Before the Financial Services Review Panel

2018 FSRP 5

In the matter of –

HM	**<u>Applicant</u>**
v/s	
The Financial Services Commission	**<u>Respondent</u>**

<u>Determination</u>

1. The Applicant was at all material times a Director of the following companies:
   (i) B Limited;
   (ii) N Inc.;
   (iii) C Inc; and
   (iv) SF.

2. Following investigations and on-site inspections into the business of the above named companies, the investigators and inspectors submitted their reports in respect of each company, to the Chief Executive of the Respondent.

3. In the light of the reports which, according to the Respondent, revealed numerous breaches committed by the companies and the written representations submitted by (i) the Applicant in his capacity as Director, (ii) B Chambers on behalf of N Inc and (iii) Mr S on behalf of C Inc and B Limited, the Chief Executive had reasonable cause to believe that the officers of the Companies were not fit and proper. The Chief Executive, by letter dated 30 October 2014, referred the matter to the Enforcement Committee (EC) to take such action, as the EC deemed appropriate against the officers of the Companies.

4. By notice dated 24 December 2014 (2014 Notice), the EC, referring to the numerous breaches committed by the companies under the Applicant's directorship, was concerned as to whether the Applicant was fit and proper to hold office or position in a licensee of the Respondent. The EC was therefore contemplating to disqualify the Applicant from holding office or position in a licensee of the Respondent for a period not exceeding five years, pursuant to section 52(3)

and section 7(1) (c) (iv) of the Financial Services Act ("FSA"). The Applicant was informed of his right to make written representations to the EC with respect to the alleged breaches and to the sanction contemplated within a period of 21 days from the date of the notice.

5. The Applicant submitted his representations as requested, to the EC reiterating the representations sent to the Chief Executive in reply to the show cause letter.

6. By letter dated 16 March 2015 (2015 Notice) issued under section 53(3) of the FSA, the EC, following an assessment of the Applicant's representations concluded -

I. B Limited

A. Breaches of the FSA

(i) B Limited failed to comply with section 18 of the FSA in that as a Management Company, it did not satisfy the criteria and standards, including prudential standards, applicable to its business activity. B Limited did not have the requisite systems, procedures and resources for proper supervision of its business and the business of its clients and did not have adequately qualified staff to ensure proper supervision of its clients;

(ii) B Limited failed to comply with section 29 of the FSA - insufficient record keeping pertaining to transactional and other records was observed.

(iii) B Limited failed to comply with section 30 of the FSA - it did not file its audited financial statements ("AFS") for the financial years ending December 2011, December 2012 and December 2013 within the statutory timeframe.

B. Non-compliance with the Code on the Prevention of Money Laundering and Terrorist Financing (the "Code")

(i) B Limited failed to know its clients as required under Chapter 4 of the Code. The Respondent observed that the Applicant, as director on the Board of SF, was unaware of the activities being conducted by SF. A review of the file of B Limited revealed that Ms. E had been appointed as Manager of its Mauritian office; the Applicant confirmed that he was unaware that Ms E had been issued a work permit and salaries were being paid to her.

(ii) B Limited also failed to comply with paragraph 4.1 of the Code as it did not verify the identity of its clients using reliable, independent source documents, data or information. It was noted that B Limited did not carry out independent checks on source of funds of its clients but instead relied solely on confirmation from clients.

(iii) B Limited failed to comply with paragraph 4.3 of the Code. The Applicant certified Customer Due Diligence ("CDD") documents as true copies without having access to original identity documentations. This deficiency was noted in almost all clients' files of B Limited.

(iv) B Limited furthermore failed to comply with Chapter 5 of the Code as it did not conduct risk profiling of its clients' companies.

(v) B Limited failed to conduct training for the Money Laundering Reporting Officer ("MLRO") in contravention of paragraph 7.5 of the Code. A review of the file of B Limited showed that the MLRO did not follow any annual refresher training pertaining to Anti Money Laundering/Combating Financing of Terrorism ("AML/CFT").

C. Breach of Licensing Conditions

B Limited failed to comply with condition 5 of its Management Licence insofar as it did not have a policy on corporate governance.

II. N Inc.

A. Breaches of the FSA

(i) N Inc. acted in breach of section 29 of the FSA. It failed to keep proper records, including accounting records. It was noted that records with respect to the transactions of N Inc. were not available at its registered office. N Inc. consequently also acted in breach of section 190 of the Companies Act and in breach of the Licensing Conditions for an Investment Adviser (Unrestricted) Licence.

