Requirement). Based on these contractual terms, the EEA Institution's counterparty (the Counterparty) acknowledges that the EEA Institution's obligations under that document are subject to an EEA regulator's exercise of those Powers. The contractual term is commonly referred to as the Bail-in Clause.

The Article 55 Requirement is only applicable to a document governed by a Foreign Law. To the extent that the transaction is a European-based lending transaction, the inclusion of a Bail-in Clause would still be relevant where the security documents or other finance documents are governed by a Foreign Law.

Article 55 Requirement

The Article 55 Requirement is not retrospective and will apply if one of the trigger events listed below occurs on or after the date specified in the relevant national implementing legislation which, in most cases, is 01 January 2016[2]. Occurrence of the following events in relation to a Foreign Law-governed agreement on or after 01 January 2016 will trigger the Article 55 Requirement:

(a) An EEA Institution becomes party to a document.
(b) Material amendments are made to an agreement to which an EEA Institution is a party.
(c) New liabilities arise under an existing document to which an EEA Institution is a party.

What should the Bail-in Clause look like?

The European Banking Authority has prepared draft regulatory technical standards[3] requiring the Bail-in Clause to include certain mandatory features such as a description of the Powers set out in the EEA Institution's national implementing legislation. Moreover, the Bail-in Clause should also contain an acknowledgement and acceptance by the Counterparty that:

(a) The EEA Institution's liabilities may be subject to the exercise of the Powers by the EEA regulator.
(b) The Counterparty is bound by the effect of an EEA regulator's application of the Powers.
(c) The terms of the relevant documents may be varied as necessary to give effect to the exercise of such Powers.
(d) The Counterparty may be issued equity or other ownership instruments in the EEA Institution as a result of the exercise of the Powers.

Scope of liabilities captured

Beyond the limited exemptions provided in Article 55, the Article 55 Requirement applies broadly to any document governed by a Foreign Law under which the EEA Institution may have contractual or non-contractual liability. While it is clear that debt liabilities of an EEA Institution (such as bonds, capital instruments and other instruments created indebtedness) are

1. Article 55 applies to EU incorporated banks and qualifying investment firms, their EU incorporated holding companies, their subsidiaries which are EU financial institutions and certain affiliates. Non-EU incorporated firms and their EU branches are out of scope. Careful consideration should be paid to the national implementing rules to determine whether entities are in scope.

2. BRRD requires EEA member states to specify this date as no later than 1 January 2016. This article refers to 1 January 2016 for simplicity and the date of application may vary in some EEA member states.

3. The regulatory technical standards prepared by the European Banking Authority have been submitted to the European Commission and are currently available in draft form only. These standards will be binding and directly applicable in all EU member states upon adoption by the European Commission.

captured, the Article 55 Requirement is far wider in scope. By way of example, contingent liabilities including letters of credit and guarantees, operational liabilities under service agreements, derivative instruments and liabilities to clearing and settlement systems outside the EU would also fall within the scope of the Article 55 Requirement.

Of particular relevance for banking transactions, the Article 55 Requirement would apply to obligations commonly undertaken by a financial institution as lender or as administrative party under finance documents, typically security agreements, governed by a Foreign Law. The following obligations commonly undertaken by lenders, security agents and/or facility agents would trigger an Article 55 Requirement:

(a) Lending commitments.
(b) Requirements to share or turnover recoveries made from the borrower.
(c) Indemnities typically given to the facility agent, security agent and issuing bank.
(d) Confidentiality duties.
(e) Requirement to obtain borrower consent/consultation prior to transfer of participation.
(f) Administrative obligations such as notifications of tax status or requirement to make other notifications.
(g) Potential non-contractual liability under loan market documentation such as claims in negligence or misrepresentation.

