

LICENSING CRITERIA

SPOT COMMODITY CLEARING HOUSE - FS-1.23

Note to the Applicant:

1. This 'Licensing Criteria' aims to provide guidance to applicants with respect to the requirements when applying for a Licence.
2. It should be noted that this proposed Licensing Criteria neither derogates nor restricts the powers vested upon the Financial Services Commission, Mauritius (the 'Commission') by statute, and should be read together with the relevant Acts, regulations, rules, guidelines, circulars and codes issued thereunder.
3. An applicant is expected, at the time of submitting an application to the Commission, to be conversant with applicable relevant Acts, regulations, rules, guidelines, circulars and codes which the Commission has issued or may issue from time to time.
4. The Commission requires that all applications be accompanied by a cover letter and by the information and documentation set out in this Licensing Criteria.
5. **Incomplete applications received by the Commission may be returned to the applicant.**
6. The Commission, upon inadequate response or no response within fifteen (15) working days from the date of its first query, shall not proceed further with the application, unless otherwise agreed in writing. The applicant will, thereafter, have to submit a fresh application.

Information/Documents to be submitted with respect to application for a Spot Commodity Clearing House Licence

A. Relevant Forms /Documents

1 Formal application under section 14 of the Financial Services Act (the 'FSA') for a Spot Commodity Clearing House Licence on the FSCOne platform.

Submission of prescribed processing/annual fees
Extract of the Financial Services (Consolidated and Licensing Fees) Rules 2008

Type of Licence	Code	Fees	
		Processing	Annual
Spot Commodity Clearing House	FS-1.23	USD 5,500**	USD 11,000**

**For applicant not applying for a Global Business Licence or corporation not holding a Global Business Licence, the corresponding fee in Rupees (Rs.) shall be calculated based on the Indicative Exchange Rate as computed by the Bank of Mauritius as at date of payment.

Note: Payment of annual fee is not mandatory at time the application is submitted to the Commission.

3 Duly filled in authority form and written and signed consent of each promoter, officer and/or controller.

4 Certified true copy of the resolution of the board of directors authorising two members of the board to sign the application (not applicable to a Global Business Company).

B. Structure

If the applicant is structured as a company:

- 5
- Copy of the constitution, duly dated and signed, accompanied by a legal certificate; and
 - Certified true copies of statutory documents lodged with the Corporate and Business Registration Department (CBRD) with respect to the incorporation of the applicant.

C. Activity

Detailed Business Plan including, but not limited to, the following:

- 6
- (i) Rationale of applying for a Spot Commodity Clearing House Licence;
 - (ii) introduction and background of promoter/shareholder;
 - (iii) details on the activities;
 - (iv) detailed procedures of the mode of operation of the Spot Commodity Clearing House activities;
 - (iii) organization/structure chart and staffing requirements;
 - (iv) target market and client profile;
 - (v) 3 years' financial forecasts (Profit & Loss, Cash Flow and Balance Sheet); and
 - (vi) any other relevant information.

*

Rule 6(1) of the Financial Services (Spot Commodity Market and Intermediaries) Rules 2024 states that a spot commodity clearing house may make business rules.

- 8
- The applicant to submit the business rules in line with Rule 6(3) of the Financial Services (Spot Commodity Market and Intermediaries) Rules 2024, duly certified by a legal practitioner to the effect that the same are complying with the Laws of Mauritius.

These Rules will be subject to the approval of the Commission as per Rule 6 (2) of the Financial Services (Spot Commodity Market and Intermediaries) Rules 2024.

- 9
- Detailed process flow on the mode of operation of the Spot Commodity Clearing House including how it interacts its members/participants

- 10
- Demonstrate as to how the applicant will comply with Rule 9 of the Financial Services (Spot Commodity Market and Intermediaries) Rules 2024

- 11
- Demonstrate prudential and other requirements to reduce risk of non-completion of transaction.

IT Systems

- 12
- a) Details on the IT Systems and its operations for the clearing and settlement.
 - b) Whether the IT Systems is being provided from a service provider. In affirmative, provide details on the IT Systems and a draft service agreement to be entered into between the applicant and the service provider.
 - c) Indicate who will have access to the IT Systems and the types of rights that will be provided.
 - d) Details on the means through which the IT Systems will be accessed.
 - e) Demonstrate that its IT systems are resilient and not prone to failure, damage, tampering, misuse or unauthorised access.
 - f) An indication whether the IT Systems has been tried and tested in other financial institution. If yes, please submit evidence of same.
 - g) Whether an independent audit had been carried out on the IT Systems (including testing of various systems and platform starting from trading to clearing and settlement have been successfully performed). In affirmative, please submit a copy of the report.
 - h) Details on the cyber-security features (including confidentiality to information of clearing members and their customers, encryption element to prevent hacking, back up, server etc.) of the IT Systems to be used by the applicant. Please provide evidence of any independent audit performed to validate the security surrounding the application.
 - i) A confirmation that the IT Systems complies with the Data Protection Legislations of Mauritius.

