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C O N T E N T S

An Examination of the Application of Corporate Governance Principles in the Global Business Sector of Mauritius

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Abstract

The need for the enshrinement of principles of corporate governance in the legal framework on global business sector of Mauritius has become necessary given the economic importance this sector has gained since the last two decades. This article conducted an assessment of the said legal framework using a legal doctrinal methodology by assessing the principle legislation regulating this sector which is the Financial Services Act 2007 and other related soft laws. The article adopts a doctrinal legal approach consisting of the analysis of legal provisions in view of understanding their application. The relevant sections of these laws are analysed to investigate the extent to which corporate governance principles were enshrined therein. It was found that the legal framework on global business in general critically lacked the infusion of essential principles of corporate governance as provided for by the 2016 Code of Corporate Governance of Mauritius.

Keywords: Mauritius; Corporate Governance; Global Business; Principles; Code of Corporate Governance.

Global Business Sector of Mauritius - An Overview

Located in the Indian Ocean, Mauritius is a key global business hub. It has one of sub-Saharan Africa's most transparent and stable economies. The prospering economy of Mauritius, which is sandwiched between Asia and Africa, is primarily as a consequence of its political and socio- economic stability, together with good governance and a variety of incentives to encourage investment. It is well known that Mauritius is a fantastic location for conducting business. International organizations such as the Organization for Economic Cooperation and Development (OECD), the Financial Action Task Force (FATF), and the World Bank (WB) have recognized the nation's implementation of best business practices and sustainable development strategies (E Lee, 2016).

The Island nation has started a fresh reform initiative supported by an open economics ideology. The goal is to increase Mauritius' appeal to foreign investors, establish it as the financial Centre of the African continent, and position it as a prime location for business and investment in Africa, the Middle East, and Asia. The establishment of the international business sector in Mauritius at the beginning of the 1990s was done in order to draw in foreign capital, and it has since grown to become one of the foundations of the modern economy. The initial framework established by the Mauritius Offshore Business Activities Act 1992 permitted offshore corporations and trusts to engage in offshore business activities including, but not limited to, offshore trading, offshore fund management, offshore banking, international consultancy services, and international financial services.

With the introduction of the Financial Services Act 2007 (the Act), the regulatory environment was modernized in 2007 with the goal of increasing the jurisdiction's appeal to foreign investors and the convenience of doing business in Mauritius. Companies with either a Category 1 Global Business License (GBL1) or a Category 2 Global Business License (GBL2) at the time were authorized to execute investments. Due to the GBL1 license holder's tax residency in Mauritius and ability to take advantage of the growing network of double taxation agreements, this license provided investors with an effective vehicle for tax structuring and planning. The owner of a GBL1 license must apply for one or more country-specific tax residency certificates or a general tax residence certificate issued by the Mauritius Revenue Authority in order to take advantage of those tax benefits. The GBL1 license had a number of benefits, including the elimination of inheritance tax, withholding tax on certain kinds of income (such as dividends, interests, and royalties from overseas sources), and capital gains tax.

An effective maximum rate of 3% on its chargeable income in Mauritius was applicable to a GBL1 licensee with a deemed foreign tax credit of up to 80%. Under Mauritian law, a GBL1 licensee was typically organised as a company, trust, or limited partnership and was permitted to engage in any type of commercial activity (such as asset management, credit finance, distribution of financial products, factoring, treasury management, etc.), so long as it was managed and controlled from Mauritius. Before the change in 2018, the Financial Services Commission (the FSC) predicated its determination of the "management and control" test on the following criteria: the selection of at least two resident directors to the board, and the attendance of these directors at all board meetings; the establishment and upkeep of a primary bank account in Mauritius; maintaining financial records in Mauritius; the examination of Mauritius's financial statements; displaying economic substance in Mauritius by meeting at least one of the following requirements: having office space in Mauritius; employing at least one person there; holding assets worth at least $100,000 there; having the GBL1 licensee's shares listed on a local securities exchange; meeting minimum annual spending requirements, depending on the activity carried out; or including a provision requiring arbitration in Mauritius in its founding documents. A GBL1 licensee was also required to be managed at all times by a management business that was properly licensed by the FSC.

