

# FINANCIAL SERVICES COMMISSION

## **GUIDE TO COMPLIANCE**

Global Business Companies

## FOREWORD

The Financial Services Commission (“FSC”) - was established by the Financial Services Development Act, 2001.

The FSC is responsible for licensing, regulating, monitoring and supervising the conduct of business activities in the non-banking sector of the financial services industry in Mauritius – which includes, inter alia, providers of corporate services e.g. Management Companies, Registered Agents, Captive Insurance Managers, Corporate Trustees, Qualified Trustees etc.

This booklet is part of a series entitled “Guide To...”. The object of these booklets is to provide a simple overview of certain topics and matters that are relevant to the general work of the FSC. By definition, an overview will not provide detailed information on every aspect of a topic. Accordingly, where more information is required, you may care to consult the relevant legislation. Naturally, all officers of the FSC will be pleased to provide whatever assistance they can.

This particular booklet is entitled “Guide To Compliance” – and is designed to assist Licensees, members of the public and their advisors.

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## **1.0 Background**

This Guide describes the Financial Services Commission's approach to Compliance

## **2.0 Introduction**

Regulatory work comprises three main elements – (1) Licensing; (2) Regulation and (3) Compliance. In turn, Compliance can be undertaken both “Offsite” and “Onsite” – the two approaches being complementary. “Offsite Compliance” involves checking information that Licensees are statutorily obliged to supply (which currently means only audited accounts) while “Onsite Compliance” means testing carried out in the business premises of the Licensee. This Paper focuses on “Onsite Compliance” testing. The word “Licensee” should be interpreted to mean Management Companies, Registered Agents, Nominee Companies, Captive Insurance Managers, Corporate Trustees and Qualified Trustees.

## **3.0 Objectives**

Once the FSC issues a licence, it becomes responsible for the regulatory behaviour of its Licensee. To exert appropriate control, the FSC needs to ensure that the Licensee is operating according to the terms of the licence issued to it. “Onsite Compliance” testing is an internationally recognised method of achieving that purpose.

Compliance visits also provide an opportunity for Regulators to identify weaknesses and problems and to take action to ensure those defects are remedied in a timely manner

Lastly, compliance testing enables the Regulator to offer feedback, comment and opinion on whatever procedures and controls are observed (or not observed as the case may be) during compliance visits.

In the absence of compliance visits, a “compliance culture” is more difficult to achieve and Regulatory agencies are encouraged by International Regulators (Basel Committee; IOSCO; IAIS; FSF; OGBS etc) to undertake compliance testing. According to an OECD Report in 2000 (Reducing the Risk of Policy Failure; Challenges for Regulatory Compliance – Pg 7), “... Dramatic regulatory failures tend to produce calls for more regulation, with little assessment of the underlying reasons for failure. Though there is little hard evidence, a growing body of anecdotes and studies from OECD countries suggest that inadequate compliance underlies many such failures ...”. Accordingly, the FSC conducts Compliance Visits as on-going, standard part of our Regulatory work.

#### **4.0 Compliance Visits and Inspections**

The Financial Services Development Act 2001 (section 27(5)) provides for “inspections”. These are non-standard visits that are very serious in nature and will probably only be necessary infrequently. “Inspection Visits” should be distinguished from “Compliance Visits” – not least because Compliance Visits are pre-arranged and notice will be provided whereas Inspection Visits cannot be arranged in advance and notice may not be given. Thus, although Compliance Visits are of the same genre as Inspection Visits, there are differences in application.

#### **5.0 Basis of Testing**

A risk-based approach will be adopted. That is to say, the frequency of the visits, their intrusiveness and their length will reflect the degree to which the FSC believes Licensees to be exposed to risk.

Criteria that will influence this assessment include:

- 5.1 Competence of the people involved;
- 5.2 Experience of the people involved;
- 5.3 Regulatory track record;
- 5.4 Scope of business;
- 5.5 Adequacy of controls;
- 5.6 Appropriateness of “Know your Customer” and anti money laundering systems etc.

This list is not exhaustive and will be refined and perhaps expanded in the process of time and in light of practical experience. The criteria will be weighted by FSC to form part of a model that is used to determine the degree of risk – which in turn will determine the frequency of visits.

For the first cycle, FSC will adopt the date of original licensing as the order in which the Visits will take place – unless an intervening event causes the priority to be amended.

