



PRACTICE NOTES

ON

MANAGED CORPORATE SERVICE PROVIDERS

(PN-010105)

(Issued under section 7(1)(a) of the Financial Services Development Act 2001)

Issued on 06 January 2005



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PRACTICE NOTES ON MANAGED CORPORATE SERVICE PROVIDERS

INTRODUCTION

BACKGROUND

- 1 Management Companies are licensed by the Financial Services Commission ("FSC") under section 24 of the Financial Services Development Act 2001 ("the Act") to set up and manage global business companies, to provide nominee and other services to the latter or to act as corporate trustee or qualified trustee under the Trust Act 2001.
- 2 A Management Company ("MC") is licensed on the basis that it will operate as a full fledged stand alone operation. Current practice requires Management Companies to have a permanent establishment locally and to operate from business premises with adequate logistics and staff of adequate number, skills, knowledge and experience to undertake and fulfil their duties. The only exception is where the operation of a MC is managed under a Management Agreement by a fully established Management Company having the resources to provide such a service.
- 3 The FSC is responsible for supervising Global Business. The FSC's role is to reduce the risk of money laundering and other financial crime and to protect the good repute of Mauritius as a financial centre. The FSC discharges this responsibility in different ways, for example, by promoting and enforcing legislation, statements of policy and principles, guidelines and codes of practice or practice notes.
- 4 In particular, practice notes explain the manner in which the principles already established under legislation or a guideline will be interpreted and implemented. Practice notes are issued under section 7(1)(a) of the Act. They do not have the force of law in that breaches will not by themselves constitute criminal offences – although they may entail regulatory sanctions. However, where as a result of a breach or failure to comply with practice notes, the FSC directs the Licensee under section 7(1)(d) of the Act to comply with any practice notes or any part thereof, failure to do so will constitute a contravention of the law and may lead to prosecution- quite apart from any other regulatory action that may be taken.

STRUCTURE OF THESE PRACTICE NOTES

- 5 This Paper comprises three parts: Part 1 deals with Preliminary Matters; Part 2 sets out Practice Notes to describe FSC's policy on Managed Company Services Providers and Part 3 contains some Miscellaneous Provisions which deal with some transitional provisions. Where necessary, the Practice Notes are accompanied by Explanatory Notes. Reference to Practice Notes should be understood to refer to all paragraphs of this Paper which have equal status as

Practice Notes and are equally enforceable as such, whether they come under Part 1, Part 2 or Part 3, or even under the heading "Explanatory Notes". Compliance is expected with all the provisions of these Practice Notes and regulatory action can be taken for breach of any of its provisions. A Glossary that defines certain terms used in the Practice Notes is attached in the Appendix. This form of presentation has been adopted for the sake of clarity.

PART 1

PRELIMINARY MATTERS

DEFINITION OF MCSPs

- 6 For the purposes of these Practice Notes, a Managed Corporate Service Provider (MCSP) refers to a licensed Management Company which operates under a Management Agreement with another Management Company having established premises and office in Mauritius ('the Managing MC').
- 7 A proposed MC may prefer to operate as a MCSP because, *inter alia*, the proposed MC may-
 - (a) not be able to finance a fully fledged operation at the outset and may need a period of time to recoup pre-operational expenses;
 - (b) want to test the jurisdiction before committing greater capital;
 - (c) need some time to build up clientele and critical mass in a new market;
 - (d) want to avail of the professional experience and skill of the Managing MC and its staff;
 - (e) want to avail of the local contacts that the Managing MC has with Regulators, Government agencies and professional accountancy and legal firms.
- 8 Although stand alone MCs remain the preferred route for services to Global Business Companies, it is believed that MCSPs can be an effective means of expanding the market for Mauritius Global Business Companies and generating new value-addition. Accordingly, FSC will consider applications for MCSPs provided that the promoters intend to use the MCSP to develop sufficient critical mass to lead to a fully-fledged operation within a defined period.
- 9 Considering that MCs play a pivotal role for the purposes of Global Business regulations and for combating Money Laundering and the Financing of Terrorism in that they are required to carry out due diligence on a prospective client, establish and verify his identity and obtain and keep records of the details of the due diligence exercise, the licensing of MCSPs has some regulatory implications which should be addressed to mitigate any risks arising. In the absence of a proper framework, regulatory gaps may arise, creating uncertainty and a lack of clarity in the regulatory obligations and responsibility.
- 10 The purpose of these Practice Notes is to describe the regulatory approach of the FSC towards MCs that intend to be set up as MCSPs and to clarify the obligations of both the Managing MC and the MCSP.