Consequences of non-compliance

Failure by an EEA Institution to include a Bail-in Clause in a Foreign Law-governed finance document will result in a breach of the law of the jurisdiction of that EEA Institution transposing BRRD. Article 55(2) BRRD provides that failure to include a Bail-in Clause does not preclude the EEA Institution's resolution authority from exercising its Powers. Consequences of non-compliance with the Article 55 Requirement may result in fines or regulatory actions being imposed on the EEA Institution but it is generally expected that the contract will remain valid and enforceable.

Next steps

Because of the wide scope of both the trigger events and liabilities captured by the Article 55 Requirement, Mauritian counterparties and especially Mauritian financiers will need to take a judgement call on the inclusion of the Bail-in Clause when preparing Foreign Law-governed finance documents.

For instance, where no syndicate members are EEA Institutions, the arranger / facility agent may still wish to build in flexibility across the finance documents to facilitate transfers to EEA Institutions in the future.

Where a facility agreement is governed by an EEA law, parties should determine whether there are (or if it contemplated that there may in the future be any) other security documents governed by a Foreign Law. Even where none of the parties to a Foreign Law security document are EEA Institutions, parties should consider whether they want to include the Bail-in Clause to provide for (i) potential non-contractual liabilities, or (ii) future change of security agent to an EEA Institution.

The Loan Market Association has produced a recommended form of the Bail-in Clause and an accompanying user guide. Because Article 55 requires a description of the Powers under the national implementing legislation in the Bail-in Clause rather than a generic description of the directive, the Loan Market Association has also produced an EU bail-in legislation schedule setting out a description of all relevant legislations which can be incorporated by reference in the relevant contracts. The schedule has been prepared as part of the co-operation between the Loan Market Association, Loan Syndications and Trading Association, Asia Pacific Loan Market Association and International Capital Market Association.

LEGAL UPDATES

BANK OF MAURITIUS CONSULTS ON THE ESTABLISHMENT OF AN ASSET MANAGEMENT COMPANY

The Bank of Mauritius (the BoM) launched a consultation paper on 8 January 2016 on the setting up of an asset management company (an AMC) in Mauritius. The consultation closed on 16 February 2016.

The BoM established an working group in August 2015 with the purpose of examining the possibility of setting up an AMC in Mauritius to (i) address concerns of the weakening effect of non-performing loans (NPLs) on the balance sheet of local banks, (ii) to remedy the lack of effectiveness of the Borrower Protection Act 2007 (the BPA)[4] and (iii) to address the deficiencies of the sale by levy procedure[5].

The BPA and the sale by levy procedure, which are supposed to facilitate enforcement and recovery of debt liabilities, have proved to be more cumbersome and ineffective. The sale by levy procedure has been criticised by two successive commissions of inquiries which have noted that the process is lengthy and costly. In addition to the process providing hardship to debtors, lenders have also criticised the sale by levy procedure by highlighting that sale of assets fetched at most 20 to 25 % of their market value.

In light of the inadequacies of the current regime in place for consumer credit, the BoM working group has recommended the setting up of an AMC to achieve the following objectives:

(a) To protect the vulnerable class of society which the BPA was intended to protect.
(b) To eliminate recourse to the sale by levy procedure.
(c) To set up a recovery system relieving banks from the problems encountered under the BPA regime.
(d) To stabilise the level of NPLs.
(e) To enable both lenders and borrowers to have a fair deal upon realisation of assets held as security.

The BoM working group considered both a centralised AMC model with one agency responsible for the restructuring of debts and a decentralised model where each bank would take responsibility of the debt workout. In recommending the centralised model, the working group recognised the efficiency of a central AMC to recover the maximum possible value from NPLs allowing banks to focus on their core day-to-day lending activities.

The centralised AMC would acquire NPLs from banks following completion of a due diligence process to ensure that there are no deficiencies in the credit facility documentation and to determine the current market valuation and long-term economic value of underlying secured assets. The AMC would apply a valuation methodology under which the NPL being transferred would be discounted.