#### **6.0 The Population to be Tested**

The Population of those to be tested includes (but is not limited to):

- 6.1 Management Companies
- 6.2 Registered Agents;
- 6.3 Nominee Companies;
- 6.4 Corporate/Qualified Trustee;
- 6.5 Captive Insurance Managers

It is impossible to assess Management Companies without reference to the files of the Client Companies that they establish and manage. Accordingly, FSC's Examiners will need access to files of Client Companies to the extent necessary to demonstrate how the Management Company conducts its business. The FSC's focus will be on how Management Companies deal with issues such as conduct of business, anti-money laundering procedures, clients' assets and other prudential issues. Our focus on Client Companies extends only so far as ensuring that they act in accordance with the Law, the Guidelines and any Directions or other requirements imposed upon them from time to time and that their activities do not impugn the reputation of Mauritius.

## **7.0 Modus Operandi**

- 7.1 Compliance visits will take place in twelve monthly cycles – so the schedule is planned;
- 7.2 There are three elements – (1) preparation; (2) execution and (3) analysis;
- 7.4 “Preparation” involves the compilation and/or subsequent check on “Static” information (shareholders; directors; first licensed; issued capital; etc) and “Ongoing” information. Ongoing information means any matters that are outstanding from the last visit and salient points that have come to FSC’s attention since the last visit.
- 7.5 Each Licensee will be given notice (between two and four weeks) of a visit and a date will be arranged that is mutually convenient. The arrangement will be convened in writing and the Licensee will be told who to expect and what will be needed to allow us to complete the test;
- 7.6 On the first day of the visit, FSC staff will present themselves at the office of the Licensee – with appropriate identification – and start the test procedures;
- 7.7 Ordinarily, the test should take between one and three days and will involve two members of staff;
- 7.8 Once testing is completed, the staff involved will compile a Report that will distinguish “Observations” (which are merely suggestions) from “Recommendations” (strong suggestions that are not requirements) from “Requirements” (about which there is no negotiation). The draft prepared by the Examiners will be reviewed by a senior member of FSC's staff before it is sent to the Licensee;
- 7.9 A summary of the Report – which will include the “Observations”, “Recommendations” and “Requirements” will be provided to the Licensee who may wish to comment;
- 7.10 Where matters arise that are considered to be material, an appropriate course of action will be instituted.

## **8.0 The Test Program**

The testing carried out on site will follow a standard pattern for all Licensees (tailored to take account of any exceptional or peculiar circumstances). Licensees will be tested against the Law, the Guidelines, Licence Conditions currently in force and any other Directives or requirements imposed by the FSC

from time to time. When any of these change, Licensees will be tested against the changed version.

The following paragraphs describe the various stages of the testing program – and briefly describe the material components of each.

## **9.0 Stage One: Pre-Visit Preparation**

In preparation for a compliance visit, the Licensee's file is subject to a pre-visit review. The purpose of this review is to identify whether the particular environment in which the Licensee operates is exposed to any undue risks. The review will prompt staff to think about these issues. It is the facts of the case and the results of enquiries and the observations or conclusions drawn (if any), rather than completing checklists which represent the real benefit of this exercise.

This review may bring to light, certain characteristics that may be a warning or predictor of too much exposure to risk or of wrong doing or of potential for problems. This review will also serve to remind Examiners of matters that have been considered and addressed by the FSC in the past.

### **9.1 Summary Of Information On Licensee**

The first step is to check the details on file about the company (e.g. name, type of the licence issued, date of issue of licence, date of the expiry and so on).

### **9.2 Corporate Details**

This entails a complete review of the company's file analysing the corporate structure of the Licensee, including, the verification of information first submitted in the application form. Information will be collated on the structure (i.e. subsidiary of a group, objects of the company, share capital, source of funds, beneficial ownership, shareholders, directors etc).

### **9.3 Company Activities**

At licensing, it is important to know about the activities in which the company will be engaged. Subsequently, at the time of the site visit, the services that are being provided will be checked against FSC's records. The object is to ensure that there has been no change in the business plan or in the company's activities or working principle or objects of the company.

### **9.4 Company Transactions/Operations**

We will ask the Licensee to describe his markets and to provide copies of marketing brochures/advertisements used.

If the Licensee is operating as a managed operation, we will be particularly interested in progress made towards becoming a stand-alone operation.

