



Financial Services Commission
Mauritius

CIRCULAR LETTER – CL280313

*To: Directors of
Management Companies,
Reporting Issuers and
Companies licensed by the FSC*

28 March 2013

Dear Sir/Madam,

In line with provisions of the Economic and Financial Measures (Miscellaneous Provisions) Act 2012 whereby the Financial Services Act 2007 was amended to enable the Chief Executive to direct any person to comply with any of the principles and practices of corporate governance laid down in the Code of Corporate Governance issued under the Financial Reporting Act, the Financial Services Commission (FSC) is issuing this Circular Letter to remind directors of all its licensees and reporting issuers of their duties and obligations under the law.

Directors of licensees and reporting issuers are reminded that, upon signing the “Consent & Certificate of Director Form (F16)”, they are confirming their agreement to abide by all the provisions of the Companies Act 2001. Directors are further reminded that pursuant to **Section 143(1) of the Companies Act 2001**, all directors are required to exercise their duties in good faith, in the best interests of the company and for the respective purposes for which such duties are explicitly or impliedly conferred.

In performing their duties, directors must exercise the care, diligence and skills that a reasonable prudent director would exercise and should always act in accordance with the law, honestly, in good faith and in the best interest of the companies. Directors should also ensure that they do not put themselves in a position that will impair their ability to perform their functions properly and to be sufficiently involved in the control and management of the companies.

The attention of the directors of relevant licensees and reporting issuers is also drawn to **clause 2.7.8 of the Code of Corporate Governance (the Code)** which includes the duty of directors to ensure that they carry out their responsibilities and to regularly attend board meetings and acquire a broad knowledge of the business of the Company. Furthermore, **Clause 1.8 of the Code** provides that regulators, inter alia, are responsible for monitoring the application of the principle set out in the Code. Accordingly, the extent to which a licensee is able to demonstrate compliance with the Code will be duly considered by the FSC in the supervision of its licensees.

The attention of the directors of all licensees is also drawn to procedures applied upon the receipt of an application for a new licence, on the renewal of an existing licence or on approval/ notification of appointments of new directors. The FSC may consider whether the current directors or proposed directors have the capacity and are/will be able to perform their duties in accordance with the law and regulatory requirements.

In conducting this task, the FSC will take into account the following:

1. Qualification and experience

A director shall have the relevant qualification and experience to exercise sufficient care, diligence and skills for the good conduct of the business of a licensee/reporting issuer.

2. Independence of mind

A director shall act with integrity and freedom of mind, without any influence, interest or relationship that might impair his professional judgement or objectivity.

3. Judgment

In the performance of his/her duties, a director shall provide impartial and good judgment.

4. Time Commitment

When a director serves on multiple boards, he/she shall ensure that sufficient time and attention is given to the affairs of each board he/she serves on. The director shall be adequately involved in the control and management of the licensee and perform his/her functions properly and efficiently.

It is expected that a director shall be able to demonstrate that he / she is / will be able to devote sufficient time to:

- adequately prepare for each board meeting;
- attend each board meeting including the annual general meeting;
- address the complexities and risks involved in each licensee;
- actively participate in deliberations of the board meetings;
- adequately prepare for any board committees he/she is a member of and actively participate in the deliberations of the committee(s);
- be acquainted with the affairs and business of each licensee; and
- fulfill all his/her obligations and responsibilities in accordance with the requirements set out in the Companies Act 2001.

In assessing his/her time commitment, the director may consider the following factors:

Self

- the number of available working days in a year;
- other commitments of the director – whether self-employed, retired or in full time employment;
- number of years of experience as Director;
- number of hours per day available for preparing and attending board meetings and any committees he/she is a member of;
- availability of support staff with relevant qualifications and expertise to assist the director in performing his/her duties.

Company

- frequency of meetings - board & committee meetings;
- number of committee meetings per year
- size, nature and complexity of business of the company, such as whether the company is an investment holding company or is an active trading company or a services related company or an active fund; and
- other factors such as the company being part of a group structure.

The FSC will also give due consideration to matters raised by directors, licensees and reporting issuers on a case by case basis.

Yours faithfully,

Clairette Ah-Hen
Chief Executive