Redefining the bond market in Mauritius

Since the first bond issuance in 2012 by Omnicane, the Mauritian authorities and regulators took heed of stakeholders' demands and brought about a number of changes over the years to the Listing Rules, the DEM Rules, and the Preferential Offer Rules to balance the practicalities of issuing bonds whilst protecting investor interests and meeting their need for sustainable finance products. Orison Legal's Tania Li shares insights on how this space has evolved.

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The bond market has rapidly developed over the last decade as an alternative way to raise debt. Mauritian legislation, therefore, has also evolved to meet the changing needs of industry players.

The rapidly evolving regulatory landscape

The regulatory framework for listed bonds was principally found in the Listing Rules of the Stock Exchange of Mauritius ('SEM') and the rules of the Development and Enterprise Market ('DEM') and was complemented by the provisions of the Companies Act 2001 concerning record-keeping obligations and the appointment by issuers of a debenture holders' representative.

Since the first listed bond issuance in 2012 by Omnicane for MUR 3 billion, key market players have followed suit, and the appetite of both issuers and investors appears to have grown steadily since then.

The scope of regulatory disclosures and continuing compliance obligations imposed by the SEM and DEM rules have made it too costly to raise finance through mid-size bond issuances. This led to the emergence of an alternative market, that is, the issuance of bonds by private placement to targeted corporate and institutional investors. Private placements at that time remained unregulated until the proclamation of the Securities (Preferential Offer) Rules in 2017 ('Rules'), demonstrating the regulators' proactiveness in ensuring investor protection.

The regulatory effort was however not entirely satisfactory: the Rules imposed requirements such as obtaining prior shareholder approval and a timeframe of 12 months from the date of such approval to complete bond issuances falling within the purview of the Rules, causing a mismatch between the practicalities of raising debt finance swiftly and efficiently and the cautionary approach of the regulators in giving investors comfort. Indeed in 2021, the Rules were amended to adopt a tempered approach in removing the deadline for issuing bonds and the approval requirement, as the bond issuances would not affect the shareholding of an issuer per se.

A sustainable regulatory roadmap for bonds

With the pressing climate agenda and a view to positioning Mauritius as an attractive jurisdiction for sustainable finance, the Bank of Mauritius ('BOM') and the Financial Services Commission (the 'FSC') respectively published the Guide for the Issue of Sustainable Bonds in Mauritius and the Guidelines for the Issue of Corporate and Green Bonds in Mauritius in 2021.

Whilst the BOM's Guide is informational, the FSC Guidelines have binding authority and confer on the FSC the power to take administrative sanctions in case of breaches. The BOM Guide references the International Capital Market Association's ('ICMA') Green Bond Principles, Social Bond Principles, Sustainability-Linked Bond Principles as well as Climate Bonds Initiative's Climate Bonds Standard eligibility taxonomy. The FSC Guidelines also draws heavily on ICMA's Green Bond Principles, thereby

demonstrating the jurisdiction's commitment to best international practice.

The FSC Guidelines now complement the existing framework and expatiate on inter alia the 4 categories of 'eligible issuer' and how non-eligible issuers would be treated until they meet the relevant eligibility criteria, as well as financial criteria such as the minimum issue lot, denominations, applicable market conventions and restrictions on securitisation. Two noteworthy requirements are the continuing disclosure obligations and the mandatory appointment of an issuing and paying agent and a corporate finance advisor, whose scope of duties are also catered for in the FSC Guidelines.

> Greenwashing remains a major concern in the absence of a concrete universal definition

With the first ever green bond issuance by Cim Finance in 2022, the jurisdiction's transition into a sustainable finance hub appears to be under way and is indicative of the market's interest and confidence in the improved legislative framework. Whilst the implementation of the green bond framework is an encouraging step and will hopefully attract more foreign investors, Mauritius will nevertheless face challenges as in other countries.

Sustainable finance: Is Mauritius on the right track?

Greenwashing remains a major concern in the absence of a concrete universal definition. In addition to a claim for breach of warranty (arising from a prospectus for listed bonds or a preferential offer document for unlisted bonds), a prejudiced investor in listed bonds is further protected by the special statutory regime provided in the Securities Act 2005 regarding civil and criminal liability for

defective prospectuses. It will be interesting to see how Mauritian courts address greenwashing claims. Regulators should nevertheless assess the need for adopting anti-greenwashing policies, and certain jurisdictions such as Australia and the United Kingdom have already adopted a regulatory guide and a green claims code respectively, which cover guidance for advertising of financial instruments as well as labelling and marketing goods and services as being environmentally friendly.

Other factors which industry stakeholders may consider are financial and tax incentives. Singapore has addressed the problem of costs through a grant scheme specifically for green bonds, where eligible issuers benefit from a grant to cover the expenses of obtaining annual independent reports or certification. On the local front, interest derived by investors from bonds issued to finance renewable energy projects approved by the Mauritius Revenue Authority are exempted from income tax, but it may be worth extending the scope of this exemption to other categories of sustainable projects.

Given its reputation as a mature international financial centre, Mauritius has the potential to leverage its regulatory framework in becoming a jurisdiction of choice to finance projects on the continent. With the considerable development in the regulation of bonds in the past decade, it will be interesting to see how the market evolves further and whether Mauritius can indeed become a sustainable finance gateway towards Africa.