(ii) N Inc. acted in breach of section 30 of the FSA in that N Inc. had not filed any AFS since its inception.

B. Breaches of the Securities Act

N Inc. also breached:

(i) section 55 of the Securities Act in that N Inc. had not filed any Annual Report since its inception; and

(ii) section 107 of the Securities Act in that N Inc. failed to inform the Respondent of the change of the auditor from B to JFS, an audit firm not found on the list of firms approved by the Financial Reporting Council.

C. Non-compliance with the Code

N Inc. failed to adopt the necessary AML/CFT measures provided under the Code as it:

(i) failed to comply with the requirements of paragraph 4.1 of the Code;

(ii) breached paragraph 4.2 of the Code in that it failed to take appropriate measures to establish the source of funds of each applicant for business;

(iii) failed to comply with paragraph 4.4 of the Code in that it failed to establish any responsibility in writing with most of its service providers given that the Respondent could only view the F Inside Broker-Dealer Market Participant Agreement at the time of the investigation.

D. Breach of Rule 14(1) of the Securities (Licensing) Rules 2007 ("Securities Rules")

N Inc. failed to fulfil the requirement to maintain the requisite unimpaired capital of MUR 600,000.

E. Breach of Licensing Conditions

(i) N Inc. breached the Licensing Condition No. 2 of its Category 1 Global Business Licence since N Inc. was issued with several regulatory warnings by various EU financial regulatory bodies as it did not seek the requisite licence/approval/authorisation;

(ii) N Inc. failed to devise and set-up appropriate corporate governance measures for its sustainability since its Board did not have an appropriate balance of executive, non-executive and independent directors to ensure satisfactory performance within a framework of good governance, thereby breaching Licensing Condition No. 5 of its Category 1 Global Business Licence.

F. Other matters

N Inc. had set up representative offices in India, Ukraine, Russia and Indonesia without informing or requesting the prior approval of the Respondent. At the time of application, N Inc. did not inform the Respondent that it would be setting up subsidiaries in other jurisdictions and subsequently did not notify the Respondent of same.

III. C Inc

A. Breaches of the FSA

C Inc:

(i) acted in breach of section 29 of the FSA in that it failed to keep proper records, including but not limited to accounting records, board resolutions and minutes of the Board/shareholders meetings. It was further noted that records of the transactions of C Inc were not available at its registered office, in breach of section 190 of the Companies Act;

(i) breached section 30 of the FSA in that C Inc had not filed any AFS with the Respondent since its inception;

(ii) acted in breach of subsections 71(4)(ii)-(iv) of the FSA in that C Inc did not conduct its business in line with its Category 1 Global Business Licence inasmuch as C Inc:

- did not maintain its principal bank account in Mauritius;
- did not keep its accounting records at its registered office in Mauritius; and
- did not prepare or propose to prepare its statutory financial statements and did not cause or propose to have such financial statements audited in Mauritius.

B. Non-compliance with the Code

(i) C Inc failed to comply with the requirements of paragraph 4.1 of the Code in that it did not undertake reviews of existing records, particularly for higher risk categories of customers or business relationship.

(ii) C Inc also failed to comply with paragraph 4.1.2 of the Code in that it did not establish any responsibility in the identification and verification of applicants for business.

C. Non-Compliance with Rule 14(1) of the Securities (Licensing) Rules 2007

C Inc failed to fulfill the requirement to maintain the requisite unimpaired capital of MUR 500,000.

D. Breach of Licensing Conditions – Conditions No. 2 and No. 5

(i) C Inc failed to adopt, enforce and re-assess on an annual basis, its AML/CFT framework in breach of Licensing Condition No. 4 of its Payment Intermediaries Services Licence.

(ii) C Inc failed to devise and set-up appropriate corporate governance measures for its sustainability in that the Board of C Inc did not have an appropriate balance of executive, non-executive and independent directors to ensure satisfactory performance within a framework of good governance to serve the interest of all stakeholders and it did not set up any board committee as of date, thereby acting in breach of Licensing Condition No. 5 of its Payment Intermediaries Services Licence.

E. Other matters

C Inc had set up subsidiaries in Labuan (Malaysia) and in Russia and had offices in Holland and Cyprus. At the time of its application for a licence, C Inc did not inform the Respondent that it would be setting up subsidiaries in other jurisdictions and did not subsequently notify the Respondent of same.

