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GUIDANCE NOTES ON WHISTLEBLOWING

(Issued under section 7(1)(a) of the Financial Services Act)

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1. PREFACE

The Financial Services Commission (“FSC”) is issuing these Guidance Notes on Whistleblowing (the “Guidance Notes”) to clarify its expectations regarding implementation of section 45A of the Financial Services Act.

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2. INTERPRETATION

"Board" means the Board of Directors of a licensee;

"FSA" means the Financial Services Act;

"FSC" means the Financial Services Commission established under section 3 of the FSA;

"licensee" has the same meaning as in section 2 of the FSA;

"relevant Acts" has the same meaning as in section 2 of the FSA;

"victimisation" and *"retaliation"* have the same meaning as in section 45A of the FSA

3. INTRODUCTION

Whistleblowing has been proved to be one of the most effective ways to detect and prevent malpractices within an organisation as witnessed in the cases of renowned corporate scandals. Whistleblowing can be made by the employees, the clients, the suppliers of an organisation or by the public in general.

However, it has been observed that, in the case of employees, although they are the first to identify such malpractices, they are reluctant to raise their voice for fear of retaliation and victimisation which can take the form of discrimination, demotion, dismissal, defamation action and/or court proceedings. As such, the misconduct or wrongdoing which remains uncovered, is perpetuated.

Hence, a protective legal environment has become crucial to encourage employees to report instances of malpractices while safeguarding their own interests.

In view to encourage whistleblowers to come forward with information on any suspected wrongdoing, the FSA has been amended to include a new section – Section 45A, cited as follows:

“(1) No criminal or civil action shall lie against any person who makes a report or disclosure in good faith to the Commission that is required or permitted under the relevant Acts, or that relates to a matter in respect of which the Commission has functions under the relevant Acts, whether or not the person is required to make the report.

(2) The Commission, a member or a staff of the Commission shall not, without the consent of the person making reports or disclosure under section 45A, disclose the identity of that person except where it is necessary to do so for the fulfilment of the functions of the Commission.

(3) (a) Any person who commits an act of victimisation or retaliation against a person who has made a disclosure or report pursuant to this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for term not exceeding one year.

(b) In this subsection –

“victimisation” or “retaliation” means an act –

(a) which causes injury, damage or loss;

(b) of intimidation or harassment;

(c) of discrimination, disadvantage or adverse treatment in relation to a person’s employment; or

(d) amounting to threats or reprisals.

(4) Any person who knowingly makes a false, malicious or vexatious disclosure under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.”

The aim of section 45A of the FSA is to protect employees of any licensee who come forward to make disclosures of wrongdoings to the FSC without any fear of retaliation, where such disclosures are made in good faith.

4. PURPOSE, OBJECTIVE & APPLICABILITY

4.1 The purpose of these Guidance Notes is to specify the minimum content of the Whistleblowing Policy which is required to be put in place by licensees to meet the requirements of section 45A of the FSA.

4.2 These Guidance Notes shall not apply to a corporation holding a Global Business Licence or an Authorised Company unless the corporation or the company, as the

case may be, also holds a licence, authorisation, approval or registration for the conduct of a financial services activity under a relevant Act.

- 4.3 The content of the Whistleblowing Policy will vary depending on the size and nature of the organisation. Licensees are expected to set up their Whistleblowing Policy by taking into consideration the fundamentals set out in these Guidance Notes to ensure that any reporting, done in good faith, is addressed in a fair and prompt manner while safeguarding the whistleblowers' interest. Additionally, licensees are expected to actively promote their Whistleblowing Policy to demonstrate that they are genuinely open to listen to the concern of the aggrieved individual(s) and shall, in good faith, take fair, just and appropriate actions to rectify such established wrongdoing.
- 4.4 These Guidance Notes neither derogate nor restrict the powers vested upon the FSC by statutes and should be read together with the relevant Acts as well as other Guidelines and Circular Letters issued by the FSC.
- 4.5 The Guidance Notes on Whistleblowing form part of 'Guidelines' issued by the FSC pursuant to its powers under section 7(1)(a) of the FSA. In addition, the FSC may direct any licensee to comply with these Guidance Notes or any part thereof and failure by licensees to do so, shall constitute a contravention of the Law and may lead to prosecution.
- 4.6 Moreover, any failure by the licensee to comply with the provisions of section 45A of the FSA may entail criminal actions as prescribed under section 45A(4) of the FSA.