The GBL2 license was more flexible than the GBL1 license because it did not do business in Mauritius and was therefore excluded from Mauritian tax implications. Another distinction was that a GBL2 licensee was only allowed to name one director, who might be either an individual or a business and need not be a resident. The GBL2 license was typically used for non-financial activity, storing assets such as intellectual property, or protecting wealth. It was forbidden for someone who held a GBL2 license to: (a) engage in banking activities, financial services, collective investment schemes, or trusteeship services; (b) serve as a professional functionary of a collective investment scheme; or (c) offer registered office space as well as nominee, directorship, and secretarial services. A registered agent with an FSC license managed a GBL2 licensee. The GBL2 licensee received a small number of services from the registered agent, including submitting returns and communicating with authorities (including the FSC).

The international business sector saw major modifications as a result of the Finance (Miscellaneous Provisions) Act 2018. The GBL2 license was eliminated and replaced by a new regime for approved corporations (AC), and the GBL1 license was re-designated as a global business license (the GBC license). Holders of GBL1 and GBL2 licenses issued on or before 16 October 2017 were automatically enrolled by the Act until 30 June 2021, after which GBL1 licenses were presumed to be GBC licenses, according to the transitional rules between the pre-2018 and post-2018 regimes. However, GBL2 licenses expired on June 30, 2021, and owners had to request for a GBC license or authorization to act as an AC by that date. Similar to this, GBL1 licenses that were granted after October 16, 2017, were valid until December 31, 2018, at which point they became GBC licenses. After the December 2018 deadline passed, GBL2 licenses that had been issued after that date lapsed and were either relicensed as GBC licenses or ACs.

With total assets at USD719.6 billion, or around 53 times the worth of the Mauritian GDP, Mauritius has a sizable GBC sector. The GBC sector's share of Mauritius' GDP was expected to be 5.8% in 2019 and to have grown by 3.8% year over year. Around 6,000 people were employed directly in the GBC Sector as of December 2019. While the global business sector of Mauritius undeniably plays a crucial role towards the economy, it can also become a breeding ground for financial crimes and corporate collapses. Indeed, a number of significant company failures have recently harmed the global business sector and Mauritius has been no exception to this with various management companies operating in the global business sector have been forced to close down. There has always been the concern that Mauritius' global business sector may be chosen by international business actors because of its reputation for being a low cost, tax treaty jurisdiction (Buchanan, 2004).

Additional steps to promote Mauritius as a jurisdiction of substance were added in the Budget 2017/2018, following the tendency of international tax planning towards "economic substance" in addition to "legal substance." GBC must now meet two of the six requirements set forth by the Mauritius Financial Services Commission, up from the prior need of just one, making them subject to stricter scrutiny. This is a development that is good. In July 2017, Mauritius ratified the most current Multilateral Instrument (MLI) of the OECD, which was a logical extension of the Base

Erosion and Profit Shifting (BEPS) proposals. This move demonstrates Mauritius' steadfast commitment to upholding international standards and preventing abuses such as looking for a tax treaty jurisdiction with a low cost (Buchanan, 2004).

In spite of all the positive measures taken so far, it can be argued that the principles of corporate governance have not yet been adequately enshrined in the legal and normative frameworks that regulate the global business sector in Mauritius. Principles of corporate governance can act as a barrier against corporate collapses with key components such as the board, audit systems, duties and powers of directors, risk management and internal controls, integrity reporting as well as relations with shareholders and other key stakeholders (Armstrong et al. 2010). Against this backdrop, this article attempts at reviewing the legal framework on global business in Mauritius with the primary aim of assessing the degree and extent to which the 8 principles of corporate governance in Mauritius, as per the 2016 Code of Corporate Governance (the 2016 Code), are infused and enshrined in the laws regulating global business. It is argued that enshrining the principles of corporate governance in the laws governing global business sector in Mauritius would enhance their enforceability and justiciability, somehow legally imposing on companies in this sector to mandatorily observe these principles. The following sector provides for an overview of the principles of corporate governance in Mauritius before embarking on the analysis regarding the enshrinement of the principles in the legal framework on corporate governance.