IV. SF

A. Breaches of the FSA

SF:

(i) acted in breach of section 23 of the FSA in that the shares in SF were transferred without the prior approval of the Respondent;

(ii) acted in breach of section 24 of the FSA, based on the website of SF and from documents gathered, Ms. E had been appointed as Manager of SF without the prior approval of the Respondent;

(iii) acted in breach of section 29 of the FSA in that SF failed to keep proper records, including, but not limited to, accounting records, board resolutions and minutes of the board/shareholders meetings - records with respect to the transactions of SF were not available and were not kept at its registered office. SF consequently acted in breach of section 190 of CA 2001 and Licensing Condition No. 2 of its Investment Adviser (Unrestricted) Licence;

(iv) acted in breach of section 30 of the FSA in that it failed to file AFS with the Respondent since its inception.

B. Breach of the Securities Act

SF failed to comply with the requirements of section 55 of the Securities Act in that it did not file any annual report with the Respondent since its inception.

C. Non-compliance with the Code

SF:

(i) failed to comply with the requirements of paragraph 4.1 of the Code in that SF did not keep any CDD document with respect to the beneficial owners/shareholders/non-resident directors at its registered office;

(ii) failed to comply with paragraph 4.4 of the Code in that SF failed to establish any responsibility in writing with D, a company incorporated in Cyprus and also failed to monitor relationship with D.

D. Breach of Rule 14(1) of the Securities (Licensing) Rules 2007

There was no evidence that SF had been maintaining the requisite unimpaired capital of MUR 600,000.

E. Breach of Licensing Conditions

(i) SF breached Licensing Condition No. 2 of its Category 1 Global Business Licence in that, as per the public notice issued by the Autorité des Marchés Financiers ('AMF') and the Autorité de Contrôle Prudentiel ('ACP') Banque de France, SF did not seek the requisite licence/approval/authorisation from the said authorities.

(ii) SF failed to devise and set-up appropriate corporate governance measures for its sustainability in that its board did not have an appropriate balance of executive, non-executive and independent directors to ensure satisfactory performance within a framework of good governance in order to serve the interest of all stakeholders and it had not set up any board committee as of date, thereby acting in breach of Licensing Condition No. 5 of its Category 1 Global Business Licence.

F. Other matters

It was observed that SF was providing false and misleading information on its website. It was running an online platform in the name of F, which was not a licensee of the Respondent.

7. The EC observed that the breaches were committed during the Applicant's tenure in office as director.

8. Based on the breaches committed and the Applicant's written representations, the EC:

   (a) concluded that the Applicant was not fit and proper to hold office or position in a licensee of the Respondent; and

   (b) disqualified him from holding position as Officer in any licensee of the Respondent for a period of five years pursuant to sections 52(3) and 7(1) (c) (iv) of the FSA.

9. Aggrieved by the decisions of the EC, the Applicant is seeking a review of the decision on the following grounds:

> *"1. The contents of the 16th March 2015 letter are the same as the 24th December 2014 letter in relation to which my written representations were sought. I had replied to the latter by letter dated 1st January 2015. The reasons or grounds of review are therefore found in and particularized in my said letter of 1st January 2015, hereto attached (marked as **Exhibit 2**)* [**Not reproduced here**]

2. *The inspection carried out by the Chief Executive on 19 December 2013 with respect to B Limited and any investigation report in pursuance thereto on which the EC must have based its observations and decision are flawed and unlawful inasmuch as no reasonable notice was given for the inspection as the investigator was never asked any questions or queries or clarifications nor asked for the production of any additional information or documents.*

3. *The complaints or charges (in the 24th December 2014 letter) which were in the nature of already made findings are general, vague and imprecise (without reasonable and sufficient particulars) such that they amount to no complaints or charges at all or to no proper complaints or charges.*

4. *Particulars requested for have never been communicated. This is the same wrongful, unreasonable and unlawful attitude adopted towards B Limited.*

5. *The generality, the vagueness and the imprecision of the allegations, complaints or charges and the failure or neglect to furnish the particulars requested make that I (like B Limited) have never been afforded a real and effective opportunity to make representations as per law.*

6. *The EC had already made its findings (which are the same for B Limited) before the alleged opportunity (which amounted to no opportunity at all) given to the Applicant to make written representations, which was treated by the EC as a mere formality.*

7. *The decision or findings as per the 16th March letter (the contents of which are the same as the 24th December 2014 letter) are therefore also general, vague and imprecise. As a result, no reasons or no proper reasons have been given by the EC.*

