Corporate Governance and Directors' Duties: Mauritius

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A Q&A guide to corporate governance law in Mauritius.

The Q&A gives a high level overview of board composition, the comply or explain approach, management rules and authority, directors' duties and liabilities, transactions with directors and conflicts, company meetings, internal controls, accounts and audit, institutional investors and reform proposals.

Corporate entities

In Mauritius, the most common corporate entities are the:

- Private company limited by shares.
- Public company limited by shares.
- Public company which is listed on a stock exchange.

Public companies and private companies can also apply for a global business licence from the Financial Services Commission (FSC). Global business companies are widely used for investing in foreign jurisdictions as they attract taxation benefits.

Legal framework

1. What is the regulatory framework for corporate governance and directors' duties?

Companies are governed by the Companies Act 2001 (Act). Depending on the business of the company, there are also other legal regimes to be complied with, for example:

- Listed companies must comply with the Listing Rules and the directives of the Stock Exchange of Mauritius.
- Global business companies must comply with the Financial Services Act 2007 and regulations made under it.

2. Has your jurisdiction adopted a corporate governance code? If yes:

- **What is the name of the code? What areas are covered by it (for example, board composition and committees, remuneration, audit and risk)?**
- **How is the code structured (for example, a set of rules or principles and provisions)? What type of companies must comply with the code?**
- **Is the code based on the comply or explain principle? How are companies required to report their application and compliance with the code (for example, in their annual report)?**
- **What are the consequences of non-compliance with the code?**
- **What has been the general response of companies, regulators and shareholder groups to the comply or explain approach? Has it been popular or controversial? Are there plans to reform it?**

Mauritius has a Code of Corporate Governance (CCG) since April 2003, covering the following areas:

- Role and function of the board and directors.
- Board committees including audit, corporate governance, remuneration, nomination and risk committees.
- Role and function of the company secretary.
- Risk management, internal control and internal audit.
- Accounting and auditing.
- Integrated sustainability reporting.
- Communication and disclosure.

The CCG consists of a set of rules accompanied by a report on how to implement those rules. The CCG applies to various businesses, namely:

- Companies listed on the Stock Exchange of Mauritius.
- Banking and non-banking institutions.
- Large public companies (individual or group of companies with an annual turnover of MUR250 million and above) (as at 1 April 2011, US$1 was about MUR27).
- State-owned enterprises, including quasi-government bodies that are partly or wholly state-owned.

- Large private companies (individual or group of companies with an annual turnover of MUR250 million and above).

Other companies should give due consideration to the good application of corporate governance. The annual reports of the above entities must provide whether the CCG has been adhered to and in case of non-compliance, those companies must give reasons for the non-compliance.
The Bank of Mauritius (BOM) and FSC can further require certain provisions of the CCG to be mandatory and prescribe, for specific prudential reasons, more stringent requirements relating to corporate governance for companies under their regulation.
The CCG does not provide for sanctions in case of non-compliance because the CCG is a combination of self-regulated compliance and legal enforcement. Sanctions for non-compliance with the CCG are usually covered under other laws, for example the Act and the Banking Act 2004.
The adoption of the CCG did not cause any controversy. There are currently no proposals for reform.

Board composition and remuneration of directors

3. What is the management/board structure of a company? In particular:

- **Is there a unitary or two-tiered board structure?**
- **Who manages a company and what name is given to these managers?**
- **Who sits on the board(s)?**
- **Do employees have a right to board representation?**
- **Is there a minimum or maximum number of directors or members of the managerial and supervisory bodies?**

- **Structure.** Companies have a unitary board structure.
- **Management.** The board of a company manages the company. The business and affairs of a company are managed by, or are under the direction or supervision of, the board, and the board has all powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company (*Act*).
- **Board members.** Directors sit on the board.
- **Employees' representation.** The regulatory framework does not provide for employee representation on the board.

- **Number of directors or members.** There is no maximum number of directors but a company must have at least one director resident in Mauritius (*Act*).

4. Are there any age or nationality restrictions on the identity of directors?

Age restrictions

A public company cannot have a director who is over 70 years of age unless authorised by an ordinary resolution of shareholders.

