

CIRCULAR LETTER

(issued under section 7(1) of the Financial Services Act)

CL281021

28 October 2021

To: Officers,
Licensees

Dear Sir/Madam,

NATIONAL CODE OF CORPORATE GOVERNANCE

1.0 Purpose of the Circular Letter

- 1.1 The purpose of this Circular Letter is to inform licensees of their obligations with respect to the second edition of the National Code of Corporate Governance (the 'Code') issued by the National Committee on Corporate Governance in accordance with section 65(c) of the Financial Reporting Act and was published in the Government Gazette (General Notice No. 1804 of 2016) on 3 December 2016.
- 1.2 This Circular Letter revokes and supersedes the Circular Letter bearing reference CL280218 issued on 28 February 2018 by the Financial Services Commission, Mauritius (the "FSC").
- 1.3 This Circular Letter is without prejudice to any obligation of entities to comply with the Code under the Financial Reporting Act, the Companies Act, relevant Acts¹ or any other enactment(s) and should not be used as an excuse for not complying with any other requirements under the law.

2.0 Role of the FSC

- 2.1 The FSC, as the regulator of non-banking financial services and global business sectors, will monitor the application of the Code and adherence to corporate governance principles by its licensees. The extent to which a licensee

¹ Defined in the Financial Services Act.

is able to demonstrate compliance with the Code and Corporate Governance principles will be considered by the FSC in its supervisory functions.

2.2 Where circumstances warrant, the FSC may:

- (i) pursuant to section 46(2) (ca) of the Financial Services Act, direct a licensee to comply with any of the principles and practices of corporate governance laid down in the Code; or
- (ii) impose other regulatory sanctions where non-compliance with the Code amounts to a breach of the relevant Acts or licensing conditions.

3.0 The Code

3.1 The Code is applicable as from the reporting year ending 30 June 2018 and adopts a 'principles-based' approach. The core of the Code consists of the following 8 corporate governance principles (the 'Principles'):

- (i) Governance Structure;
- (ii) The Structure of the Board and its Committees;
- (iii) Director Appointment Procedures;
- (iv) Director Duties, Remuneration and Performance;
- (v) Risk Governance and Internal Control;
- (vi) Reporting with Integrity;
- (vii) Audit; and
- (viii) Relations with Shareholders and other key Stakeholders.

3.2 The Code provides guidance on how to apply the Principles for different types of companies and sectors of the Mauritian economy.

4.0 To whom does the Code apply?

4.1 *Licensees having the statutory obligations to comply with the Code*

Where a licensee of the FSC has an obligation to comply with the Code under the Financial Reporting Act, the Companies Act, the relevant Acts or any other enactment(s), it should ensure compliance with the Code.

4.2 *Licensees providing financial services*

4.2.1 The Code shall also be applicable to Management Companies falling under the definition of Public Interest Entity as defined under the Financial Reporting Act having similar features as the category of

licensee identified under paragraph 4 of the First Schedule of the Financial Reporting Act.

4.2.2 In addition to section 4.2.1 of this Circular Letter, the Code shall also apply to the following licensees identified under paragraphs 3 and 4 of the First Schedule of the Financial Reporting Act:

- a) insurance companies, other than companies conducting external insurance business, licensed under the Insurance Act;
- b) collective investment schemes and closed-end funds registered as reporting issuers under the Securities Act;
- c) CIS managers and custodians licensed under the Securities Act;
- d) persons licensed under section 14 of the Financial Services Act to carry out leasing, credit finance, factoring and distributions of financial products to the extent that the services supplied are by retail;
- e) any other licensee (excluding holders of Global Business Licence) which has, during 2 consecutive preceding years, at least one of the following:
 - (i) an annual turnover exceeding 500 million rupees; or
 - (ii) total assets exceeding 500 million rupees.
- f) Any group company which has, during 2 consecutive preceding years, at least one of the following:
 - (i) an annual turnover exceeding one billion rupees; or
 - (ii) total assets exceeding one billion rupees.

4.2.3 Subject to any statutory obligation to comply with the Code as mentioned under paragraph 4.1 above, it shall not be mandatory for the following licensees² to comply with the Code:

- (i) Expert Funds, Professional Collective Investment Scheme (CIS) or Specialised CIS which are not Reporting Issuers;
- (ii) Family Offices;
- (iii) Private Pension Schemes;
- (iv) An individual person who is the holder of a licence;
- (v) Insurance agents;
- (vi) Holders of Global Headquarter Administration licence;
- (vii) Holders of Global Treasury Activities Licence; and
- (viii) Any other licence as the FSC deems appropriate.

4.2.4 Even if licensees are exempted under paragraph 4.2.3 above, to implement the Principles of the Code, they are encouraged to set up appropriate corporate governance measures.

² Defined in the Financial Services Act.

5.0 The implications of the provisions

5.1 General

5.1.1 All licensees required to comply with the Code ('relevant licensees') should apply the 8 Principles in accordance with the nature of their business and inspire themselves from the specific guidance whenever same is applicable.

5.1.2 Where a relevant licensee is required to comply with Corporate Governance requirements in a foreign jurisdiction, it may, with the prior approval of the FSC, comply with the foreign requirements in lieu of the requirements of the Mauritian Code. The FSC may impose any licensing condition when granting an approval under this paragraph.

5.2 Reporting and Disclosures

The approach adopted in the Code depends significantly on reporting and disclosure of Corporate Governance practices to stakeholders. Relevant licensees should disclose compliance with the Code on an 'apply and explain' basis in the manner laid out in the Code. Also, relevant licensees should inspire themselves from the guidance provided in the Code and make other appropriate disclosures.

5.3 Directors' Report

All relevant licensees shall ensure that their Annual Reports/Audited Financial Statements are accompanied by a Director's Statement of Compliance with the Code in the form and manner as provided in the Code.

5.4 Auditors' Report

The auditors of the relevant licensees shall assess any explanation in cases of non-compliance and shall make a report in the form and manner as provided in the Code.

Signed by Mr Dhanesswurnath Thakoor, Chief Executive, on 28 October 2021

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