8. *The Chief Executive did not and/or could not have reasonable cause to form any belief under Section 53 of the Financial Services Act to refer the matter to the EC.*

9. *The decision is tainted with bias and partiality.*

> *10. The decision is unreasonable, or manifestly unreasonable or unreasonable in the wendsbury sense".*

10. The Respondent is resisting the application.

11. We propose to consider the grounds for review in the following order:

   (i) Ground 2;
   (ii) Grounds 3,4,5;
   (iii) Ground 1;
   (iv) Ground 8;
   (v) Grounds 6,7;
   (vi) Ground 9; and
   (vii) Ground 10

12. Ground 2:

"The inspection carried out by the Chief Executive on 19 December 2013 with respect to B Limited and any investigation report in pursuance thereto on which the EC must have based its observations and decision are flawed and unlawful inasmuch as no reasonable notice was given for the inspection as the investigator never asked any questions or clarifications nor asked for the production of any additional information or documents."

12.1 The above ground is two-fold.

(i) Is the Respondent required to give "reasonable notice" of an intended investigation?
(ii) Did the investigator comply with sections 44(2)(a)(b)(c), 44(3) and 44(4) of the FSA in the conduct of the investigation?

12.2 In reply to the show cause letter, the Applicant stated the following: [**Not reproduced here**]

12.3 In his statement of case, the Applicant averred that:

(i) He did make arrangements for (a) the availability of an administrative staff to answer and note any queries from officers of the Respondent (b) the presence of Mr C, another Director of B Limited, but Mr C was taken up in a court matter when the officers of the Respondent called.

(ii) The administrative staff, who was present on the day of the investigation, was someone who knew the operational matters of B Limited. She was also briefed by the Applicant on a number of relevant issues in order to assist the officers. Though she might not have been in a position to reply to complex questions, she could have replied to most queries pertaining to B Limited, in particular on its corporate governance policy.

(iii) The investigators did not ask for the information that they could not find. Had the investigators raised any query, the applicant would have responded on the following day.

(iv) The comments of the investigators were unfair, unreasonable and tainted with bad faith as such opinion had been reached without seeking or without having had the willingness to seek relevant information.

(v) It is completely inaccurate to say that the Respondent made *several attempts* to contact the Applicant and that the Applicant was not available. The Applicant was not available only for a few hours on the day of the investigation. Besides, one officer of the Respondent did speak to the Applicant on his cell phone.

(vi) The officer did not query about any missing information but rather inquired on the whereabouts of the Applicant. Had the officer asked the Applicant, while he was talking to him that, for instance, he could not find the policy on corporate governance, the Applicant would have provided a copy. The latter could have also provided a list of ‘missing information’ to the administrative staff and same would have been dealt with on the following day by the Applicant or another officer of B Limited. That there was no business plan in the file of H ltd is baseless. In fact the said business plan was on record and a copy was sent to the Respondent.

(vii) It was clear that the investigators were minded to find 'flaws' which in fact did not exisit at all (by taking advantage of the absence of the Applicant). Consequently the Applicant was unjustifiably sanctioned.

12.4 The Respondent's case:

(i) Following several continued deficiencies noted in the business of B Limited, the Chief Executive ordered an investigation to be carried out into the business of B Limited on 19th December 2013. By letter dated 17 December 2013, the Applicant was duly informed of the intended investigation. On the day of the investigation, only an administrative staff was present. She was not aware of the whereabouts of the Applicant and the contact details of the other directors. One of the investigators, who managed to reach the Applicant on the phone, was informed that arrangements had been made for another director to be present.

(ii) The Respondent could not seek clarifications from the employee, who would not have been in a position to answer in view of her job profile at B Limited. Furthermore, an administrative staff is not an officer as defined under the FSA.

(iii) The Respondent made numerous attempts to query the Applicant in relation to the operation of B Limited, its Customer Due Diligence and other deficiencies but the Applicant was not available. This was put to him and to B Limited by way of letter dated 21 April 2014. The investigators also tried to reach the other director of B Limited but without success. There was no director present during the investigation.

(iv) The investigators reviewed several files of companies falling under the administration of B Limited. They noted numerous deficiencies and breaches, which were detailed in a report submitted to the Respondent on 19 December 2013.