Nationality restrictions

A company must have at least one director resident in Mauritius (*Act*); however this requirement will differ for a global business company.

5. In relation to non-executive, supervisory or independent directors:

- **Are they recognised?**
- **Does a part of the board have to consist of them? If so, what proportion?**
- **Do non-executive or supervisory directors have to be independent of the company? If so, what is the test for independence or what makes a director not independent?**
- **What is the scope of their duties and potential liability to the company, shareholders and third parties?**

- **Recognition.** Independent directors are recognised.
- **Board composition.** The board should have at least two independent directors and at least two executives as members of the board (CCG).
- **Independence.** An independent director is a director who:
  - is not involved in the day-to-day management and not a full-time salaried employee of the company or its subsidiaries;
  - is not a representative or member of the immediate family (spouse, child, parent, grandparent or grandchild) of a shareholder who has the ability to control or significantly influence the board or management. This includes any director who is appointed to the board (by a shareholders' agreement or similar agreement) at the instigation of a party with a substantial direct or indirect shareholding in the company;

- has not been employed by the company or the group of which the company currently forms part, in any executive capacity for the preceding three financial years;
- is not a professional adviser to the company or the group other than in a director capacity;
- is not a significant supplier to, debtor or creditor of, or customer of the company or group, or does not have a significant influence in a group-related company in any one of the above roles;
- has no significant contractual relationship with the company or group; and
- is free from any business or other relationship which could be seen to materially impede the individual's capacity to act in an independent manner.

- **Duties and liabilities.** The director of a company must exercise his powers and discharge the duties of his office in the best interests of the company, and this duty is owed to the company and not to the shareholders individually or the debenture holders or the creditors of the company (Act). Further, a director who is appointed to the board at the instigation of a party with a substantial interest in the company, such as a major shareholder, substantial creditor or significant supplier or adviser, should recognise that his duty and responsibility as director is always to act in the interests of the company and not in the interests of the party who nominated him (*CCG*).

6. Are the roles of individual board members restricted? For example, can one person be the chairman and chief executive?

The title, function and role of the chief executive officer must be separate from that of the chairperson (*CCG*).

7. How are directors appointed and removed? Is shareholder approval required?

Appointment of directors

Subject to the constitution of a company, a director can be appointed by ordinary resolution. Directors can appoint any person to be a director to fill a casual vacancy or as an addition to the existing directors. Such directors only hold office until the next annual meeting and then retire, but are eligible for appointment at that meeting.

Removal of directors

A director of a public company can be removed from office by an ordinary resolution passed at a meeting called, among other things, for that purpose.
A director of a private company can, subject to the constitution of a company, be removed from office by special resolution passed at a meeting called, among other things, for that purpose.
In addition, in a listed company, the company in the shareholders' meeting can, by resolution, remove any director, managing director or other executive director before the expiry of his period of office.

8. Are there any restrictions on a director's term of appointment?

Each director should be elected (or re-elected as the case may be) every year at the meeting of shareholders (*CCG*).

9. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

Directors employed by the company

There is no legal requirement that a director must be employed by the company. Executive directors can be in full-time salaried employment of the company (*CCG*).

Shareholders' inspection

There is no provision regarding the inspection of service contracts by shareholders. However, the total detailed remuneration of each director must be disclosed in the annual report (*CCG and the Act*) (*see Question 11, Disclosure*).

10. Are directors allowed or required to own shares in the company?

A director is not required to own shares in the company but is allowed to do so subject to disclosure of related share dealing to the board. Further particulars relating to the share dealing must be entered in the share register in the case of public companies.
Further, shares directly or indirectly held by the directors should be disclosed in the annual report (*CCG*).

11. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

Determination of directors' remuneration

The remuneration of directors should be decided by the remuneration committee or the corporate governance committee that has responsibility for remuneration matters (*CCG*). It is

recommended that the remuneration committee should consist of a majority of non-executive directors. The aim is that the remuneration committee should always be composed of a majority of independent directors.