A Brief Introduction to the 2016 Code of Corporate Governance

A Committee on Corporate Governance was established in Mauritius in September 2004. The main objective of the aforementioned committee was to spread awareness of corporate governance among businesses and organizations in both the public and private sectors. Transparency, accountability, meritocracy, fairness, management principles, and the fight against corruption were the major working criteria of the committee. In response to the World Bank's Report on the Observance of Standards and Codes for Corporate Governance from October 2002, which recommended the adoption of a Code of Corporate Governance for Mauritius, the committee's work resulted in the creation of a Code of Corporate Governance for Mauritius. Mervyn King, the author of the King Reports on Corporate Governance for South Africa, participated in the publication of the first Code for Mauritius in October 2003 following national consultations with diverse stakeholders (HJ van Vuuren, 2020)

The 'comply or explain' approach served as the foundation for the 2004 Code. In essence, this concept states that an alternative to the Code may be approved or put into practice as long as it results in excellent corporate governance and transparency. The following were some of the Code's.

Salient characteristics: (1) The CEO's and Chair's roles must be distinct; (2) There must be at least two independent and two executive directors; (3) An Audit Committee and a Corporate Governance Committee are necessary; (4) Communication and disclosure are stressed; and (5) Independent auditors. The 2004 Code's primary flaw seems to be its application level among its followers. In fact, according to a 2009 survey by the World Bank, just 36% of State Owned Enterprises and businesses listed on the Development and Enterprise Market were actually putting the Code's tenets into practice. The 2008 global financial crisis and the numerous corporate failures in Mauritius, including the BAI and the Bramer Bank, had fueled the need to amend the Code in 2016.

The 2016 Code provides for eight principles namely governance structure, structure of board and its committees, director appointment procedures, directors duties, remuneration and performance, risk governance and internal control, reporting with integrity, audit and relations with shareholders and other key stakeholders. It applies to public interest entities, public sector organizations and other companies of Mauritius which shows that it has a wide reach in terms of the types of companies that it covers. The 2016 Code has adopted a principle-based approach in contrast with a rules-based approach. According to the National Committee on Corporate Governance (2016), the legal system in Mauritius is mature and well-developed, and it is mostly based on rules. Codes differ from other legal provisions in that they have a principles-based strategy rather than a rules-based one. An organization can implement processes and procedures that are tailored to its particular needs using a principles-based approach, but they must then justify how they have applied each concept.

The principles in this Code have been written in such a way that organizations must report on how they have implemented each one. The disclosure of corporate governance procedures by organizations is a key component of the suggested corporate governance strategy. Reporting on corporate governance practices to shareholders and other stakeholders is a necessary part of putting the principles into effect, and the website and annual report are the best places to do this. As a consequence of considerable consultation, the 2016 Code strives to avoid adopting a prescriptive or mandatory approach to governance procedures that places a heavy emphasis on compliance requirements. It is not advised to take a "tick-the-box" approach to reporting on governance.

The Code uses a "apply-and-explain" technique based on a philosophy of application and disclosure. The first corporate governance document to use this new strategy is the Mauritius Code of Corporate Governance. This is a change from the 'comply-or-explain' strategy connected with the UK's Cadbury Report (1992) and the 'apply-or-explain' strategy linked with the Dutch Tabaksblat Code of Corporate Governance (2004) and the King III Report in South Africa (2009). All public interest organizations and other organizations that are obligated to report on corporate governance must adhere to the Code's entire set of tenets and detail how they have done so in their annualreports. When there are contradictions or conflicts, however, the law and the regulatory framework supersede the Code. The Code consists of eight concepts on just two pages, not a rigorous set of regulations. The Code's fundamental tenets are its principles. The application of each principle should be determined by each Board of Directors.

