



# **FINANCIAL SERVICES COMMISSION**

**CONSULTATION PAPER**

**ON**

**COMPLIANCE SERVICES**

*Issued on 19 January 2022*

## **1.0 Introduction**

- 1.1 The Financial Services Commission, Mauritius (the 'FSC Mauritius') is issuing this consultation paper on the introduction of a regulatory framework for Compliance Services and invites comments from industry participants and the public on the framework of this new business activity.
- 1.2 Comments must be addressed to the Chief Executive of the FSC Mauritius at the following email address: [complianceservices@fscmauriti.us.org](mailto:complianceservices@fscmauriti.us.org).
- 1.3 Two weeks of window will be given to the Industry members to comment from the date of issue of this consultation paper.

## **2.0 Objectives**

- 2.1 It was announced in the Budget 2018-2019 that the Financial Services Act 2007 (the 'FSA 2007') will be amended to allow the FSC Mauritius to regulate Compliance Services with the potential to service its licensees and other domestic clients, including but not limited to, Designated Non-Financial Business and Professions (the 'DNFBPs').
- 2.2 The FSC Mauritius, with a view to enhance the current compliance culture in place, wishes to ensure that domestic players involved in both financial and non-financial services can rely on a regulated corporate entity to carry out their compliance functions on their behalf. The increasing complexity of the business activities, the risks involved in performing such activities, and the lack of knowledge and expertise in complying with laws, rules, regulations and directives issued, may necessitate the delegation of some functions to entities providing compliance services.

## **3.0 Compliance Services**

- 3.1 Who shall apply?
  - (a) An applicant incorporated as a company in Mauritius wishing to perform compliance services (as defined at paragraph 3.2) shall submit an application for a Compliance Services licence to the FSC Mauritius under Section 14 of the FSA 2007;
  - (b) A Management Company, as defined under Section 77 of the FSA 2007, may perform compliance services under its management licence, and shall be exempted to apply for a Compliance Services licence; and
  - (c) An application under para 3.1(a) above shall be solely for the provision of compliance services.

### 3.2 Scope of the Compliance Services licence

The services and compliance functions with respect to the responsibilities of the applicant shall be mainly to engage in the provision of:

- (a) Money Laundering Reporting Officer ('MLRO'), Deputy Money Laundering Reporting Officer ('DMLRO') and Designated Compliance Officer ('DCO') services; and
- (b) Compliance services related to Anti-Money Laundering and Combatting the Financing of Terrorism ('AML/CFT') to Financial Institutions ('FIs'), DNFBPs and Foreign Clients.

**The applicant shall:**

- (i) Assign or deploy qualified and experienced employees, on behalf of licensees to ensure the maintenance of adequate compliance systems and controls;
- (ii) Provide a written undertaking indicating that it will not assign or deploy any employees to perform compliance functions for and or on behalf of a licensee unless such employees are approved by the FSC Mauritius and are formally appointed by the licensee further to the FSC Mauritius's approval;
- (iii) Have within 6 months and before commencing business, the relevant number of employees considered sufficient to perform the compliance officer duties having regards to the number, nature, size and complexity of the licensees to which the services are geared;
- (iv) Understand the business of the licensees;
- (v) Oversee the implementation of compliance procedures;
- (vi) Report to the Board of Directors of the licensees and should it be deemed required, to the FSC Mauritius, on compliance matters;
- (vii) Act as liaison between licensees and the FSC Mauritius;
- (viii) Prepare an Annual Compliance Program;
- (ix) Assist with implementing adequate policies and procedures to identify breaches by the Companies and to minimise such breaches;

- (x) Ensure that the activities of the Company are in line with the applicable laws and rules;
- (xi) Ensure that an adequate reporting procedure is in place for any breach;
- (xii) Assist with informing the FSC or any other authority and management in case of any material breaches by the companies;
- (xiii) Monitor returns provided to the FSC or any other authority to ensure that all information are in order;
- (xiv) Assist with ensuring that its staff is familiar with the applicable legislation and any relevant conditions applicable to their role;
- (xv) Provide adequate training to the officers of the companies with regards to any compliance issues; and
- (xvi) Provide any other duty that is ancillary or complimentary to the above duties.