12.5 Section 44(1) of the FSA provides -

(1) Where the Chief Executive has reasonable cause to believe that a licensee –

(a) has committed, is committing or is likely to commit, a breach of –

(i) any of the relevant Acts;

(ii) any condition of his licence, authorisation or registration; or

(iii) any direction issued by the Commission under a relevant Act;

(b) has carried out, is carrying or is likely to carry out, any activity which may cause prejudice to the soundness and stability of the financial system of Mauritius or to the reputation of Mauritius or which may threaten the integrity of the system;

(c) has failed or is failing to take such measures as are required pursuant to the Financial Intelligence and Anti-Money Laundering Act 2002,

the Chief Executive may order that an investigation be conducted into the business or any part of the business of the licensee or its associate.

12.6 The above section does not require that "reasonable notice" be given to a licensee for the conduct of an investigation.

12.7 Under section 44(4) of the FSA, the investigator should be duly authorised by the Chief Executive and they should show the authorisation letter to the person being investigated.

12.8 The person being investigated is the licensee. By "personne interposée" its director, who was absent but had made arrangements that an employee of the company be present in order to assist the investigators. In compliance with section 44(4) of the FSA, the investigators showed the authorisation letter to the employee delegated to assist them.

12.9 Under section 44(2)(a) of the FSA, … *a person duly authorised in writing by the Chief Executive as an investigator shall have all the powers of the Chief Executive under section 43 and may direct the licensee, or any of its officers, its employees, and its associates or any witness to produce to the investigator, at a reasonable time and place specified in the direction, any specified document or other thing that may afford such evidence and that is in his possession or under his control.*

12.10 It is admitted that the investigators did not ask the staff any document nor did they make any query or ask for clarifications. The reason put forward by the Respondent is that the person delegated to assist them was not an officer under the FSA.

12.11 Granting that the investigators did not deem it apposite to seek information from the employee who was not an officer, under the above provision, an investigator has the discretion to direct the licensee, or any of its officers, its employees, and its associates or any witness to produce to the investigator, at a reasonable time and place specified in the direction, any specified document or other thing that may afford such evidence and that is in his possession or under his control (emphasis added).

12.12 In the present case, the investigators did not use their discretionary power under section 44(2)(a) of the FSA but submitted their report on the very day of the investigation itself to the Chief Executive.

Did the investigators use their discretion judiciously?

12.13 Bearing in mind that under section 44 of the FSA, the Respondent does not have to give notice of an intended investigation and that the whole purpose of an investigation is to obtain evidence regarding the business activity of a licensee, we are of the considered view that the spirit of section 44(2) is indeed to afford a licensee reasonable time to produce to the investigator any specified document or information that may afford such evidence and that is in his possession or under his control.

12.14 We find that the investigators failed to give the Applicant reasonable time to produce evidence. That the Applicant was not present and that the employee delegated to assist the investigator is not an officer, are no excuses. In the circumstances, the investigators did not use their discretion judiciously.

12.15 However, the lapsus is not the be all and end all of the matter. The Respondent's case is not based solely on the investigation carried out on 19 December 2013. The Applicant was given ample opportunities in the show cause letter to produce any evidence which might tilt the scales of justice in his favour. On 13 January 2014, the Applicant did reply to the show cause letter. In a letter dated 21 April 2014, the Chief Executive referring to the show cause letter and the Applicant's reply, gave details of the deficiencies noted by the investigators and requested the Applicant to respond to the issues raised. By letter dated 28 April 2014, Mr S, Counsel for B Limited, addressed the issues raised by the Respondent.

12.16 The matter was referred to the EC on the basis of the representations submitted and the investigation conducted on 19 December 2013. As required under the FSA, in its notice dated 24 December 2014, the EC requested the Applicant to submit written representations with regard to the breaches mentioned in the notice.

12.17 In the circumstances, we are of the view that the failure of the investigator to meet the requirement of section 44(2)(a) of the FSA does not have a negative impact on the Respondent's case.

12.18 There is yet another reason as to why the failure of the investigators to use their discretion under section 44(2) of the FSA is not fatal to the Respondent's case. The Respondent annexed a number of documents in support of its case (the referral letter, the investigation reports, representations from legal representatives). The Applicant is therefore before the Review Panel, in presence of the particulars sought.

12.19 We accordingly find that the second ground for review must fail.

13. Grounds 3, 4 and 5.

3.The complaints or charges (in the 24th December 2014 letter) which were in the nature of already made findings are general, vague and imprecise (without reasonable and sufficient particulars) such that they amount to no complaints or charges at all or to no proper complaints or charges.