The BoM working group recommended that the AMC be formed by way of a joint-venture between the BoM and banks with the BoM holding 60% of the capital in the AMC with the remainder being subscribed for by banks and other financial institutions.

The outcome of the consultations is being awaited.

IBA publishes roadmap for ICE LIBOR

A critical step in the evolution of the London Interbank Offered Rate (also known as ICE LIBOR) (LIBOR) was reached with the publication of the roadmap on LIBOR by its administrator, ICE Benchmark Administration Ltd (the IBA) on 18 April 2016. The roadmap is the outcome of IBA's consultation after publication of a second position paper in July 2015 setting out its proposals for the evolution of LIBOR. The measures set out in the roadmap will be implemented progressively during 2016.

Objective of the roadmap

The roadmap covered submission criteria, the implementation of a transaction based approach over a period of time, expert judgement determination as well as other enhancements to the benchmark.

To ensure the continuity of LIBOR in all market circumstances, the roadmap adopts the following waterfall of methodologies to be followed by benchmark submitters when making their LIBOR submissions:

4. The BPA was introduced to safeguard the interest of borrowers in respect of credit facilities not exceeding MUR 2 million.

5. The sale by levy procedure is a mechanism under the Sale of Immovable Property Act 1864 by means of which a creditor can realise the immovable assets of a debtor and apply the proceeds towards discharging the debts of that debtor.

(a) Level 1: transactions, using a range of eligible counterparties (Level 1).
(b) Level 2: data derived from transactions (including adjusted and historical transactions, interpolation and extrapolation/ parallel shift) (Level 2).
(c) Level 3: Expert judgement, appropriately framed.

Centralised determination

An important theme discussed in the consultation was the submission of raw data by benchmark submitters to IBA, who would then calculate and publish rates. IBA would collect trade data from benchmark submitters as set out in the waterfall of methodologies detailed above. Doing so would require IBA to build systems and algorithms and the roadmap sets out an indicative timetable for to implement the centralised determination model with IBA set to announce the outcome of its feasibility study by the end the second quarter of 2016. IBA would then seek regulatory approvals for its determination processes from its regulator, the Financial Conduct Authority, during the second half of 2016 with the view that IBA would take over centralised responsibility for the formulation of LIBOR in 2017.

Use of transactions

Benchmark submitters already use a range of transactions within their waterfall of methodologies to anchor their LIBOR submissions. These methodologies have been developed by each benchmark submitter resulting in a variation of approaches amongst benchmark submitters.

Through the roadmap, IBA is standardising acceptable Level 1 methodology. Acceptable Level 1 transactions will be the volume-weighted average price of unsecured deposits, commercial paper and certificates of deposits.

Respondents to the consultation noted that the use of historical transactions as anchor points would be particularly useful in the absence of new trades providing Level 1 transactions to IBA. The use of historical transactions involves a bank taking its transactions from previous day(s) and adjusting them by the day-on-day change of a correlated rate such as short-dated government bonds or central bank rates.

By allowing the use of Level 2 historical transactions, the roadmap ensures that rates can be submitted even where there is a lack of Level 1 transactions submitted to IBA. This approach is particularly useful for longer tenors where there are generally fewer transactions. Level 2 historical transactions will be weighted depending on their currency, tenor and proximity to the time of submission and the maximum number of LIBOR submission days for which historical transactions could be used has been set by the LIBOR Oversight Committee.

Expert judgement

In the consultation, IBA considered whether any adjustments should be permitted in determining LIBOR submissions based on Level 1 and/or Level 2 inputs. For example, if a market event result in Level 1 or Level 2 input being clearly unrepresentative of the market or the benchmark submitter considers that the transaction-based submission rate is clearly unrepresentative of the bank's funding cost, the benchmark submitter's use of expert adjustments could change the input by removing unrepresentative trades or adjust the rates through the application of expert judgement.

