OP-ED

The end of an epoch: "Serving as the boardroom stooge could land you jail time."

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About the Author

Nikhil Boolell is a practicing Barrister in Mauritius at Temple Law. He specialises in Civil and Business Law, and will soon mark ten years at the Bar. He appears regularly before courts and tribunals and is committed to contributing to the public interest through his legal practice. He holds an LLM in International Finance and Law (with Distinction) from King's College London. He is also a graduate of the University of Exeter and UWC Atlantic College in Wales.

1. Restoring the independence of the Central Bank

a. The sacrosanct principle of the Central Bank's establishment is that it should be independent in the pursuit of its objects. Uncannily, "easier said than done" here applies.

b. Mauritius is no exception to other jurisdictions. Our law provides that the Central Bank is the country's macroprudential authority. Amongst a plethora of functions revolving around the dissemination of economic indicators, the Central Bank must notably: conduct monetary policy, regulate credit and currency, promote an orderly and balanced economic development, and juggle with foreign exchange reserves.

c. Whilst there is little solace found in the statutory underpinning of the Central Bank as regards the meaning of "independence" (it is not defined in the dictionary part of the statute, the moreso, the word "independently" appears in the Bank of Mauritius Act at section 3(3) singularly).

d. There is no doubt that a well governed Central Bank will deploy the means to resist the nefarious pressures that will often be imposed by Government, which is inevitably dictated by the external influences of the meandering political hotchpotch.

e. Put simply, resisting the undue interference of elected politicians very much lies at the core of what is meant by "independence". As an admissible standard of the autonomy of the Central Bank, it is therefore critical in today's context that a decoupling of the Central Bank's governance from politics be seen to happen. For instance, the Central Bank should not be seen to prop up an ailing Government, a remarkably common global trend of Central Banks since the Pandemic.

2. As the FCC investigations run their course, it seems now that the MIC was either a stupid or a devious idea

a. The world of banking and finance has suffered a short, sharp shock considering the numerous convocations and headline arrests caused by the FCC. The consequence is that it appears that the former Governor of the Central Bank and the former Minister of Finance are now daggers drawn at each other. It is elementary that both are perfectly entitled to a defence, a strategy and legal representation of their choice.

b. Yet, this is not where the issue lies. The irony of this situation is that it took only a few hours of prodding by the FCC for questions to manifestly be raised on the manner in which affairs were being run over the past years at the highest levels of the state. The reputation of Mauritius as a jurisdiction of choice for doing business and as a gateway to Africa will without doubt be left smeared from these events.

c. The poor judgment of the MIC and its board in advancing finance haphazardly will have to be scrutinised. After all, the MIC is a wholly-owned subsidiary of the Central Bank whose sole capital is made up of the funds of the Central Bank only.

d. Again, one must not forget that the MIC was established as a result of an amendment brought to the Bank of Mauritius Act at its section 6(1)(y)), pursuant to the Covid 19 (Miscellaneous Provisions) Act 2020. This amendment brought in the context of the Pandemic was intended to alleviate hardship on the population.

e. The operative words of the said change to the law are "to facilitate economic development".

*"(y) with the approval of the Minister, subscribe to, hold and sell shares of, provide capital to or invest in, any corporation or company set up for the purposes of **facilitating economic development.**"*

The Hansard shows that the amendment was purely brought in the context of the Pandemic. Extract from the Hansard: Mr Speaker, Sir, let me start with the COVID-19 (Miscellaneous Provisions) Bill (No. 1of 2020). The object of this Bill is to amend a number of enactments to cater for the impact of COVID-19 in various sectors, mitigate the hardship on the population and facilitate recovery. Moreover, the Bill also seeks to enhance our preparedness, in general to face a COVID-like situation in the future. In fact, the bill is amending 56 enactments and I shall now provide a brief outline of these proposed amendments.
(...) Clause 2 of the Bill is amending sections 6, 46 and 47 of the Bank of Mauritius Act, to allow the Bank to inter alia – (i) invest with the approval of the Board, such amounts of foreign reserves as the Board may determine, in any corporation or company set up for the purpose of facilitating economic development...
(...) *Mr Speaker, Sir, these amendments to the Bank of Mauritius Act are being brought to provide financial support to Government, in the implementation of various initiatives to address the negative impact of COVID-19, including assistance to employees in enterprises and individuals in the informal sector, and to support economic recovery. Across the world, Central Banks, such as the Federal Reserve Banks and the Bank of England, have been providing financial support to Government, as well as to private enterprises and the household sector in the wake of the COVID-19 pandemic.*

f. Any borrower must satisfy the MIC that it intends to "facilitate economic development". It is difficult to reason how this was done, since so much financing was furnished to so very few private organisations.

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