5. INTERNAL REPORTING MECHANISM FOR WHISTLEBLOWERS

5.1 Licensees are required to implement an **Internal Whistleblowing Policy** which provides for a reporting mechanism for whistleblowers. In setting up the policies and procedures, licensees may draw inspiration from the Principles for Protection of whistleblowers issued by Transparency International.

5.2 Transparency International identifies three key elements for protecting individuals and disclosures:

- i. *provision of accessible and reliable reporting channels;*
- ii. *robust protection from all forms of retaliation; and*
- iii. *mechanisms for disclosures that promote reforms that correct legislative, policy or procedural inadequacies and prevent future wrongdoing¹.*

5.3 An internal reporting mechanism for whistleblowers can take various forms. The process can be managed at senior personnel level, at Board subcommittee level or outsourced to an external service provider².

6. FUNDAMENTALS OF THE INTERNAL WHISTLEBLOWING POLICY

6.1 *The Whistleblowing Policy should comprise the following fundamentals, at a minimum.*

6.1.1 Confidentiality and protection of anonymity of whistleblowers

The concept of whistleblowing is about observing and disclosing an act conducted in the workplace which is considered as corrupt, fraudulent, illegal or

¹ Transparency International, 2013. International Principles for Whistleblower Legislation, principle 2, [WB principles main \(transparencycdn.org\)](http://transparencycdn.org)

² Transparency International, 2013. International Principles for Whistleblower Legislation, principle 2

immoral. Whistleblower protection laws generally require the identity of the reporting person to be treated as confidential³.

Appropriate procedures must be established and implemented to ensure that the identity of the reporting individual is kept confidential. Once these confidentiality procedures are in place, the reporting person should feel comfortable reporting concerning issues to the proper authorities without fear of reprisal.

Licensees should ensure that necessary procedures have been put in place to allow whistleblowers to make a disclosure anonymously and in case the whistleblower has disclosed his/her identity, the licensee must keep his/her identity confidential, unless the whistleblower himself/herself agrees and consents to waive this confidentiality.

6.1.2 Protections for whistleblowers

Licensees must put in place strong safeguards to ensure that a whistleblower who has made a disclosure is protected from victimisation or retaliation by any person who is responsible for the control or direction of the firm. The licensees must have transparent, enforceable and timely mechanisms to follow up on whistleblowers' retaliation complaints (including a process for disciplining perpetrators of retaliation).

6.1.3 The Whistleblowing Mechanism

Licensees must ensure that they have an effective internal whistleblowing mechanism in place. In this respect, the licensees should ensure that a copy of

³ <https://www.oecd.org/daf/anti-bribery/44884389.pdf>

the Whistleblowing Policy is circulated to all employees and that they have an easy and all-time access to the Whistleblowing Policy. A Whistleblowing Policy should be aimed at all stakeholders and this should be reflected in the way it is promoted. Details of the process should be visible on the company's website, within the organisation and through direct communication with relevant customers, suppliers, shareholders and other third parties. Licensees are encouraged to raise awareness of their Whistleblowing Policy amongst their relevant stakeholders and on the specific instances where matters may be reported to the Whistleblowing Desk of the FSC.

As part of their internal channels, licensees should ensure that they have an effective infrastructure in place which may include a hotline, a designated whistleblowing champion, a mechanism for managing conflict of interest, amongst others, taking into account the size and nature of their business.