The third level of the waterfall methodology allows for the use of expert judgement, framed in the following manner:

(a) Expert judgment should be based on the benchmark submitter's internally approved procedure and agreed by IBA.
(b) It should be formulated using inputs allows by IBA.
(c) It should be accompanied by full documentation of the rationale and with the supporting evidence provided to IBA.

Other proposals

The roadmap also proposes other amendments to LIBOR, including allowing benchmark submitters to use transactions where they receive funding from non-financial corporations to inform LIBOR. This is a result of the decrease in interbank activity and the increasing importance of wholesale deposits from other counterparties to bank funding. This shift has led IBA to conclude that unsecured loans from non-financial corporations to banks should be eligible for submission by benchmark submitters. The roadmap sets out a list of eligible counterparties, including sovereign wealth funds and supranational non-financial corporations, whose trades with benchmark submitters should inform LIBOR. Moreover, as set out in the roadmap, IBA intends to move away from the administrator's question[6] which will be replaced with an output statement setting out inter alia the waterfall of methodologies and the list of eligible counterparties.

The roadmap can be found on the ICE website: theice.com/iba

Basel publishes revised framework on minimum capital requirements for market risk

The Basel Committee on Banking Supervision (BCBS) has published a revised market framework on minimum capital requirements for market risk (the Revised Framework) in

6. The question asked of submitters, referred to as the "Administrator's Question", which is currently "At what rate could you borrow funds, were you to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11 am?"

January 2016. The Revised Framework takes into account two consultations carried out by BCBS in October 2013 and December 2014 as well as several quantitative impact studies. The Revised Framework will come into effect on 01 January 2019.

Following the deficiencies regarding the capitalisation of trading book exposures during the financial crisis, BCBS identified a number of structural flaws in the existing market risk framework and revised the market risk framework as part of the Basel 2.5 reforms. There remained areas of concern with the Basel 2.5 market risk framework which have led to the Revised Framework being published.

The key highlights of the Revised Framework are:

(a) Revising the boundary between the banking book and the trading book to disincentive regulatory arbitrage between the two books.
(b) Enhancing the internal models approach by (i) providing for more coherent and comprehensive risk capture, (ii) providing an enhanced model approval process and (iii) constraining the capital-reducing effects of hedging and portfolio diversification.
(c) Revising the standardised approach for market risk to allow for greater reliance on risk sensitivities into capital charge calculations.

Providing coherent and comprehensive risk capture

A noteworthy change in evaluating market risk in the trading book is the replacement of value at risk (VaR) as the risk measure with expected shortfall (ES). It is understood that the VaR model faces significant difficulties under market stress by assuming that asset returns follow normal distributions. Consequently, VaR does not take tail risk into account. By measuring the risk of a position through a consideration of both the size and the likelihood of losses above a certain confidence level, ES is seen as being better equipped to evaluate tail risk and consequently, a better judge of market risk.

The Revised Framework can be found on: https://www.bis.org/bcbs/publ/d352.pdf

Basel publishes Guidance on credit risk and accounting for expected credit losses

The Basel Committee on Banking Supervision (BCBS) has issued its Guidance on credit risk and accounting for expected credit losses (the Guidance) on 18 December 2015. The consultation process was undertaken in early 2015 and the Guidance replaces the Committee's Sound credit risk assessment and valuation for loans published in 2006.

The Guidance sets out supervisory expectations for banks relating to sound credit risk practices associated with the implementation and ongoing application of expected credit loss (ECL) accounting framework.

The Guidance is structured around 11 principles and its impact will largely depend on each national supervisor's interpretation and application of these principles.
The Guidance recognises that there exists differences between ECL accounting frameworks across jurisdictions and aims to drive consistent interpretations and practices where there are similarities across these frameworks.

In addition, the Guidance includes provisions specific to banks applying IFRS.