## **9.5 Company Organigram/Management Team**

We will ask the Licensee to supply an organigram showing all staff and the levels at which they are working, a brief summary of their duties and responsibilities and their qualifications and experience.

The Licensee will be asked to identify (if appropriate) the Compliance Officer (see below), Money Laundering Reporting Officer, the Legal Practitioner retained by the Licensee (for vetting the applications for the client companies) and the independent auditor and secretary of the Licensee.

## **9.6 Annual Audited Accounts**

Submission of annual audited accounts is a statutory requirement under the FSD Act. Examiners will check the accounting reference date, when the first annual audited accounts were due, when the last audited accounts are/were due, when the last accounts were submitted, whether and when a reminder was sent, response, if any etc. Examiners will also take note whether there are any special licensing conditions (e.g. bi-annual or quarterly accounts or management accounts). The Examiners shall consider whether the accounts are compliant with International Accounting Standards and/or any other internationally accepted accounting standards.

## **9.7 Fees**

We will also check whether there are any outstanding fees and whether fees are usually paid on time and whether reminders have been sent and if so what the response has been.

We will enquire whether the company's licence or that of any of its client companies ever lapsed for the non-payment of fees.

## **9.8 Sample Testing Licensees' Client Companies**

The Examiners will select a sample of client files that will be used as the basis for their tests.

## **9.9 Know Your Client Rule ("KYC")**

Examiners will consider KYC procedures during every visit and especially how this criterion is being satisfied. We will check what documents are submitted – e.g. passport, driving licence, bank references, independent references sought and kept on file, comprehensive CV as to client's professional/business activities and experience. This criterion shall apply to promoters, beneficial owners, directors, shareholders and other officers of the client companies. It shall also apply to the settlor, trustees, enforcers, protectors or contributors of assets and the beneficiaries of a trust.

We will want to know whether the client is the promoter, beneficial owner or director of any other company (Global Business or Domestic) registered in Mauritius and whether he conducts or carries out financial services business from any other jurisdiction other than Mauritius. We will be interested to know if the client is regulated in another jurisdiction or by any other regulatory authority and are such approvals available on the file. Most importantly, we will check to ensure that the beneficial owners' details are on file.

### **9.10 Clients' Activities**

We will want to make sure that the activities of the client companies registered and licensed in Mauritius are monitored by the Licensee and whether the client companies are conducting any other activities in Mauritius e.g. Freeport, EPZ, domestic. If so, we will check whether there any special derogations granted (e.g. dealing with residents for client companies).

### **9.11 Company Compliance Culture**

Examiners will analyse and assess the Licensees' awareness about statutory compliance required under the relevant Acts including FSD Act and the regulations made thereunder. An assessment will also be made of the standard of compliance with any special conditions attached to the Licence. Records of any breaches and/or any warnings issued by the FSC will be noted.

### **9.12 Company Finances**

Examiners will consider the financial soundness of the Licensee e.g. is the minimum paid up capital requirement maintained.

### **9.13 Professional Indemnity Insurance**

Is there PI cover and if so what is the extent of cover provided? If not, should there be?

### **9.14 Complaints**

Are there records of any complaints made against or by the company as to its activities or that of its clients, of which the FSC (or MOBAA in the past) has been informed, concerning services, activities, employees?

### **9.15 Investigations/Allegations Against The Licensee**

Have any investigations been instigated against the Licensee or against its client companies, presently (or in the past by MOBAA) or is there any allegation of money laundering, fraud, or linkages to terrorist activities direct or through client companies? Have any allegations been made against the Licensee or against

any of its client companies in connection with financial crimes, securities frauds etc?

## **10.0 Stage Two: On-Site Assessment**

### **10.1 Preliminary Interview**

If Licensees would like, the Examiners to explain how the proposed Visit will be conducted, FSC would be pleased to convene a meeting for this purpose before the Compliance Visit begins.

Additionally, at the beginning of the on site visit, the Examiners will summarise the procedure they propose to follow during the course of the visit. It is highly important to convey that the objective of this exercise is to know our Licensees and their business better and to help them in any way that we can.

### **10.2 Company's Corporate Details**

Verification of FSC's record of the Licensee's corporate details and activities will be verified as part of the Preliminary Review.