STATUS OF THE PRACTICE NOTES

- 11 Failure to comply with these Practice Notes will expose the Managing MC and the MCSP to regulatory sanctions which may include one or more of the following-
 - i. the issue of a direction under section 7(1)(d) of the Act to observe the Practice Notes or any part thereof. Failure to comply with a direction may result in criminal sanctions and regulatory action;
 - ii. the issue of a direction to a Licensee to cease operation as a MCSP;
 - iii. revocation of the Management Licence.
- 12 These Practice Notes may be amended from time to time or repealed wholly or partly without any provision being grandfathered

PART 2

PRACTICE NOTES

PRACTICE NOTE 1

In addition to the licensing requirements applicable to a MC, a MCSP must indicate in its Business Plan-

- i. the duration of the MCSP's contractual arrangement (i.e. the Management Agreement);*
- ii. the target date (not exceeding three years) by which the MCSP plans to convert into a fully-fledged stand alone operation; and*
- iii. the criteria it intends to adopt to decide on setting-up as a stand alone MC.*

Explanatory Notes

- 13 All applications involving an applicant MCSP must be submitted jointly by the Managing MC and the proposed MCSP.
- 14 In processing an application for a Management Licence in the case of a MCSP, the FSC will apply the same licensing regime as is applicable to a MC and impose the same conditions but may add such other conditions and obligations to ensure implementation of these Practice Notes and meet any particular situation of the applicant.
- 15 The arrangement between the MCSP and the Managing MC must be governed by a Management Agreement which should reflect Practice Note 1 both in terms of duration and operation. The FSC is not in favour of an arrangement in respect of MCSPs with unlimited duration. A Management Agreement should be co-terminous with the duration of the licence. A MCSP may apply to be converted into a full fledge operation at any time before the expiry of its Management Licence. On termination or revocation of the Management Licence, a MCSP shall within three months thereof start winding up or dissolution procedures, take such measures and make any arrangements as may be necessary in respect of the disposal of its assets and liabilities and comply with such directions as the FSC may give.

- 16 In normal circumstances, the FSC will limit the Management Licence of a MCSP to a duration of three years. The FSC may grant a Management Licence for a duration of less than three years where it thinks fit to do so. The FSC retains the right at its discretion to agree to a date in excess of three years or to extend the period of the MCSP's operation upon receipt of an application at some later date but not later than 3 months prior to the expiry of the Management Licence setting out the reasons why it should continue.
- 17 An application for extension shall exceptionally be granted based on the merit of individual applications. In considering such an application, the FSC shall be guided by the operations of the MCSP and by its overall standing. The resources of the Managing MC will also be re-assessed.
- 18 In the event that a MCSP applies for and is granted an extension by the FSC, such extension shall be conditional to the execution of a Management Agreement that will be co-terminous with the extended Management Licence.

PRACTICE NOTE 2

The Managing MC and the MCSP shall enter into a Management Agreement which specifies the services to be provided by the Managing MC and allocates precise responsibilities between the Managing MC and the MCSP.

Explanatory Notes

- 19 The Management Agreement between the Managing MC and the MCSP must include provisions relating to-
- (a) the nature of the services that will be provided by the Managing MC and on what basis;
 - (b) the fees to be charged and/or the basis of calculation of fees to be charged by the Managing MC;
 - (c) the legal and administrative responsibilities of each of the party as to the observance of the AML/CFT Framework;
 - (d) operational arrangements and the appointment of a Principal Officer and his alternate;
 - (e) risk management and contingency plans;
 - (f) the duration which shall not exceed three years or the duration of the Management Licence; and
 - (g) the transfer of the MCSP's files, books and records on termination.
- 20 The Management Agreement must not contain any provision prohibiting the Managing MC from imparting any information to the FSC concerning the MCSP and its operations or restricting its means of ensuring that the MCSP is meeting its

regulatory obligations and the minimum standards of operations.