4. Particulars requested for have never been communicated. This is the same wrongful, unreasonable and unlawful attitude adopted towards B Limited.

5.The generality, the vagueness and the imprecision of the allegations, complaints or charges and the failure or neglect to furnish the particulars requested make that I (like B Limited) have never been afforded a real and effective opportunity to make representations as per law.

13.1 In his statement of case, the Applicant reiterated his grounds for review and further averred that:

(i) the Respondent never even acknowledged receipt of the 13 January 2014 B Limited letter; and

(ii) the allegations themselves were couched as findings, which had already been made and hence, there were no room for manoeuvre to persuade the Respondent to deal with the matter impartially.

13.2 The Respondent contended that -

(i) It duly issued a notice to the Applicant, as required under section 53 (2) of the FSA.

(ii) The said notice consisted of 10 pages and the breaches of each of the companies under the directorship of the Applicant were listed together with full particulars of the findings of the investigations and inspections.

(iii) Its notice was sufficiently particularised and the findings of the Respondent were disclosed fully, to inform the Applicant of the breaches identified and the sanctions contemplated. In these circumstances, the Respondent submitted that the Applicant was aware of all particulars and there was no need to supply the same particulars again.

(iv) The Applicant was afforded an opportunity to be present during the investigation and to provide explanations instantly, but the Applicant did not seize the opportunity.

(v) Following the investigation, the Respondent issued a letter dated 31 December 2013 to the board of directors of B Limited informing them of the findings of the investigation and providing them with an opportunity to submit representations.

(vi) It is completely wrong and inaccurate of the Applicant to state that particulars were not communicated to him and that the Respondent did not acknowledge receipt of his letter dated 13 January 2014. Over and above the details provided, the Respondent replied to the letter dated 13 January 2014 and addressed the queries of the Applicant. This shows clearly that the Respondent considered the representations submitted. After due consideration of the Applicant's representations, in his letter dated 21 April 2014 addressed to the directors, the Respondent reiterated its concerns in relation to a number of breaches mentioned in the show cause letter. By letter dated 28 April 2014, the legal representative of B Limited replied to the Respondent. A further letter dated 24 December 2014 was sent to the Applicant, giving details of the breaches committed during his tenure in office as Officer and inviting representations in this respect.

13.3 The particulars sought in reply to the show cause letter and the Applicant's representations to the 2014 Notice were the same and were reproduced in his statement of case. They are:

(i) Which criteria and standards have not been satisfied?
(ii) Which prudential standards have not been satisfied?
(iii) In what manner did the management company not have the requisite systems, procedures and resources for supervision of its business and the business of its clients?
(iv) Why it alleged that the company did not have adequate qualified staff?
(v) Which "several companies" are being referred to in paragraph?
(vi) Which "clients" are being referred to on the averment relating to the verification of the identity of clients?
(vii) Which "clients" are being referred to on the averment of alleged failure to carry out independent checks on source of funds?
(viii) Which "independent checks" are being referred to?

13.4 The notice issued pursuant to section 53(2) consisted of 10 pages, all the breaches identified were particularised. Thus, the Applicant was well aware of the particulars of the breaches.

13.5 In its statement of case, the Respondent annexed the referral letter and the investigation reports.

13.6 We have perused the investigation reports with regards to B Limited. The report on which the Chief Executive relied when referring the matter to the EC spelt out in sufficient detail the deficiencies noted.

13.7 We have given due consideration to the statement of case of both parties and the annexes, we find that the particulars sought have been satisfactorily supplied by the Respondent in the letter dated 21 April 2014 as is evident from the representations submitted by the legal representative of B Limited in his letter dated 28 April 2014.

13.8 Even if the Applicant considered that the alleged breaches were not sufficiently particularised to enable him to make his representations in the first place to the Chief Executive and then to the EC, the Applicant has been afforded another opportunity before the Review Panel. The Respondent produced a number of documents. In the circumstances, we find that the particulars sought by the Applicant were supplied.