Licensees must ensure that there is a timely and independent investigation further to the whistleblowers' disclosures. Licensees must maintain appropriate records of reports or disclosures made by whistleblowers and the treatment of these reports including the outcomes. Any deviation from established safeguards should be for specific, objective and articulable reasons and be well documented. Licensees are hence required to keep a **whistleblower log** with their corresponding complaints to which follow-up actions are registered.

It is important that feedbacks are given to the whistleblowers and that they are kept up-to-date on the status of the case, where this is feasible and appropriate.

6.2 *It is desirable that the Whistleblowing Policy contains the following:*

6.2.1 Details on what can be reported

A reportable matter is not a grievance related to employment/superior-subordinate relationship/ relationship with peers. Likewise, complaints associated with unsatisfactory probation reports, performance evaluations, favouritism, and nepotism and related issues would not be covered under this policy. Such cases should be referred to the company's Human Resources Department and redress sought through other mechanisms established within the company's internal processes or other formal Human Resources related mechanism.

A genuine reportable concern has to be clearly defined by licensees within their Whistleblowing Policy. For instance, it can be anything which amounts to a breach of the provisions of the laws of Mauritius and/or any behaviour/action which is harmful or is likely to harm the interest of clients of the licensee or of the public in general.

6.2.2 Establishment of an internal whistleblowing culture

Licensees need to establish a conducive whistleblowing culture within their company. Whistleblowing is most effective when it operates within an open-door culture where employees are actively encouraged to raise their concerns and can do so without fear of retaliation or victimisation.

6.2.3 Training

Staff Training with respect to Whistleblowing Policy is expected to cover the following three key areas:

- how to raise a concern;
- how staff will be protected; and
- how the concern will be dealt with.

Training should emphasise that staff are encouraged to confidently raise any matters of genuine concerns within their workplace with their senior employees, without fear of reprisals, as well as, in the understanding and conviction that they will be taken seriously and that the matters reported will be investigated appropriately and regarded as confidential.

It is also important that the personnel tasked with handling whistleblowing calls, disclosures and reports is adequately trained to handle the various concerns raised and treats the matter as confidential.

6.2.4 The whistleblower champion

As a best practice, it is desirable that licensees have a whistleblower champion(s). The whistleblower champion(s) shall be allocated the responsibility of ensuring and overseeing the integrity, independence and effectiveness of the licensees' policies and procedures on whistleblowing including those intended to protect whistleblowers from being victimised because they have disclosed reportable concerns.

The whistleblower champion(s) is/are expected to have a level of authority and independence within the company and access to resources (including access to independent legal advice and training) and information, sufficient to enable him/her to carry out his/her duties and responsibilities. The person needs not have a day-to-day operational role handling disclosures from whistleblowers and may be exercising a position in another capacity. However, he/she should be able to perform his/her functions effectively, in an independent and confidential manner which does not impact on his/her day-to-day operational role handling disclosures from whistleblowers.

7 DISCLOSURES TO THE FSC

- 7.1 In certain circumstances, it may be more appropriate for the whistleblower to channel his/her disclosure externally, to the FSC or other appropriate law enforcement agencies or competent authorities, for instance where:
- (a) an internal report has already been made but no action has been taken;
 - (b) senior employee(s) of the organisation may be implicated;
 - (c) the whistleblower may be subject to occupational detriment;
 - (d) the external report is justified by the urgency of the matter; or
 - (e) it is likely that evidence will be concealed or destroyed.
- 7.2 The FSC has accordingly introduced an internal Whistleblowing Desk to which disclosures can be made in strict confidence. Any person can make a disclosure in person to the Whistleblowing Desk of the FSC during office hours or by email on **XX mail** at any time.
- 7.3 Any person who commits an act of victimisation or retaliation against a person who has made a disclosure or report to the FSC shall commit an offence under section 45A(3)(a) of the FSA and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for term not exceeding one year.
- 7.4 Alternatively, any person who knowingly makes a false, malicious or vexatious disclosure shall commit an offence under section 45A(4) of the FSA and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

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