

28 February 2018



**Financial Services Commission**  
Mauritius

## CIRCULAR LETTER

CL280218

To Directors/Officers

Licensees

Dear Sir/Madam,

### **NATIONAL CODE OF CORPORATE GOVERNANCE**

#### ***1.0 Purpose of the Circular Letter***

The National Committee on Corporate Governance has in accordance with section 65(c) of the Financial Reporting Act 2004 issued the Second Edition of the National Code of Corporate Governance (the 'Code') which has been published in the Government Gazette (General Notice No. 1804 of 2016) on 3 December 2016. The Code is applicable as from the reporting year (financial period) ending 30 June 2018. The purpose of this Circular Letter is to inform licensees of their obligations with respect to the new Code.

#### ***2.0 The principles of the Code***

2.1 The Code adopts a 'principles-based' approach and the core of the Code consists of 8 corporate governance principles (the "Principles") namely-

1. Governance Structure;
2. The Structure of the Board and its Committees;
3. Director Appointment Procedures;
4. Director Duties, Remuneration and Performance;
5. Risk Governance and Internal Control;
6. Reporting with Integrity;
7. Audit; and
8. Relations with Shareholders and Other Key Stakeholders.

2.2 The Code also provides for specific guidance on how to apply the Principles for different types of companies and sectors of the Mauritian economy.

### **3.0 To whom does the Code apply?**

#### *3.1 Licensees having the statutory obligation to comply with the Code*

Where a licensee has an obligation to comply with the Code under the Financial Reporting Act, the Companies Act, the relevant Acts<sup>1</sup> or any other enactment, it should comply with the Code.

#### *3.2 Licensees providing financial services.*

3.2.1 Subject to paragraph 3.2.2, the Code shall also be applicable to all licensees of the Financial Services Commission ('FSC') providing financial services<sup>2</sup>, including Management Companies. In addition, compliance with the Code shall be mandatory for holders of Category 1 Global Business Licences (GBC1s) which provide financial services or conduct financial business activities.

3.2.2 The FSC will not make it mandatory for the following licensees<sup>3</sup> (unless such licensees have the statutory obligation to comply with the Code as mentioned paragraph 3.1) to comply with the Code-

1. Expert Funds, Professional CIS or Specialised CIS which are not Reporting Issuers;
2. Overseas Family Offices;
3. Private Pension Schemes;
4. An individual person who is the holder of a licence;
5. Insurance agents;
6. Holders of Global Headquarter Administration licence;
7. Holders of Global Treasury Activities Licence.

3.2.3 Even if licensees are exempted under paragraph 3.2.2 to report on the implementation of the Principles of the Code, they should set up appropriate corporate governance measures where this is required under their respective licensing conditions.

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<sup>1</sup> Defined in the Financial Services Act.

<sup>2</sup> Defined in the Financial Services Act.

<sup>3</sup> Defined in the Financial Services Act.

## **4.0 *The implications of the provisions***

### **4.1 General**

4.1.1 All licensees required to comply with the Code ('relevant licensees') should apply the 8 Principles in accordance with the nature of their business and inspire themselves from the specific guidance when same is applicable.

4.1.2 Where a relevant licensee is required to comply with Corporate Governance requirements in a foreign jurisdiction, it may, with the **prior approval** of the FSC, comply with the foreign requirements in lieu of the requirements of the Mauritian Code. The FSC may impose any condition when giving any approval under this paragraph.

### **4.2 Reporting and Disclosures**

The approach adopted in the Code depends significantly on reporting and disclosure of Corporate Governance practices to stakeholders. Relevant licensees should disclose compliance with the Code on an 'apply and explain' basis in the manner laid out in the Code. Also, relevant licensees should inspire themselves from the guidance provided in the Code and make other appropriate disclosures.

### **4.3 Directors' Report**

All relevant licensees shall ensure that their Annual Reports/ Audited Financial Statements are accompanied by a Directors' Statement of Compliance with the Code in the form and manner provided in the Code.

### **4.4 Auditors' Report**

The auditors of the relevant licensees shall assess any explanation in cases of non-compliance and shall make a report in the form and manner provided in the Code.

#### 4.5 Role of the FSC

The FSC, as the regulator of non-banking financial services and global business sectors will monitor the application of the Code and adherence to corporate governance principles by the relevant licensees. The extent to which a relevant licensee is able to demonstrate compliance with the Code and Corporate Governance principles will be considered by the FSC in the supervision of licensees. Where circumstances warrant, the FSC may-

- (i) pursuant to section 46(2)(ca) of the Financial Services Act 2007, direct a licensee to comply with any of the principles and practices of corporate governance laid down in the Code; or
- (ii) impose other regulatory sanctions where non-compliance with the Code amounts to a breach of the relevant Acts or licensing conditions.

#### ***5.0 Other obligations to comply with the Code***

This circular letter is without prejudice to any obligation for any entity to comply with the Code under the Financial Reporting Act, Companies Act, relevant Acts, or any other enactment and should not be used as an excuse for not complying with any other requirements under the law.

*Signed by Mr Harvesh Seegolam, Chief Executive, on 28 February 2018*