PRACTICE NOTE 3

The Managing MC shall demonstrate to the FSC that it has adequate resources to host a MCSP and shall designate a Principal Officer (and an alternate Principal Officer) who shall be responsible for the day to day affairs of the MCSP.

Explanatory Notes

- 21 Hosting a MCSP is likely to require a Managing MC to have additional resources. Accordingly, the latter must demonstrate the resources and infrastructure that it has or will put into place to provide the services it has undertaken to provide to the MCSP. "Resources" includes human, technical and financial resources. It also includes office premises, fixed assets, staff recruited or allocated to work for the MCSP, additional security, directors and so on. The MCSP must have dedicated telephone and facsimile lines and e-mail connection. Meanwhile, the Managing MC must ensure that it has sufficient resources to service its own clients simultaneously.
- 22 The designated Principal Officer and his alternate should have proven experience in company and trust administration. Unless complete and updated information is already in the possession of the FSC, the Managing MC (at the time of application for a Management Licence for the MCSP) shall provide FSC with the name and profile of the relevant directors, the Principal Officer, the alternate Principal Officer, and other employees who will be administering the MCSP. A copy of the letter/memorandum specifying the specific duties and obligations assigned to such persons shall be provided to the FSC upon request. The Principal Officer will be responsible to the FSC for the day to day operations of the MCSP and during his absence, the alternate Principal Officer will be so responsible.

PRACTICE NOTE 4

The Managing MC shall be appointed to act as secretary to the MCSP's Board for the duration of the Management Agreement.

Explanatory Notes

- 23 The Managing MC shall in fulfilment of its duties as secretary to the Board of the MCSP adhere to the requirements of section 166 of the Companies Act 2001. This means *inter alia* that the Secretary will be expected to provide guidance to the Board of the MCSP about the duties, responsibilities and powers of Board members. The Secretary will also be responsible for informing the shareholders and members of the Board of the MCSP about compliance with legislation and about their duty to keep proper records.

PRACTICE NOTE 5

The Board of the Managing MC shall seek from the Principal Officer periodic reports on the operation of the business on behalf of the MCSP focusing on adherence to regulatory requirements and standards.

Explanatory Notes

- 24 For its own protection, the Managing MC should conduct periodic reviews of its relationship with the MCSP. Written summaries should be retained. The summaries should be sufficiently precise to describe issues and how they were dealt with. FSC may consider these summaries during compliance visits.
- 25 Exchange of notes and correspondence concerning the management of the MCSP should be kept on file and must be open to inspection by the FSC.

PRACTICE NOTE 6

The Managing MC and the MCSP are two distinct and separate legal persons. Accordingly, the business affairs of each must be kept totally segregated from the affairs of the other.

Explanatory Notes

- 26 Save and except for the sharing of certain overheads/resources with the Managing MC, the MCSP shall comply with all the requirements and conditions applicable to all holders of a Management Licence. By way of example, to comply with all the conditions applicable to other holders of Management Licences, the MCSP shall, *inter alia*, have its own Professional Indemnity Cover, Know Your Customer Manuals and Procedures Manuals.

- 27 If the MCSP is sharing the premises of the Managing MC, the operations must be segregated to the satisfaction of the FSC. This means (*inter alia*) that all assets, files, documentation (including stationery), Board Minutes, books and records, including accounting records of the MCSP and those of its clients must be kept separate from those of the Managing MC's. The assets, files and other records of the MCSP must be capable of being distinguished from those of the Managing MC.
- 28 In particular, the financial accounts of the MCSP and of the Managing MC must be kept entirely separate and at arm's length. If there are transactions between the MCSP and the Managing MC, these should be processed on a formal basis - with full written explanations in the files of both companies.
- 29 Further, the bank accounts of the MCSP, those of its clients and of the Managing MC must be kept entirely separate and at arm's length. From time to time (and perhaps during Compliance Visits) the FSC will ask to see reconciliations.