The annual report's explanation of how a company has applied the principles should be the Board's main concern. The following suggestions are made to encourage the annual report's authors to think about their answers: Has the annual report and/or website covered all the important aspects of corporate governance? Are the organization's corporate governance practices in line with the Code's guiding principles? Are the corporate governance practices of the organization helping to achieve and add value to the organization's goals? But the annual report must give a justification in cases where there is a significant departure from any advice in this Code. Individual conditions, in particular the organization's size, sector, complexity, and the types of risks and challenges it faces, may have an impact on the organization's explanations. While shareholders and regulators are perfectly within their rights to question an organization's justifications if they are not persuasive, these justifications shouldn't be assessed in a mechanical or box-ticking manner, and deviations from the advice shouldn't always be considered breaches.

A strong capital market requires active shareholders and important stakeholders. In order to help the apply-and-explain process, shareholders and stakeholders should take care while responding to the governance report in the annual report. They must express their opinions to the organization, and both parties must be willing to debate the issue. The success of the Mauritian corporate governance system depends on the Boards of Organizations' and other suitable stakeholders' satisfactorily engaging with each other. The duty for ensuring that apply-and-explain remains a viable alternative to a rules-based system rests with boards, shareholders, and other stakeholders.

The Legal and Regulatory Framework on Global Business inMauritius

The Financial Services Act 2007 (FSA) is the main regulatory framework governing the global business sector. The FSC, in turn, is responsible for the licensing of Management Companies (MCs) which are service providers acting as intermediaries between their clients and the FSC. A company applying for a Global Business License must pass the test of business being conducted outside Mauritius. An application has to be submitted to the FSC through a Management Company of the choice of the applicant. The FSC has developed the Guide to Global Business to provide for guidance on application for licenses. MCs act as service providers and intermediaries between the clients and the FSC as per Section 77 of the FSA 2007. They can also act as corporate or qualifiedtrustee as per provisions of the Trusts Act 2001. They operate based on the provisions of the FSC Guidance Notes for Management Companies.
As for the legal framework, global business companies, more specifically the management companies, are regulated by the FSA. The FSC has a series of rules, regulations, guides, codes and circular letters which are also part of the law regarding global business. Similar to the insurance sectors, while acts, regulations and rules are binding in nature, others would be non-binding and mainly serving the purpose of guidance. It should be highlighted that, similar to any type of company, MCs are also regulated by the Companies Act 2001. However, the FSA 2007 specifically regulates the global business sector and thus it is legal framework which will be under review.

Critical Assessment of the Degree of Enshrinement of the Principles of the 2016 Code in the Legal and Regulatory Framework on Global Business

The following section will now review the above explained framework to assess the degree of enshrinement of the 2016 Code's principles regarding global business. The methodology applied is premised on a principle-by-principle approach. Relevant provisions of the legal and regulatory framework on global business are analyzed to eventually feed onto the recommendations. A dual approach will be employed since the legal and regulatory framework on global business consist of a binding framework consisting of acts, regulations and rules and a non-binding framework involving codes, guidelines and guidance notes from the FSC.

Principle 1 – Governance Structure

Part X of the FSA 2007 regulates the global business sector through 11 sections. As stated above, the MCs are the main actors in this sector. It is noted with concern that the FSA 2007 makes no mention of the need to have an effective board and for the adoption of a board charter, code of ethics, organizational charts and statement of responsibilities. At this stage it should be highlighted that even the soft laws on global business make no mention of the various components of Principle 1 as well.

Global business is no doubt an important economic pillar of the country. However, it is also a sphere which has a dark side breeding illegal financial transactions sometimes linked to serious crimes. It is a major drawback that the legal framework on global business does not provide for an effective board, a board charter and code of ethics. Ethical considerations are vital for responsible offshoring and outsourcing as very often global business activities can be legal but not ethical as was the case with Hong Kong's global business companies in 2016 (S Datta et al. 2015). This explains the need for arobust board governance structure and a pressing need for principle 1 of the 2016 Code to be embedded in the FSA 2007.

As mentioned above, review of the non-binding framework on global business has shown that governance structure and its components are not adequately covered in the soft laws as well. Taking into consideration that soft laws are there to provide for guidance, it is a matter of concern that such important components have not been adequately catered for by the soft laws even on the basis of persuasive value.