Board members' remuneration is to be determined in relation to their input and effort and the level of responsibility. Companies are urged to consider structuring a proportion of the executive directors' remuneration in a manner that more directly rewards corporate and individual performance of the executive director.

Disclosure

Companies must include a transparent statement of remuneration philosophy in their annual report and financial statements, so that shareholders and stakeholders can comprehend the board's policy and motivation in determining remuneration for directors, in accordance with specified benchmarks. The statement should also incorporate the criteria used for remunerating executive directors approaching retirement (*CCG*).

Companies must disclose in their annual report details of remuneration paid to each director on an individual basis. This remuneration should include both:

- Salaries, fees, severance payments and share options.
- Any other benefits, whether received from or relating to the company, or from or relating to any subsidiary of the company, or any company on which the director serves as a representative of the company.

Further, the disclosure should indicate the extent to which the individuals retain remuneration from a subsidiary or as a representative of the company, and how much is paid over to the company of which the persons are directors.

Shareholder approval

Generally, the remuneration of directors requires approval by ordinary resolution, but this is subject to the Act and the company's constitution.

Management rules and authority

12. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

The proceedings of the board are governed by the Act and are subject to the constitution. In the absence of the contrary in the constitution, the provisions relating to meetings of directors are as follows:

- A notice of a meeting of the board is sent to every director who is in Mauritius, specifying the date, time, and place of the meeting and the matters to be discussed. The length of notice is not specified by law.
- A quorum for a board meeting is fixed by the board. If it is not so fixed, the quorum is a majority of the directors.
- Every director has one vote. A board resolution is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it. A director present at a board meeting is presumed to have agreed to, and to have voted in favour of, a board resolution, unless he expressly dissents from or votes against the resolution at the meeting.
- A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

13. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' powers

Generally the board has all powers necessary for managing, and for directing and supervising the management, the business and affairs of the company. Some powers are reserved to shareholders, for instance:

- Approval of a major transaction.
- Amendment or revocation of the constitution.
- Reduction of stated capital of the company.
- Approval of an amalgamation.
- Putting the company into liquidation.

Restrictions

The powers of the directors can be restricted and limited in the constitution of the company. These restrictions are not enforceable against third parties, except where the third party knew or ought to have, due to his position with or relationship to the company, knowledge of the restrictions.

14. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

The board can delegate to a director or committee of directors or any other person any of its powers, other than the following powers:

- Issuing further shares.
- Determining consideration for issue of shares.
- Determining the consideration where shares are not paid for in cash.
- Authorising a distribution.
- Issuing shares instead of dividends.
- Authorising shareholder discounts.
- Purchase of its own shares by the company.
- Redemption of shares at the option of the company.
- Giving financial assistance.
- Changing the registered office of the company.
- Approval of an amalgamation.
- Making a short form amalgamation proposal.

Duties and liabilities of directors

15. What is the scope of a director's duties and personal liability to the company, shareholders and third parties? Please distinguish between civil and criminal liability under each of the following (if relevant):

- **General duties.**
- **Theft and fraud.**
- **Securities law.**
- **Insolvency law.**
- **Health and safety.**

- **Environment.**
- **Anti-trust.**
- **Other.**

General duties

The general duties of a director of a company under the Act are to:

- Exercise his powers in accordance with the Act and the company's constitution.
- Obtain the authorisation of a meeting of shareholders before doing any act or entering into any transaction for which the authorisation or consent is required.
- Exercise his powers honestly in good faith, in the best interests of the company and for the respective purposes for which the powers are explicitly or impliedly conferred, except where otherwise provided under the Act.
- Exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- Not agree to the company incurring any obligation unless the director believes, at that time, on reasonable grounds that the company will be able to perform the obligation when it is required to do so.
- Account to the company for any monetary gain, or the value of any other gain or advantage, obtained by him in connection with the exercise of his powers, or by reason of his position as a director of the company, except remuneration, pension provisions and compensation for loss of office in respect of his directorship of any company in accordance with the Act.
- Not make use of or disclose any confidential information received by him on behalf of the company as director, otherwise than as permitted and in accordance with the Act.
- Not compete with the company or become a director or officer of a competing company, unless it is approved by the company in accordance with the Act.
- Disclose to the board any transactions involving self-interest, unless the transactions are in the ordinary course of business and on usual terms and conditions.
- Not use any assets of the company for any illegal purpose or purpose in breach of its duties, and not do, or knowingly allow to be done, anything by which the company's assets may be damaged or lost, otherwise than in the ordinary course of carrying on its business.