The Guidance can be found on: https://www.bis.org/bcbs/publ/d350.htm

UBS AG v MCB[7], Supreme Court refers dispute to arbitration

MCB brought proceedings to the Commercial Division of the Supreme Court in respect of an undertaking evidenced in a side letter with UBS AG[8].

The Commercial Division of the Supreme Court previously held that the issue as to the applicability of the arbitration clause under a facility agreement should be transferred to the Supreme Court of Mauritius for determination under section 5 of the International Arbitration Act 2008.

The Supreme Court considered the test under section 5 (2) of the International Arbitration Act 2008 which provided that the court transfer the dispute to the competent arbitral tribunal unless a party shows, on prima facie basis, that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed. In applying section 5 (2), the Supreme Court noted the heavy burden placed on a party to satisfy the prima facie test and that the court would have to finally decide whether the arbitration agreement is null and void, inoperative or incapable of being performed in very rare cases. The Supreme Court held that such threshold had not been met by MCB and referred the matter to the competent arbitral tribunal.

7. UBS AG v The Mauritius Commercial Bank Ltd, 2016 SCJ 43

8. The Mauritius Commercial Bank Ltd v UBS AG. Singapore Branch & Anor, 2015 SCJ 307

5 THINGS TO KNOW ON SURETYSHIP

In general terms, a suretyship is an agreement by which a person (Guarantor) undertakes to perform an underlying obligation if the principal debtor fails to do so. The principles and legal regime of suretyship in Mauritius are inspired from French law and are to be found under the Mauritian Civil Code.

Below are 5 things you should have in mind when thinking of suretyships under Mauritian laws:

1. Nature of the obligation The suretyship is an accessory obligation and may only guarantee a valid underlying obligation without which the suretyship cannot exist. The suretyship is therefore an obligation to perform the underlying obligation (in full or in part up to a contractually set out limit) upon failure of the principal debtor.

2. Conditions of the suretyship A suretyship may not be contracted for an amount in excess of that owed by the principal debtor or under more onerous conditions. However a suretyship which does not meet these conditions is not void; it is only reducible to the measure of the underlying obligation.

3. Enforcement and recourse against the initial debtor If and when default of the initial debtor arises, the creditor may exercise his right to be paid under the suretyship subject to the rights of the Guarantor to claim back against the principal debtor.

4. Rights of the Guarantor Upon default under the underlying obligation, the beneficiary can call on the Guarantor to perform its obligations under the suretyship after having exhausted its remedies against the principal debtor. The principle is known under Mauritian law as the "bénéfice de discussion". The "bénéfice de discussion" can be expressly waived. Where there are several Guarantors jointly liable for the same underlying obligation, the Guarantor may require the beneficiary to divide its recourse amongst the various Guarantors, this right known as ("bénéfice de division"), can be expressly waived, as well.
   A Guarantor who has performed the underlying obligation is entitled to be subrogated to the beneficiary's right in respect of the debt. The Guarantor can thus step into the shoes of the beneficiary and enforce the beneficiary's rights for its own benefit.

5. Commercial suretyship Suretyships are subject to the Mauritian Civil Code but can, in some specific cases, qualify as commercial agreements and be subject to the certain provisions of the Mauritian Commercial Code. The Privy Council's judgement in Société Alleck & Cie[9] perfectly illustrates the commercial qualification of a suretyship with 2 conditions based on French judicial precedent. The first criterion is known as "commercialité par accessoire" which will apply when the surety is granted by any person for the only purposes of his business. Secondly, the agreement may be subject to the Commercial Code if the grantor has a patrimonial interest over the fulfilment of underlying commercial obligation guaranteed by the surety.

   Where the grantor is a "commerçant" (i.e. a trader which under Mauritian law means any person practicing a commercial activity on a regular basis), there is no presumption under Mauritian law resulting in the surety automatically being qualified as a commercial arrangement and being governed by the Commercial Code. The specific criteria mentioned above must be fulfilled for the arrangement to be governed under the Commercial Code.