Principle 2 – The Structure of the Board and its Committees

Similar to principle 1 on governance structure, Part X of the FSA provides for no information on board structure, size and composition of the MCs. Essential concepts such as independent directors and company secretary and board diversity in terms of women's representation as directors are not embedded in the legal framework on global business. Likewise, even the non-binding framework on global business does not make any specific reference to board structure and essential aspects such as independent directors and board diversity.

The board is the mind and heart of any global business company. It is imperative for it to be democratic, adequately represented, gender diverse with a dose of independence since different sets of skills and backgrounds of directors may be required while engaging in global business partners from various countries with diverging business culture. Since provisions of the FSA 2007 on global business are devoid of any component of board structure, GBC boards can be constituted at the free will of people responsible for the MCs and the clients. This can be a dangerous proposition as very often it results in boards without any system of checks and balances in the best interest of the company and shareholders. Again, similarly to Principle 1, it is a matter of apprehension that such significant components have not been even mentioned for by the soft laws even on the basis of persuasive value or as a means for guidance.

Principle 3 – Director Appointment Procedures

The FSA, which is the only binding legislation directly regulating global business does not provide for any provision related to the appointment procedures of directors. Section 71 (3) (b) of the FSA 2007 only mentions that the client needs to have at least 2 directors resident in Mauritius and of sufficient caliber to exercise independence of mind and judgment.

Directors have a massive role to play in ensuring both the good health of MCs and global business sector in general which, for instance, may not be guaranteed by a corporation as a director. They are indeed the bridge between the clients and their business activities in Mauritius as regulated by the

FSC. There is a major gap in the law given the fact that no single provision in the FSA 2007 regulates the appointment of directors. This allows global business directors too much discretion and exclusively profit-oriented to the detriment of good corporate governance practices. Such a situation warrants the inclusion of Principle 3 in the FSA 2007. The FSC regulatory framework, as reviewed above, also falls short of regulating the appointment of directors.

The procedural aspects of appointment of directors of MCs is noticeably absent from the soft law framework on global business. Yet, appointment of MCs directors should be based on strict criteria adhering to best practices. While different MCs may be of a different nature based on their operations, the soft law framework should have at least provided for basic procedural indications on appointment of directors for MCs. This would have ensured a basic degree of consistency.

Principle 4 – Directors duties, remuneration and performance

The FSA 2007 has no substantive provisions on director duties, remuneration and performance. The FSC Guidelines for Management Companies makes references to the Companies Act while reminding directors of MCs to discharge their duties with honestly, in good faith and in the best interest of the company. Directors of MCs are also required to possess necessary and sufficient skill and knowledge to carry out their directorship duties. Paragraph 4.3 of the Code of Business Conduct 2015 provides for the concept of conflict of interest encouraging licensees to avoid situations of conflicts of interest and emphasize on the fair treatment of customers in such conflicting situations. It is only the FSC Guidelines for Management Companies that directly imposes a soft obligation on directors to not unfairly place their interest above that of the client.

It is mandatory to take into account the nature of global business when discussing the role, duties and performance of directors. There is a certain level of opacity in some cases when it comes to MCs. Even if the general provisions on these aspects from the Companies Act 2001 are applicable to directors of MCs, it is essential for the standards applicable to directors' duties and performance to be embedded in the FSA 2007 to enhance legal accountability by taking into account the nature of global business. It means that standards such as due diligence, skill, care and good faith should be highly contextualized and explicitly provided for in the FSA 2007.

The FSC Guidelines for Management Companies lightly touch on the concept of conflict of interest as explained above by imposing a soft duty on directors of MCs. The health of an MC and by extension of global business in general is dependent on the way conflicts of interest are managed especially in relation to directors. It is therefore too critical a matter for it to be provided for in the soft law framework on global business which remains non-binding in nature.