- Transfer immediately to the company all cash or assets acquired on its behalf, whether before or after its incorporation, or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the company and to use it only for the purposes of the company.
- Attend meetings of the directors of the company with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse.
- Keep proper accounting records and make such records available for inspection in accordance with the Act.

If a director commits a breach of any of his duties, all the following applies:

- The director and every person who knowingly participated in the breach are liable to compensate the company for any loss it suffers as a result of the breach.
- The director is liable to account to the company for any profit made as a result of the breach.
- The director commits an offence and, on conviction, is liable to a fine up to MUR200,000.

Theft and fraud

A director who does either of the following commits an offence under the Act and, on conviction, is liable to a fine up to MUR1 million and to imprisonment up to five years:

- Fraudulently takes or applies company property for his own use or benefit, or for a use or purpose other than the use or purpose of the company.
- Fraudulently conceals or destroys any company property.

Securities law

The directors of a collective investment scheme (CIS) manager licensed under the Financial Services Act 2007 have specific duties under the Securities Act 2005 and must, in exercising their powers and duties:

- Act honestly and in the best interests of the participants in the scheme and, where there is a conflict between the interests of the participants and their own interests, give priority to the participants' interests.
- Exercise the degree of care and diligence that would be reasonably expected of a person in that position.
- Treat participants who hold interests of the same class equally and participants who hold interests of different classes fairly.

- Not make use of information acquired through being a CIS manager or officer to:
    - gain an improper advantage for themselves or another person; or
    - cause detriment to the participants in the scheme.
- Ensure that all payments out of the CIS property are made in accordance with the constitutive documents of the CIS, the Securities Act 2005, any regulations made under it and any FSC rules.
- Report to the FSC, as soon as practicable after they become aware of any breach of either:
    - the Securities Act 2005, any regulations or rules made under it; or
    - the CIS's constitutive documents that have had, or are likely to have, a materially adverse effect on the interests of participants.

A director of a CIS manager contravening the above commits an offence and, on conviction, is liable to a fine up to MUR500,000 and imprisonment up to five years.
A director of an issuer of securities can incur liability, both civil and/or criminal, for a defective prospectus. The director can also be personally liable for any money received for securities issued in breach of the Securities Act 2005. A director of a reporting issuer failing to disclose an interest in the securities of the reporting issuer or in an associate of the reporting issuer commits an offence under the Securities Act 2005.

Insolvency law

A director who believes that the company is unable to pay its debts as they fall due must immediately call a board meeting to consider whether the board should appoint a liquidator or an administrator. Failure to do so may render the director personally liable for the whole or any part of any loss suffered by the creditors of the company, due to the company continuing to trade.

Health and safety

A director does not have duties or liabilities under health and safety laws as such. The duties and liabilities are directed at an employer who is generally the company.

Environment

A director does not have duties or liabilities under environmental laws.

Anti-trust

A director must not compete with the company or become a director or officer of a competing company, unless it is approved by the company in accordance with the Act.

Other

The CCG expands the duties of directors. Further, the directors of an offeree have specific duties in relation to a takeover, under the Securities (Takeover) Rules 2010.

16. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

The director's liability as provided under the Act cannot be restricted or limited.

A company cannot indemnify, or directly or indirectly effect insurance for, a director of the company or a related company relating to liability for any act or omission in his capacity as a director, or relating to costs incurred by that director in defending or settling any claim or proceedings relating to such liability, except as provided under section 161 of the Act.

17. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

Subject to its constitution, a company can, with the prior approval of the board, effect insurance for a director of the company or a related company relating to:

- Liability, not being criminal liability, for any act or omission in his capacity as a director.
- Costs incurred by that director in defending or settling any claim or proceeding relating to any such liability.
- Costs incurred by the director in defending any criminal proceedings:
    - that have been brought against him in relation to any act or omission in his capacity as a director;
    - in which he is acquitted; or
    - in relation to which a *nolle prosequi* is entered (that is, a declaration by a prosecutor that a case against the director has been stopped).

The board must do one of the following in relation to details of indemnity given to or insurance effected for a director of the company or a related company:

- Enter or cause them to be entered in the interests register, if the company has one.
- Record or cause them to be recorded in the minutes of directors meetings.
- Disclose or cause them to be disclosed in the annual report.

18. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

This is possible because the definition of director under the Act is very broad.

Director is defined under the Act as including a person occupying the position of director of the company by whatever name called and an alternate director, but does not include a receiver.

For the purposes of sections 143 to 157 and 160 to 162 of the Act, a director also includes:

- A person in accordance with whose directions or instructions a director may be required or is accustomed to act.
- A person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act.
- A person who exercises or who is entitled to exercise, or who controls or who is entitled to control, the exercise of powers which, apart from the constitution of the company, are exercisable by the board.
- A person to whom a power or duty of the board has been directly delegated by the board with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board.

The above does not include a person acing in a professional capacity only.

For the purposes of sections 143 to 157 of the Act, a director includes a person in accordance with whose directions or instructions a person referred to above may be required or is accustomed to act in respect of his duties and powers as a director.

Transactions with directors and conflicts

19. Are there general rules relating to conflicts of interest between a director and the company?

Where directors are interested in a transaction to which the company is a party, they must disclose the interest in accordance with the Act.

A director of a company must, immediately after becoming aware that he is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register if it has one and, if the company has more than one director, disclose to the board of the company, either:

- The nature and monetary value of that interest, where the monetary value of the director's interest can be quantified.

- The nature and extent of that interest, where the monetary value of the director's interest cannot be quantified.

A general notice entered in the interests register or disclosed to the board, that a director is a shareholder, director, officer or trustee of another named company or other person, and is to be regarded as interested in any transaction after the date of entry or disclosure with that company or person, is a sufficient disclosure of interest in relation to that transaction. However, failure by a director to comply with the above does not affect the validity of a transaction entered into by the company or the director.

A director of a company is not required to comply with the above where both:

- The transaction or proposed transaction is between the director and the company.
- The transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

20. Are there restrictions on particular transactions between a company and its directors?

Subject to the constitution of the company, a director of a company who is interested in a transaction entered into, or to be entered into, by the company:

- In a public company, cannot vote on any matter relating to the transaction, and if he does vote, his vote is not counted.
- In a private company, can vote on any matter relating to the transaction, provided he discloses his interest in the prescribed manner (*see Question 19*).
- Can attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum.
- Can sign a document relating to the transaction on behalf of the company.
- Can do any other thing in his capacity as a director in relation to the transaction, as if the director were not interested in the transaction.

21. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

Where a director in his capacity as a director has information material to assessing the value of shares or other securities issued by the company or a related company, which is information not otherwise available to him, the director can only acquire or dispose of those shares or securities where either:

- In an acquisition, the consideration given for the acquisition is no less than the fair value of the shares or securities.
- In a disposition, the consideration received for the disposition is no more than the fair value of the shares or securities.

The fair value of shares or securities is to be determined on the basis of all information known to the director or publicly available at the time.
The above does not apply in relation to either:

- A share or security that is acquired or disposed of by a director only as a nominee for the company or a related company.
- A listed company.

In relation to a director of a public listed company, an acquisition of an interest in the securities of the reporting issuer or of an associate of the reporting issuer must be notified to the FSC within one month of the acquisition.

Disclosure of information

22. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

Normally, disclosure of information about the company is done by annual reports.
Listed companies have ongoing disclosure obligations as part of compliance with the Listing Rules. As such, listed companies should provide to the Stock Exchange of Mauritius and the shareholders, as soon as reasonably practical, any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:

- Is necessary to enable them and the public to appraise the position of the group.
- Is necessary to avoid the establishment of a false market in its securities.
- Might reasonably be to expected materially affect market activity in and the price of its securities.