### **10.3 Company's Activities**

Verification of FSC's record of the Licensee's activities will be compared to the business plan, M&As/constitutions.

FSC will check to ensure that there has been no change in the working principle or objects or business plan of the Licensee.

FSC will check whether there are any new activities or services added in last 5 years e.g. nominee services, trusteeship services in addition to setting up and managing global business companies from within Mauritius.

FSC will enquire about the performance and the strategy of the company e.g. new shareholders, joint ventures, key products, key markets, positive and negative factors etc.

The questions and accordingly the assessment may vary depending on the different types of activities a Licensee is conducting.

### **10.4 Company Compliance Culture**

In addition, FSC will check whether the Licensee has a Procedures Manual and if so, what it comprises? Are the directors, managers, officers and other staff of the Licensee aware of their duties under the law and whether sufficient information is recorded about the conduct of the business and its compliance? Is any training provided for the staff?

## **10.5 Company Finances**

In the course of the visit, FSC will ask for confirmation that no compulsory winding up or bankruptcy order has been served and that no property of the company has been seized or forfeited or relinquished by any other similar means at any stage. We will consider the equity/loan (gearing) mix of the Licensee.

## **10.6 Complaints**

FSC will verify whether clients' complaints are properly handled and whether there are any proper records kept of the details of the complaint and the Licensees' response and any action taken.

## **10.7 Company Record Keeping**

We will also check how and what records of the business activities of the Licensee and that of its client companies are kept. In what format are the records kept?

## **10.8 Anti-Money Laundering Measures**

In conjunction with the obligations laid down in the Financial Intelligence and Anti Money Laundering Act 2002 it has to be verified whether Licensee has appointed a Compliance Officer. Are there manuals making staff aware of their obligations and duties to report – both what and to whom. Are members of staff aware of their personal responsibilities in this respect? What screening is carried out before accepting a client to ensure that the client is not involved in any money laundering activities and that the source of funds is not illegitimate? How are transactions monitored through client bank accounts – and how are cash transactions monitored?

## **10.9 Consumer Protection/Handling Of Complaints**

A Licensee should ensure that clients' complaints are properly handled and that remedial action (where appropriate) is taken promptly. A record of the details of the complaint, the Licensee's response and any action taken as a result should be recorded and reviewed.

## **10.10 Miscellaneous**

Examiners will analyse precisely what actions are taken by the Licensee in cases where they lose contact with their client companies. What procedures apply for disposal of unclaimed assets/funds? What are the arrangements surrounding the appointment of Directors?

## **11.0 Stage Three: Analysis**

Following the on-site visit, an analysis will be prepared by the Examiners – based upon the criteria specified in the preparatory stages. At this point, the Examiners will be able to reach a provisional conclusion (a final conclusion cannot be reached until the Licensee is given opportunity to comment on the Examiners' findings). The provisional conclusion will indicate whether:

- 11.1 the regulatory risks that exist are being managed effectively and that no changes are required – fundamental or otherwise;
- 11.2 The regulatory risks that exist are being managed effectively in the main but some changes are required that are not fundamental;
- 11.3 the regulatory risks that exist are not being managed effectively and changes are required – some of which are fundamental;
- 11.4 the regulatory risks that exist are not being managed effectively and changes are required – most of which are fundamental.

## **12.0 Stage Four: Report**

Based on the provisional conclusions reached at stage three, the Examiners will prepare a report on their onsite visit.

The Report will distinguish:

- 12.1 Observations from;
- 12.2 Recommendations from;
- 12.3 Requirements.

Observations are not binding in nature. They are comments designed to assist the Licensee and about which the Licensee will be free to offer views.

Recommendations are stronger than suggestions but not so strong as to be required. Accordingly, FSC requires recommendations to be adopted unless the Licensee can convince the FSC that there is good reason not to adopt.

Requirements represent actions that must be taken and about which there can be no negotiation.

## **13.0 Follow Up**

Licensees will be given a copy of FSC's Observations, Recommendations and Requirements together with the Examiners' draft conclusion for comment. The Final Report will be compiled and circulated (on a restricted basis) internally for action.

Where necessary – and with the approval of the Board – punitive measures will be taken against Licensees that do not satisfy the criteria described above

## **14.0 Conclusion**

Compliance testing is a perpetual standard procedure that is adopted by most Regulators' worldwide – and recommended by the major Supra national regulatory authorities.