Principle 5 - Risk Governance and Internal Control

Risk governance and internal control are not explicitly provided for by the FSA 2007 regulating global business and management companies in Mauritius. Paragraph 4.7 of the Code on Business Conduct 2015 entitled financial resources provides that licensees must implement appropriate risk management policies in their business. There is an additional obligation under paragraph 4.8 according to which licensees are required to maintain adequate internal controls while managing their business in a responsible and sustainable manner. In line with the necessity of governing risks, the FSC Guidelines for Management Companies proposes to MC to adopt the know your client principle and to verify the background of every potential client before entering into business relationship. This principle is reiterated in the FSC Guide to Global Business 2012 (2012, 7). There is equally the proposition of obtaining references about the potential client on which the MC can rely on.

Risk governance and internal control are arguably too cardinal to be merely softly regulated by the soft and non-binding directive principles of the FSC. Indeed, managing risks and internal controls in and by MCs are determinant of the success of global business since there is a geographical implication of business activities. As stated above, these aspects are only visible in the guide and guidelines of the FSC. These soft law principles do not have legally binding force and cannot bind MCs to ensure that there is proper risk management and internal control.

While the FSC Guidelines for Management Companies and the FSC Guide to Global Business do provide for guidance with regard to risk management and internal control, again their non-binding nature appears as an impediment towards enforceability. Very often, it is only after the collapse of an MC that it is discovered that guidelines were not being followed. This acts more as a precautionary measure rather than a pre-emptive and preventive one which is more efficient as approach due to high uncertainties in global business.

Principle 6 – Reporting with Integrity

No substantive and legally binding provisions are available under the FSA 2007 regarding the critical issue of reporting with integrity. The Code of Business Conduct 2015 of the FSC has provided for business integrity as one of its nine guiding principles. Accordingly, licensees are required to observe acceptable standards of honesty, integrity and fairness. There is also the soft duty to record fairly and accurately all business transactions carried out. Paragraph 14 of the FSC Guidelines to Management Companies only provides for the need to report to the FSC on financial and accounting matters in a timely manner.

The concept of reporting with integrity is critical to the global business sector failing which possibilities of money laundering are bred to eventually make MCs collapse (Ramsay and Head, 1997). In addition, lack of binding framework on reporting and its consequences can be severely sanctioned by international financial regulations. The present framework only provides for integrity in reporting in soft terms in non-binding guidelines as discussed above. This affects the degree of accountability by which global business sector actors are supposed to operate, especially given the nature of the sector (Y Gowry et al. 2023).

The main argument under this section is that critical aspects such as reporting with honesty, integrity and in a timely manner are vital standards that cannot only be provided in the soft law framework which is non-binding. Indeed, Fung contends that 'building a culture of transparency is a fundamental first step to achieving trust'. Since trust between various global business partners is essential and determining, it must be provided for in a legally binding and enforceable framework (Fung, 2014).

Principle 7 – Audit

The essential process of auditing is not catered for by the FSA 2007 for MCs acting as intermediaries between global business clients and the FSC. It is only the FSC Guidelines for Management Companies provide that MC are required to prepare and submit to the FSC audited annual accounts in a timely manner. The FSC Guide to Global Business also provides that GBC 1 must prepare audited financial statements as reiterated in the FSC Circular Letter CL201207.

It is argued that, given the nature of global business sector, its audit procedures and requirements ought to be more stringent and explicitly provided by the law since MCs have the obligations to deliver value to their customers (T lijima, 2007). It is evident that auditing standards are only set in non-binding instruments such as guides or circular letter of the FSC. This heavily hampers the process of auditing as it is devoid of legal standards and sanctions that should accompany them in cases of non-compliance.

While the non-binding soft law on auditing processes is quite elaborate as presented in FSC Guidelines for Management Companies and FSC Guide to Global Business, it is argued that they have more of an administrative force rather than a legal one. Consequently non-compliance with such a framework results into administrative sanctions rather than legal ones. It is contended that this principle of corporate governance in relation to global business can only be given force of law by enshrining it in the hard law framework governing MCs and global business.

Principle 8 – Relations with the Shareholders and other key Stakeholders

The relationships that MCs must have with shareholders and stakeholders are not delineated and defined in the FSA 2007. The Code of Business Conduct 2015 of the FSC provides for the principleof skill, care and diligence which are standards by which licensees of the FSC must act while dealing with customers and other stakeholders. The FSC Guidelines for Management Companies also provide for the threshold with which clients' money and assets must be handled in paragraph 4.