Company meetings

23. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

The board of a company must call an annual shareholders' meeting to be held:

- No more than once in each year.
- No later than six months after the balance sheet date of the company.
- No later than 15 months after the previous annual meeting.

The company cannot hold its first annual meeting in the calendar year of its incorporation but must hold that meeting within 18 months of its incorporation.
However, it is not necessary for a private company to hold an annual meeting of shareholders where everything required to be done at that meeting is done by resolution in writing (*Act*).
The business and matters to be transacted at an annual meeting, unless already dealt with by the company, include the:

- Consideration and adoption of the financial statements.
- Receiving of any auditor's report.
- Consideration of the annual report.
- Appointment of any directors whose appointment on an annual or rotational basis is required by the constitution of the company.
- Appointment of any auditor.

24. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

The board of the company must call a special meeting of shareholders entitled to vote on an issue on a written request of shareholders holding shares together carrying at least 5% of the voting rights entitled to be exercised on the issue.

Minority shareholder action

25. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

A shareholder, who considers that the affairs of the company have been or are likely to be conducted in a manner that is oppressive, unfairly discriminatory, or unfairly prejudicial to that person, can apply to court for an order. The court order may include an order:

- Regulating the future conduct of the company's affairs.
- Requiring the company or any person to acquire the shares of the shareholder.

- Setting aside action taken by the company or the board in breach of the Act or the constitution of the company.

Further, a shareholder can bring an action against a director or the company where the director or the company (as the case may be) has breached a duty owed to him as a shareholder.
A shareholder can also apply to the court for an injunction restraining a company or a director from engaging in proposed conduct that would contravene the constitution of the company or the Act.

Internal controls, accounts and audit

26. Are there any formal requirements or guidelines relating to the internal control of business risks?

The CCG provides for establishment of a risk committee where the nature of the company's business is complex. Otherwise, responsibility for risk management is the direct responsibility of the board rather than a committee.
The responsibility for setting risk strategy remains with the board but responsibility for assessing and assuring the quality of the risk management process can be delegated to the audit committee, if a risk committee has not been set up.

27. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The board must cause accounting records to be kept that:

- Correctly record and explain the transactions of the company.
- At any time enable the financial position of the company to be determined with reasonable accuracy.
- Enable the directors to prepare financial statements.
- Enable the financial statements of the company to be readily and properly audited.

28. Do a company's accounts have to be audited?

A company's accounts must be audited, except for small private companies (which are companies whose turnover in the preceding accounting period is below MUR50 million).

29. How are the company's auditors appointed? Is there a limit on the length of their appointment?

The auditor of the company is appointed at the annual meeting of shareholders and the auditor holds office until the next annual meeting.

30. Are there restrictions on who can be the company's auditors?

To be appointed or act as auditor of a company, other than a small private company (*see Question 28*), a person must be licensed by the Financial Reporting Council and either:

- Be a member of one of the following:
  - the Institute of Accountants in England and Wales;
  - the Institute of Chartered Accountants of Scotland;
  - the Institute of Chartered Accountants of Ireland;
  - the Association of Chartered Certified Accountants;
  - the Institute of Chartered Accountants of India; or
  - the South African Institute of Chartered Accountants.
- Possess qualifications that are, in the opinion of the Minister of Finance and Economic Development, equivalent to those of a member of a body specified above.

An auditor of a company must ensure, in carrying out his duties, that his judgement is not impaired by any relationship with or interest in the company or any of its subsidiaries (*Act*). Further, an auditor must carry out his functions in full independence, and must not engage in any activity likely to impair his independence as an auditor (*Financial Reporting Act 2004*).
None of the following persons can be appointed or act as an auditor of a company:

- A director or employee of the company.
- A person who is a partner, or in the employment, of a director or employee of the company.
- A liquidator or a person who is a receiver in relation to the company's property.
- A corporate body.
- A person who is not ordinarily resident in Mauritius.
- A person who is indebted in an amount exceeding MUR10,000 to the company, or to a related company, unless the debt is in the ordinary course of business.

31. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

In considering the use of external auditors for non-audit services, the audit committee should consider (*CCG*):

- How the accounting firm is structured to ensure independence.
- The ownership of the auditors' firm.
- Whether that firm has formed alliances with entities which provide clients with services the auditors would not be allowed to offer.

The audit committee should set the principles for using the external auditors for non-audit services, either through a department of the audit firm, or through a subsidiary, associated or connected firm or company. In accordance with legal requirements, there must be separate disclosure of the amount paid for non-audit services as opposed to audit services. Information relating to the use of non-audit services from the external auditors of the company must include detailed disclosure in the notes to the annual financial statements, providing a comprehensive description of the nature of those services, together with an indication of the amounts paid for each of the services rendered.

32. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

Generally, there is a contract between the company and the auditors. Therefore, auditors may be liable for any breach of their contractual obligations to the company, and such liability can be limited in terms of an indemnity to be paid to the company.

The law does not specifically provide for liability of auditors to shareholders and third parties. However, a cause of action may potentially arise in tort against the auditors.

Corporate social responsibility

33. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

The corporate governance section in the annual report should disclose the company's policies and practices as regards social, ethical, safety, health and environmental issues (*CCG*).

Under the Income Tax 1995, every company must, in every year, set up a Corporate Social Responsibility Fund, equivalent to 2% of its book profit derived during the preceding year, to do one of the following:

- Implement an approved programme by the company.

- Implement an approved programme under the National Empowerment Foundation.
- Finance an approved NGO.

Company secretary

34. What is the role of the company secretary in corporate governance?

The company secretary should ensure that the company complies with its constitution and all relevant statutory and regulatory requirements, codes of conduct and rules established by the board.

The company secretary must also provide the board as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of the company. The company secretary should also provide guidance and advice to the board on matters of ethics and good governance.

Institutional investors and shareholder groups

35. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.

The major institutional investors, such as the International Finance Corporation (IFC), usually impose international performance standards when investing in companies, which also include good corporate governance principles.

Whistleblowing

36. Is there statutory protection for whistleblowers (persons who disclose criminal activity or serious malpractice within a company)?

There is no statutory protection for whistleblowers, except in relation to information relating to acts of corruption within the scope of the Prevention of Corruption Act 2002.

Reform

37. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

There are currently no proposals for reform.

Contributor details

Valerie Bisasur

BLC & Associates

T +230 213 7920

F +230 213 7921

E *valerie.bisasur@blc.mu*

chambers@blc.mu

Qualified. Mauritius, 2008

Areas of practice. Banking and structured finance.

Recent transactions

- Advising on several banking transactions for local and foreign financial institutions in relation to project finance and restructuring.
- Acting on behalf of investors and promoters in relation to funds with a range of investment strategies and structures.
- Acting as solicitor in corporate litigation and insolvency proceedings.

Bhavna Ramsurun

BLC & Associates

T +230 213 7920

F +230 213 7921

E *bhavna.ramsurun@blc.mu*

Qualified. England and Wales, 2008; Mauritius, 2009

Areas of practice. Corporate law.

Recent transactions

- Providing advice to the World Bank on corporate governance laws in Mauritius for drafting of the Report on the Observance of Standards and Codes (ROSC).
- Acting for various international companies and sophisticated investors in relation to acquiring shares in Mauritius companies.
- Advising on the purchase of a majority stakeholder of a company listed on the Stock Exchange of Mauritius.

Christine Korimbocus

BLC & Associates

T +230 213 7920

F +230 213 7921

E *christine.korimbocus@blc.mu*

Qualified. Mauritius, 2011

Areas of practice. Corporate, banking and finance.

Recent transactions

- Working on the World Bank's questionnaire relating to corporate governance laws in Mauritius, for the purpose of drafting the ROSC.

- Working on the IFC's checklists in respect of the creation, perfection and enforcement of security rights over various types of assets, equity investments, and the rights and duties of directors in Mauritius