- 13
- (i) Details on the profile and location of the targeted members/participants
 - (ii) Submission of a confirmation that the applicant shall seek the necessary approval/authorisation in the jurisdictions where it intends to operate.

D. Fitness and Propriety of Promoters/ Beneficial Owners/ Shareholders

- 15
- | | |
|---|---|
| Promoters/
Beneficial
Owners/
Shareholders | Individual: <ul style="list-style-type: none">• CV;• PQ form;• Valid passport copy or National Identity Card; and• Proof of address [E.g. a recent utility bill issued or a recent bank or credit card statement or a recent bank reference (proof of address must not be more than 6 months old)]. |
|---|---|

Corporate Body:

- Certificate of incorporation;
- Certificate of current standing (where applicable);
- Certified true copy of any licence/registration/authorisation held;
- List of controlling shareholders and directors;
- Latest audited financial statements;
- Corporate Profile - in case latest audited accounts are not available; and
- Confirmation from the applicant/Management Company to the effect that it holds on record CDD documents on the controlling shareholders of the corporate body and that these will be made available to the Commission.

Trust:

- A copy of the trust deed;
- Name of the trust, its date and place of registration;
- An indication of the value of assets held by the trust;
- CDD documents on the -
 - (a) settlor/contributor and the trustee;
 - (b) beneficiaries, or confirmation from the management company/trustee(s) that it holds on record comfort on the beneficiaries, that has been obtained from a recognized source; and
- For a discretionary trust, a written confirmation from the applicant to the effect that it has adequate arrangements in place with the trustee of the trust to make available the CDD documents on the beneficiaries at the time of distributions to beneficiaries of the trust and that it is comfortable that these arrangements will enable it to satisfy its obligation in accordance with the requirements of the laws governing anti-money laundering and terrorism financing in force in Mauritius.

Limited Partnership:

- Certificate of registration/establishment/good standing of the limited partnership and its general partner;
- Latest audited financial statements of the Limited Partnership and its General Partner
- Corporate profile – in case latest audited accounts are not available
- Confirmation from the Management Company/applicant to the effect that it holds on record CDD documents on the significant limited partners of the limited partnership and that these will be made available to the Commission upon request

Société:

- Profile of the Société (including a copy of the *acte de société*); and
- CDD on the principals, administrators or gérants of the société.

The applicant should refer to section 20 of the Financial Services Act for Matters related to fit and proper person requirements

E. Resources, Infrastructure and Staff

16

Directors

The following documents should be submitted on each director:

- CV;
- PQ form;
- Valid passport copy or National Identity Card; and
- Proof of address [E.g. a recent utility bill issued or a recent bank or credit card statement or a recent bank reference (proof of address must not be more than 6 months old)].

The applicant should demonstrate compliance with Circular Letter CL 280313 on Directorship

17

Officers

The applicant shall ensure that it has at all times two officers based full time and who are conversant with the operations of the Spot Commodity Clearing House.

18

Spot Commodity Clearing House team

Details of the members of the Spot Commodity Clearing House team, who will be responsible to handle the operations of clearing house activity together with the submission of their PQ forms and CV (demonstrating a proven track record in the provision of such services);

The applicant should ensure that at least 2 members are appointed on the Spot Commodity Clearing House team to ensure business continuity;

The applicant needs to indicate as to whether these persons are regulated or hold a licence from a regulated authority. If in the affirmative, to provide evidence of same.

The strength of the team is a key component of the application. The applicant needs to demonstrate that it has appropriate and competent staff commensurate with the size, nature and complexity of the business activity. Applicants should therefore provide adequate information on its members, demonstrating their suitability to discharge their responsibilities.

19	Compliance Officer	<p>Details on the Compliance Officer, together with submission of full CDD details on him/her. Written confirmation that the Compliance Officer meet the requirements of Regulation 22(1)(a) of the Financial Intelligence and Anti-Money Laundering Regulations .</p> <p><i>Outsourced compliance function</i></p> <p>Where the compliance function is being outsourced to another company, the applicant should:</p> <p>(i) provide details on the checks and balances put in place by the Company with respect to this outsourced function, that is, how the board will satisfy itself that the outsourced function is meeting the expectations of the Board [such as, by way of reviewing and validating the process employed by the service provider, periodic reporting to the Board by the service provider, periodic review of the process by the Board]; and</p> <p>(ii) Name of the person who will act as compliance officer for the applicant.</p>
20	MLRO /Deputy MLRO	<p>(i) Details on the MLRO and Deputy MLRO, together with submission of their full CDD.</p> <p>(ii) A written confirmation that the MLRO and Deputy MLRO meet the requirements of Regulation 26(4) of the Financial Intelligence and Anti-Money Laundering Regulations as well as the requirements of the competency standards issued by the Commission.</p> <p>Note: The MLRO and DMLRO should be independent from the Board of Directors.</p>
21	Auditor	<p>The applicant to seek the approval of the Commission with respect to the appointment of the auditor.</p> <ul style="list-style-type: none"> • Details on the auditor to be appointed should be provided; • The audit firm should be approved by the Financial Reporting Council (FRC); and • Details on the signing partner within the audit firm should also be provided and the latter should be registered with The Mauritius Institute of Professional Accountants (MIPA) <p>Note: The names of the auditor and signing partner should be as per FRC list.</p>
<p>F. Prudential and Safeguarding Requirements</p>		