   If the criteria are met, the Mauritian courts will depart from the general provisions of Mauritian Civil Code and apply the provisions of the Commercial Code. These relate mainly to the proof of the suretyship. The Commercial Code offers more flexibility to parties to prove a commercial contract with for instance the principle of freedom of proof which derogates to the strict requirements of the Civil Code on both form and substance.

9. Société Alleck & Co. Ltd v The Indian Ocean International Bank 2007 PRV 87 / 2008 MR 379

FREQUENTLY ASKED QUESTIONS

FILING OF PARTICULARS OF CHARGES UNDER SECTION 127 OF THE COMPANIES ACT 2001

What is this filing about?

Section 127 of the Mauritius Companies Act 2001 (Act) deals with the filing of details of any security interest created by a company over its assets with the Registrar of Companies in Mauritius (ROC).

Details of which type of security interests need to be filed?

The provision refers to “charges” which under the meaning of the Act, refers to most forms of security interest without any territorial limit. The definition of “charges” even refers to “an agreement to give a charge” which gives a very wide scope to the filing requirement.

Who is concerned by this filing?

Every company incorporated under the Act or registered under the Act (such as foreign companies which have migrated to Mauritius).

When is this filing required?

The filing has to be done within 28 days from the date of the agreement creating the charge.

What needs to be filed?

The company has to file a duly completed prescribed form giving the main particulars of the charge. Since 2012, a certified copy of the agreement creating the charge also needs to be filed.

What are the consequences of non- compliance?

The Act does not specify the sanctions for non-compliance with Section 127 and the ROC has not issued any circular to that effect. However, it is a recommended filing as a matter of good governance and record keeping. In addition, as the registers kept by the ROC are public, lenders would usually be advised to insist on this filing so that third parties are informed of the existence of the charge in their favour.

COUNTRY UPDATES

Bank of Mauritius issues a banking licence to Bank of China

The Bank of Mauritius has, on 18 March 2016, issued a banking licence to Bank of China (Mauritius) Limited, a locally-incorporated wholly-owned subsidiary of Bank of China.

The establishment of Bank of China (Mauritius) Limited is in line with the Bank of Mauritius's objective of attracting international banks to Mauritius to strengthen the position of Mauritius as an international financial centre.

National Assembly passes the Build Operate Transfer Projects Act 2016

As part of the Government's strategy to deliver large scale infrastructure projects, the National Assembly passed the Build Operate Transfer Projects Act 2016 (the Act) on 29 March 2016. The Act came into force on 05 April 2016.

The Act seeks to encourage active participation of the private sector to finance the country's infrastructure needs and governs the regulatory and contractual framework to be put into place where a Ministry, governmental department, statutory body or any other Government-owned or controlled entity enters into an agreement with a private party for the implementation of a BOT project[10].

The Act disapplies the Public-Private Partnership Act 2004 and the Public Procurement Act 2006 in relation to BOT projects.

10. A BOT project as defined under the Act includes projects based on the following delivery mechanisms:

- build, operate and transfer;
- build, own, operate and transfer;
- design, build, finance, operate and transfer; and
- modernise, own/operate, and transfer.

IMF concludes 2015 Article IV consultation with Mauritius and warns of spillover risks to the Mauritian banking sector

The International Monetary Fund's (the IMF) has, in its report of 11 March 2016, sounded the alarm in relation to various risks to the Mauritian banking sector. Pursuant to Article IV of the IMF's Articles of Agreement, the IMF produced its staff report to its executive board which informed discussion by the executive board and concluded the consultation with Mauritius.