13.9 Grounds 3, 4 and 5 accordingly fail.

14. Ground 1

"The contents of the 16th March 2015 letter are the same as the 24th December 2014 letter in relation to which my written representations were sought. I had replied to the latter by letter dated 1st January 2015. The reasons or grounds of review are therefore found in and particularized in my said letter of 1st January 2015, (…)"

14.1 Paragraphs 1 to 20 of the letter dated 1st January 2015 relate to B Limited. The issues raised in those paragraphs are:

(i) the generality, the vagueness and the imprecision of the allegations make that the averments do not amount to "reasons" under the Act;
(ii) particulars sought have not been supplied;
(iii)the investigation is flawed inasmuch as no notice was given;

14.2 The above points have been raised in grounds 2, 4 and 5 which we have already determined.

14.3 At paragraph 21 of its letter dated 1 January 2015, the Applicant stated:

"Please also note that as regards N Inc., C Inc and SF, replies have already been sent to the Respondent via letters dated 17 November 2013, 9 January 2014 and 10 January 2014 where it was demonstrated that the issues raised were not valid and others were not of a serious nature and steps were already taken to remedy any minor shortcomings. Their contents are reiterated in reply to your 24th December 2014 letter. 2 of 3 letters are attached and marked as ANNEX 2 (9 January 2014) and ANNEX 3 (10 January 2014) In addition, as regards SF, paragraph 14 above is repeated." (Paragraph 14 referred to breach of section 30 of the FSA.

According to the Applicant, section 30 applies to a corporation licensed by a Respondent and not by a management company).

14.4 The two letters annexed referred to the representations made by N Inc and C Inc. With regard to SF, the letter was not annexed. At the hearing of the 15 February 2018, the Review Panel requested the Applicant to submit the letter dated 17 November 2013. Unfortunately the Applicant failed to do so.

14.5 The letter dated 9 January 2014 (for C Inc) is reproduced below: [**Not reproduced here**]

14.6 The letter dated 10 January 2014 (for N Inc) is reproduced below: [**Not reproduced here**]

14.7 Under section 53(4) of the FSA,

> *(4) Any licensee who is aggrieved by the decision of the Enforcement Committee under subsection (3) –*
>
> *(a) may, within 21 days of the issue of the written notification, forward, by registered post, an application to the Review Panel specifying the reasons for a review of the decision; and*
>
> *(b) shall, at the same time, forward a copy of his application by registered post to the Commission.*

14.8 We are of the considered view that the annexes lack specificity and do not amount to grounds for review as provided under the above provision.

14.9 The letter dated 17 November 2013 allegedly submitted by SF to the Respondent was not produced to the Review Panel, although the Review Panel did request that same be produced.

14.10 Ground 1 must accordingly fail.

15. Ground 8

"The Chief Executive did not and/or could not have reasonable cause to form any belief under Section 53 of the Financial Services Act to refer the matter to the EC."

15.1 Suffice it to say that following the 19th December 2013 investigation into the activities of B Limited and inspections into the activities of N Inc. and C Inc, the licensees were afforded ample opportunities to take remedial actions with regard to the breaches identified as evidenced by the letters from their legal representatives and their replies to the show cause letter. As for SF, it did not respond to the show cause letter nor the letter that followed. Consequently, it cannot be gainsaid that the Chief Executive did not have reasonable grounds to refer the matter to the EC.

15.2 Ground 8 must accordingly fail.

16. Grounds 6 and 7

"6. The EC had already made its findings (which are the same for B Limited) before the alleged opportunity (which amounted to no opportunity at all) given to the Applicant to make written representations, which was treated by the EC as a mere formality.

7. The decision or findings as per the 16th March letter (the contents of which are the same as the 24th December 2014 letter) are therefore also general, vague and imprecise. As a result, no reasons or no proper reasons have been given by the EC."

16.1 We have given due consideration to the contention of both parties and the documents produced. We agree with the Respondent that the Applicant was given ample opportunity to make his representations in respect of the alleged breaches.

16.2 As the Review Panel, we have the power to consider the matter afresh in order to determine whether the conclusion of the EC was warranted.

16.3 We shall proceed to consider whether the alleged breaches were committed by the companies.

16.4 B Limited

B. Breach of sections 18, 29 and 30 of the FSA

(i) In his representation dated 1 January 2015, the Applicant submitted: [**Not reproduced here**]

(ii) The Applicant denied that the company acted in breach of section 29 and sought full particulars of the allegation.

(iii) In his statement of case, the Applicant reiterated the representation submitted above.

