

ETHICS - “Ethics in the banking and financial services industry in Mauritius: the Fit and Proper standard”

CPD Course

Resource person: Mr. Sivakumaren Mardemootoo

Date: 30th of August, 2018

Time: 14:00 – 16:00

Mr. Sivakumaren Mardemootoo gave a talk on ETHICS entitled as “Ethics in the banking and financial services industry in Mauritius: the Fit and Proper standard” on Thursday, the 30th of August, 2018 at the IJLS. 58 barristers, including State Counsels, Assistant Parliamentary Counsels, and Senior Assistant Director of Public Prosecutions, 3 notaries, and 12 attorneys, including State Attorneys, were present. The course lasted two hours and was a resounding success.

Mr. Sivakumaren Mardemootoo started by identifying the issue of wide discretion allocated, which may lead to abuse, in the context of “‘Fit & Proper’ in banking and financial services in Mauritius.” He then proceeded by explaining that in Mauritius, we have two regulators:

- (1) The Bank of Mauritius, for all banking activities and services (including non-bank deposit taking institution and cash dealers); and
- (2) The Financial Services Commission, for all other financial services.

Mr. Sivakumaren Mardemootoo then considered ‘Fit & Proper’ in the banking industry and in the financial services industry in Mauritius.

Firstly, in the banking industry in Mauritius, Mr. Sivakumaren Mardemootoo identified the sources of law for ‘Fit & Proper’ as

- (1) **Section 46** of the **Banking Act 2004**;
- (2) Guideline on Fit & Proper Criteria issued by BOM 06/14; and
- (3) Fit & Proper Questionnaire 09/16.

He also considered the three criteria in “Assessing Fitness & Probity Under The BOM Guideline”, they include:

- (1) Honesty, integrity, diligence, fairness, reputation and good character;
- (2) Competence and capability; and
- (3) Financial Soundness.

The audience then raised the question as to who has the end word or end responsibility when seeking clearance from a previous regulator, to which the resource person as well as the audience identified the subjectivity of the issue.

Mr. Sivakumaren Mardemootoo also compared the position in Mauritius to that in other jurisdictions, and concluded that other jurisdictions offer less discretion to regulators.

Secondly, in the financial services industry in Mauritius, Mr. Sivakumaren Mardemootoo elaborated on the Statutory Provisions, including the **Financial Services Act 2007**, **Insurance Act 2005**, **Private Pension Scheme Act 2012**, **Captive Insurance Act 2015**, and **Securities Act 2005**.

Mr. Sivakumaren Mardemootoo concluded his talk by analysing the case of **Kaviraj Rookny v Financial Services Review Panel [2018 SCJ 250]**.

Reported by: Miss Rudayya Zahraa Elahee

Date: 31st of August, 2018