	Draft copy of agreement to be entered into by the applicant with the members/participants (accompanied by a legal certificate certifying that the agreement complies with the laws of Mauritius).
	Note:
22	(i) The agreement should detail the scope of services and responsibilities of the applicant vis-à-vis its members/participant (the services to be provided should be in line with the licence sought); and (ii) A confirmation from the applicant's legal counsel that the agreement is in line with the laws of Mauritius.
23	Provide details on the structure of the Board and Corporate Governance measures put in place for the proper functioning of the Board of Directors
24	Details of the sub-committees to be set up by the Company to ensure that the business is conducted in accordance with sound corporate governance principles.
25	Details and assessment on the source of funding (with documentary evidence).
26	Copy of the Internal Procedures and compliance manual (including details on AML/CFT policies and procedures)
27	Detailed description of systems and procedures to prevent money laundering and financing of terrorism.
28	An indication as to who will be responsible to conduct due diligence checks on members/participants of the applicant and confirmation that all supporting documentation will be kept at its registered office address. A confirmation that the applicant will conduct due diligence of its members, in accordance with the requirements of the laws governing anti-money laundering and terrorism financing in force in Mauritius
29	An indication of amount of Professional Indemnity Insurance Cover that the applicant intends to subscribe to along with a quote from an insurer.
30	Detailed description of measures to be put in place with regard to the infrastructure surrounding confidentiality, security and safety of client information and records.
31	Details on the risk management policy of the applicant (Risks associated with its business and operations)

32	Disaster Recovery and Business Continuity Plan.	
33	Procedures for complaints handling and an indication as to who will be responsible to handle complaints & the time frame within which complaints will be resolved.	
34	(i)	Detailed description of systems and procedures to prevent and deal with any conflicts of interest that may arise during the course of the business.
35	(ii)	Additionally, when a person is cumulating different roles in the company (e.g shareholder, Director, member of the operations team ...), the applicant needs to indicate what are the measures in place to deal with any conflict of interest that may arise during the course of his duties and also to ensure that the person has adequate autonomy and independence.
36	Details as to how the Company will be complying with Section 18 of the Financial Services Act by demonstrating that it has adequate resources, infrastructure, staff in place with the appropriate competence, experience and proficiency to carry out the Spot Commodity Clearing House activity.	
37	Minimum Capital Requirement	<p>Provide details on the IT infrastructure that the Company will be having in terms of its hardware and software. Please also indicate whether the IT Infrastructure will be outsourced and in the affirmative, provide details on the service provider and the draft agreement to be entered into with the latter.</p>
37	Minimum Capital Requirement	<p>For a Global Business Company, the following should be submitted:</p> <ul style="list-style-type: none"> • An undertaking that the applicant shall at all times maintain the prescribed minimum stated unimpaired capital (currently, MUR 6,500,000 or its equivalent in another currency or such higher amount as the Commission may determine). • An undertaking that the applicant will not start its operations, trade, or incur any liabilities prior to meeting its minimum unimpaired stated capital of MUR 6,500,000 • An undertaking that within one month of the Licence being issued evidence that the proceeds of the share issue amounting to MUR 6,500,000 or its equivalent have been credited to the applicant’s bank account will be submitted to the Commission. <p>For a domestic company, the following should be submitted:</p> <ul style="list-style-type: none"> • The applicant should ensure that stated capital of MUR 6,500,000 is injected prior to the licence being issued. • Certified true copies of statutory filings with respect to the share capital; and • Confirmation that the capital is fully paid.

38	Segregation of clients funds	Details on measures put in place with respect to segregation of members' funds.
G. Others		
39		Details of the registered office address and a draft copy of lease agreement (where applicable).
40		An indication of the financial year end date of the applicant.

Disclaimer: The above list is provided for guidance and is not exhaustive. The Commission will assess the information provided on its own merits and may require additional information to determine the application.

FSC House, 54 Cybercity, Ebene, Republic of Mauritius
 Tel: (230) 403 7000 Fax: (230) 467 7172
 E-mail: fscmauritius@intnet.mu, Website: www.fscmauritius.org