3.3 The applicant shall not carry out any other financial business activity which requires a licence or authorisation under the relevant Acts.

**4.0** However, the following licensees/stakeholders will not be allowed to outsource their compliance/MLRO functions to any third party willing to provide Compliance Services:

- (i) Management Companies, and
- (ii) Domestic Long Term Insurers, General Insurers and Professional Reinsurers would be carved out of the option of outsourcing the MLRO/CO functions to any third party service provider(s) given the riskiness and nature of the business. However, the FSC Mauritius reserves the right to mandate the services of a Professional Compliance Service provider should the need arise.

The above mentioned licensees should have, at all times, an in-house full time Compliance Officer/MLRO/DMLRO.

## 5.0 Salient Features

It is proposed that the Compliance Service licence should possess the following features:

Features	Compliance Services licence
<b>Services</b>	The applicant shall hold this licence if it provides the services mentioned at paragraph 3.2.
<b>Place of business</b>	The applicant shall be physically resident in Mauritius such that its business activity is conducted in Mauritius.
<b>Functionaries</b>	<p>The applicant shall employ staff with the appropriate competence, experience and proficiency to carry out the activity.</p> <p>The applicant shall ensure that it has adequate resources to execute its duties relative to its size, complexity, business activities and risk profile, including financial, human, technology and office resources.</p>
<b>Experience and Qualifications of key staff</b>	The applicant shall ensure that key staffs who are employed to provide the service possess adequate qualifications and recommended competency standards as per the FSC Mauritius, in relation to the types of business being serviced.
<b>Infrastructure</b>	The applicant shall have adequate infrastructure to carry out the activity for which the licence is sought.
<b>Processing Fee</b>	USD 1,000
<b>Annual Fee</b>	USD 5,000
<b>Professional Indemnity Insurance Cover</b>	The applicant shall maintain a Professional Indemnity Insurance Cover which commensurate with the nature, scale and complexity of its activities.
<b>Service Agreement</b>	<p>Notwithstanding other provisions in the agreement, the service agreement shall include the following clauses (non-exhaustive):</p> <ul style="list-style-type: none"> <li>a. Right to records and working papers (compliance policies and procedures, relevant Board presentations, annual reviews and other records) to the FSC Mauritius and the licensee;</li> <li>b. Reporting to the Board of Directors of the licensee;</li> </ul>

	<p>c. Records retention in terms of data back up and Business Continuity and Confidentiality and safety of client's information and data;</p> <p>d. Dispute resolution and termination clauses which comprise of:  (i) transfer of books and records upon termination;  (ii) transfer of books and records to another service provider with the authorisation of the licensee; and  (iii) transfer of books and records to the licensee.</p> <p>e. Dispute resolution and termination clauses which comprise of:  (i) transfer of books and records upon termination;  (ii) transfer of books and records to another service provider with the authorisation of the licensee; and  (iii) transfer of books and records to the licensee.</p>
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## 6.0 Other requirements

The applicant will also be required to comply with the following:

- (a) The Board of Directors must have at least 2 directors resident in Mauritius of sufficient calibre to exercise independence of mind and judgment, and they must demonstrate relevant knowledge and experience pertaining to the operations of the applicant and must be subject to the Code of Corporate Governance;
- (b) Its principal bank account must be in Mauritius; and
- (c) The implementation of adequate internal controls, risk management and governance policies and procedures.

## 7.0 Ongoing obligations

7.1 A Company licensed by the FSC Mauritius to provide compliance services shall hold a register of clients.

7.2 The Company shall ensure the following regarding clients' information:

- (a) that the records are kept secure and pose no operational risk;
- (b) that the records are maintained so as to be readily accessible; and
- (c) that all regulatory and confidentiality laws are complied with.

7.3 There shall be, at all times, a service level agreement with its clients signed by both parties defining, *inter alia*, the duties to be conducted by the Company.

**FINANCIAL SERVICES COMMISSION**

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