As stated above, the FSA 2007 does not provide for substantive provisions on the relationship between MCs and its shareholders and stakeholders. Yet, shareholders and other stakeholders of an MC may have a distinct and essential role to play in the health of the MCs especially with the possibility of the board consisting of foreign directors who may not be versed with the corporate culture domestically.

Even if the soft law framework on global business does provide for the soft requirement of principle of skill, care and diligence while dealing with the money and assets of shareholders and other stakeholders, it is argued that such provisions lack enforceability before a court of law. It has to be borne in mind that a significant number of corporate cases is based on the way MCs treat shareholders or other stakeholders. It is therefore meaningful and purposeful for this relationship to be embedded in the binding legal framework on global business.

Conclusion and Recommendations

This article has demonstrated that the legal framework on the global business sector is devoid of the critical principles of good governance. An assessment of the degree of enshrinement of the 8 principles of the 2016 Code has shown that almost none of them are properly embedded in the legal framework regulating the global business sector. Since it is one which is arguably booming and becoming a major pillar of the Mauritian economy, there is a pressing need for necessary amendments to be brought to the law in view of integrating the principles in a legal binding manner. So far, some of the principles are only provided as soft measures which are highly inadequate and critically lack force of law. A review of the legal and regulatory framework on the global business sector in Mauritius has shown that the FSA 2007 and its few provisions on global business are highly inadequate and lack critical content and substance to regulate this sector. The recommendation here is outrightly one of enacting an act of parliament specific to global business by the name of a Global Business Act. This newly proposed act should enshrine all the provisions of the 2016 Code.

References

Armstrong, C.S., Guay, W.R. and Weber, J.P., (2010). The role of information and financial reporting in corporate governance and debt contracting. Journal of accounting and economics, 50(2-3), pp.179-234.

Buchanan, B., (2004). Money laundering—a global obstacle. Research in International Business and Finance, 18(1), pp.115-127.

Daintith, T., (2004). Administering the Petroleum (Submerged Lands) Act: Too Much Discretion or Too Little? AMPLA Yearbook 2004, 2004, pp.1-43.

Datta, S., Oschlag-Michael, N., Oschlag-Michael, N. and Datta, S., (2015). Uncertainties in Outsourcing. Understanding and Managing IT Outsourcing: A Partnership Approach, pp.11-37.

Fung, B., (2014). The demand and need for transparency and disclosure in corporate governance. Universal Journal of Management, 2(2), pp.72-80.

Gowry, Y., Subadar Agathee, U. and Soobaroyen, T., (2023). IFRS and the evolution of value relevance: evidence from an African developing country. Journal of Financial Reporting and Accounting.

Heineman Jr, B.W., (2013). Why we can all stop worrying about offshoring and outsourcing. The Atlantic, 26.

Iijima, T., (2007). Auditing your offshore outsource. Journal of Corporate Accounting & Finance, 18(4), pp.11-18.

Khan, N., Currie, W. and Guah, M., (2003). Developing a model for offshore outsourcing.

Kliem, R., (2004). Managing the risks of offshore IT development projects. Information Systems Management, 21(3), pp.22-27.

Lee, E., (2016). Will the FIFA bribery scandal spur money laundering law reform in Hong Kong? Comparing Hong Kong's Anti-Money Laundering Regime with Financial Action Task Force Recommendations. Peking University Law Journal, 4(1), pp.143-176.

Moreno, A. and Quinn, M., (2020). The influence of institutional factors on corporate narratives: A thematic content analysis of Guinness. Accounting History, 25(3), pp.425-447.

Ramsay, I. and Hoad, R., (1997). Disclosure of corporate governance practices by Australian listed companies. Company and Securities Law Journal, 15(8).

Van Vuuren, H.J., (2020). The disclosure of corporate governance: a Tick-Box exercise or not? International Journal of Business and Management Studies, 12(1), pp.50-6