PRACTICE NOTE 7

The Board of the Managing MC must exercise due care and diligence in fulfilling its duties towards the clients of the MCSP and shall be accountable to the FSC for all regulatory omissions, defaults or failures committed in the provision of services to the clients of the MCSP to the same extent as the MCSP's Board of Directors.

Explanatory Notes

- 30 The FSC's licensing standards and the standards for conduct of business as MC cannot be compromised by the setting up of MCSPs. The MCSP has its own responsibility to comply with its licensing conditions and with its regulatory obligations. However, because of the relative proximity of the MC to the operation of the MCSP, the MC will be expected to take such steps and measures as are necessary to ensure that appropriate standards of business conduct are adopted and applied in the provision of services to the clients of the MCSP.
- 31 Any failure by the Managing MC to comply with the above conditions in the management of the business and affairs of the MCSP, particularly in failing to disclose to the FSC any breach by the MCSP of its regulatory obligations which the Managing MC has actual knowledge of or ought to have known shall constitute a breach of its obligations as a Managing MC and may lead to disciplinary action being taken against the Managing MC. This is without prejudice to any regulatory action which FSC may take against the MCSP.

PART 3

MISCELLANEOUS PROVISIONS

- 32 These Practice Notes shall come into force on 02 February 2005.
- 33 To ensure the smooth operation of the new regime of MCSPs, any Management Licence granted to a MCSP before 02 February 2005 (existing MCSPs) shall terminate on 31 December 2005.
- 34 Existing MCSPs shall by 31 December 2005 submit to the FSC a fresh application stating whether the MCSP intends to continue its operations as a MCSP or whether it intends to set up as an independent stand alone operation. Where the existing MCSP resolves to set up as an independent stand alone MC it will have to satisfy the FSC of appropriate steps taken to operate as an independent stand alone MC. In considering an application from an existing MCSP which intends to continue its operations as a MCSP, the FSC will be guided by the operations of the MCSP and by its overall standing. The resources of the Managing MC will also be re-assessed.
- 35 Any existing MCSP who objects to the termination of its Management Licence under these Practice Notes shall give notice of its objection not later than 30 September 2005 setting out fully its reasons. Where no objection is made within this delay, the FSC will consider that the existing MCSP does not object to the termination of the Management Licence.
- 36 Any existing MCSP that fails to comply with paragraph 34 shall be subject to regulatory action which may include one or both of the following-
- (i) the issue of a direction to the existing MCSP to cease operation as a MCSP;
 - (ii) revocation of the Management Licence of the MCSP.

APPENDIX

Glossary

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| AML/CFT Framework | All the set of requirements, processes and mechanisms, and the legal obligations prescribed by the Financial Intelligence and Anti-Money Laundering Act 2002, and regulations made under that Act, and the FSC Code on the Prevention of Money Laundering and Terrorist Financing intended for Management Companies issued by the FSC on 18 April 2003. |
| Act | the Financial Services Development Act 2001. |
| Commission or FSC | the Financial Services Commission established under the Financial Services Development Act 2001. |
| Existing MCSP | a Management Company permitted to operate as Managed Corporate Service Provider before 02 February 2005. |
| Licensee | a person holding a Management Licence issued under section 24 of the Financial Services Development Act 2001. |
| MCSP | A licensed Management Company which operates under a Management Agreement with another Management Company having established premises and office in Mauritius |
| Management Agreement | a contractual arrangement between an established Management Company (the Managing MC) and a MCSP whereby the Managing MC agrees to provide company management and other related services to a MCSP and to assume legal and operational responsibility for the MCSP. |
| Management Company | a company licensed under section 24 of the Financial Services Development Act 2001 and includes a Qualified Trustee and a Corporate Trustee. |
| Management Licence | a licence issued under section 24 of the Financial Services Development Act 2001. |
| Managing MC | A fully established Management Company having the resources to provide company management and other related services to a MCSP. |

Principal Officer

The chief officer, by whatever name called, who manages the day-to day affairs of a Management Company and who is principally responsible to its Board for such management.