Amongst the various issues flagged by the IMF, the staff report identified as risky, the strategy on Mauritian banks to increase their Segment B activities (foreign-sourced income, including from Global Business Companies and non-residents) in light of the challenges the IMF associated with assessing the funding risk from Global Business Companies and non-resident sources. Moreover, the IMF identified potential spillover risks into the Mauritian banking sector triggered, for instance, by a significant revision to the DTAA treaty with India or by an intensification of initiatives against tax base erosion and avoidance. Such events, the IMF forewarned, could lead to a decline in Segment B deposits in domestic banks which would be particularly felt at medium-sized banks unable to expeditiously mobilise foreign currency assets to insulate their balance sheets from liquidity pressures. The resulting funding shortfall, the IMF warned, could potentially result in a cutback of foreign and domestic credit.

The IMF press release, staff report and a statement by the executive director of the IMF for Mauritius are available on the website of the IMF:
http://www.imf.org/external/pubs/ft/scr/2016/cr1689.pdf

Captive Insurance Act 2015

The Captive Insurance Act 2015 (the Act) was passed by the National Assembly in December 2015 and came into force on 29 January 2016.
The Act applies to pure captive insurance business where a subsidiary insurance company is formed to insure or reinsure the risks of its parent company and its associates.

Up until the entry into force of the Act, captive insurance fell within the scope of the Insurance Act 2005. The Financial Services Commission of Mauritius will remain the regulator of captive insurers.

A Captive insurer holding a licence issued under the Act will be able to apply for a category 1 Global Business Licence, allowing the captive insurer to benefit from the network of double taxation agreements entered into by Mauritius. The Act also amends the Income Tax Act 1995 allowing income derived by captive insurers for a period not exceeding 10 years to be except from tax.

The Financial Services Commission consults on draft Captive Insurance (Pure Captive Insurance Business) Rules 2016

The Financial Services Commission launched a consultation on 5 February 2016 in relation to the draft Captive Insurance (Pure Captive Insurance Business) Rules 2016 (the Rules). The consultation closed on 20 February 2016 and we await the publication of its outcome by the Financial Services Commission. The draft Rules set out the solvency requirements of captive insurers including:

(a) Capital and solvency requirements.
(b) Solvency ratio.
(c) Calculation of the minimum capital requirement.
(d) Valuation of assets.
(e) Criteria for inclusion of capital.
(f) Technical reserves.

In addition, the draft Rules set out the principles which must be applied by captive insurers where they invest the assets covering the technical provisions. The draft Rules also set out the criteria to be met where captive insurers provide loans to related entities.

The draft Rules can be found on the website of the FSC: http://www.fscmauritius.org/media/268363/captive-insurance-pure-captive-insurance-business-rules-2016-.pdf

Memoranda of understanding with the Financial Services Authority of the Seychelles and the Financial Services Regulatory Authority of Swaziland

The Financial Services Commission of Mauritius and the Financial Services Authority of the Seychelles have entered into a memorandum of understanding on 3 March 2016.

The parties intend that the memorandum will strengthen mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective laws and regulations of their jurisdictions.

The Financial Services Commission also entered into a memorandum of understanding with the Financial Services Regulatory Authority of Swaziland on 31 March 2016 with the intention of strengthening cooperation and collaboration with regard to exchange of information and mutual assistance.

Mauritius enters into an investment promotion and protection agreement (IPPA) with Ivory Coast

The Government of Mauritius and that of the Ivory Coast entered into an IPPA on 20 April 2016. The parties view the signature as a stepping stone for the countries to enter into a double taxation agreement.

OTHER RECENT PUBLICATIONS

Here are a number of recent publications available which provide a high level overview of a range of topics.

BLC Locus: The global application of the Bail-in Clause provided by Article 55 of the EU Directive 2014/59
http://www.icontact-archive.com/zvi55WNmFZrBGhyccEc_ZFePLrmx18Ji?w=3

Axis publication: Common Reporting Standards alert
http://www.icontact-archive.com/znSu4WzEXIvnAXDQX5LGigr3SiUAZBcm?w=3

Committee on the Global Financial System of the Bank for International Settlements publishes report on Fixed income market liquidity
https://www.bis.org/publ/cgfs55.pdf

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