(iv) The Respondent maintained that the company (1) failed to comply with section 18 of the FSA inasmuch as it did not satisfy the criteria and standards, including prudential standards, applicable to its business activity as a Management Company, (2) did not have the requisite systems, procedures and resources for proper supervision of its business and the businesses of its clients; (3) did not have adequately qualified staff to ensure proper supervision of its clients; (4) failed to comply with section 29 of the FSA inasmuch as insufficient record keeping pertaining to transactional and other records was observed; (5) failed to comply with section 30 of the FSA 2007 by failing to file with the Respondent its audited financial statements ("AFS") in a timely manner since according to records, B Limited made late filings of its AFS for the past years.

(v) In its reply to the Applicant's statement of case, the Respondent submitted that the Applicant's argument, "that since B Limited was granted a licence by the Respondent, it means that the requirements of the law were met, does not hold water. All licensees have a duty to meet all legal and regulatory requirements at all times and not only at the time of application for a licence."

(vi) As regards the application dated 25 February 2013, for the appointment of a finance manager, the Respondent does not have any records of such application. The letter dated 29 November 2013 in relation to the appointment of 2 additional local directors was under consideration and the Respondent did not grant any approval subsequently as B Limited was under investigation and there were adverse findings.

(vii) The Respondent submitted that section 30 of the FSA, falls under Part V, titled "Ongoing Obligations of Licensees". Under the FSA,

"licensee" -

(a) means the holder of a license; and

(b) includes –

(i) any person authorized, registered or approved under the relevant Acts; and

(ii) any institution established to provide any service under the relevant Acts.

(viii) A Management Company is licensed under section 77 of the FSA is therefore a licensee of the Respondent, as such it must comply with Part V of the FSA.

(ix) Furthermore, by way of letter dated 14 December 2010, upon the grant of the licence to B Limited, the Respondent informed the latter of the obligation to comply with section 30 of the FSA.

(x) In any event, B Limited already admitted non-compliance with section 30 of the FSA.

(xi) Mr S on behalf of the company underlined at the outset, *that the beneficial owner or any other member of the Board do not fully subscribe to the views of Mr HM as expressed in his response to Respondent's queries dated 31 December 2013. His views do not represent that of the Company. The beneficial owner is greatly embarrassed by the response provided by Mr HM and is clearly shocked by his lack of professionalism. A lot of the issues raised by Respondent should never have existed had the Company been managed diligently and in accordance to the Rules and Regulations governing the industry.*

(xii) At paragraph 3 of his letter dated 28 April 2014, with regard to late filing of audited financial statements, Mr S stated *"We are at a loss to explain how Mr HM argued this point with Respondent. Respondent is clearly right on this point and the Company will henceforth ensure that all filings are done promptly. The beneficial owner wishes to reiterate that he is clearly lost at the behaviour and lack of responsibility of Mr HM who was the managing director of the Company. The BO undertakes that this will not be repeated as he is appointing (upon Respondent's approval) a qualified and experienced accountant to manage his Company.*

(xiii) We agree with the submissions of the Respondent with regard to the obligations of a licensee under section 18. We also agree that a corporation is a licensee under section 30.

B. Non compliance with (i) Chapter 4 of the Code, (ii) paragraph 4.1, (iii) paragraph 4.3, (iv) Chapter 5 and (v) paragraph 7.5 of the Code

(i) In his representation, the Applicant averred that "*You may further note that under Section 166 of the Companies Act "the duties of a secretary shall include but shall not be restricted to informing the Board of all legislations relevant to or affecting meetings of shareholders and directors and reporting at any meetings and the filings of any documents required of the company and any failure to comply with such legislations." We have at all times complied with such a provision. The Secretary regularly meets the Director to discuss day to day affairs and the smooth running of the Company. We therefore strongly disagree with your finding to the effect that we have allegedly failed to comply with such a duty*."

(ii) Referring to the observation of the investigators, "Mr. HM, director on the Board of SF S.A, was unaware of the activities conducted by the Company. While a review of the Company's file revealed that Ms. E has been appointed as Manager of its Mauritian office, that the latter has been issued a work permit and salaries are being paid to her, Mr. HM confirmed that he was not aware of the above information." At paragraph 15 of the letter dated 1st January 2015, the Applicant stated:

"a. SF was not investigated or even seen or on 19 December 2013 as your letter alleges. As per your letter (paragraph g), Mr HM was not present on 19 December; so he could not even have replied to the investigators on that day as per the terms of your letter.

b. More importantly, as at 19 December 2013, the Company had already resigned as Management Company ever since 2 September 2013 and Respondent was accordingly informed.

c. As a result the file SF could not be relevant and form part of an investigation on 19 December 2013."

(iii) According to the Applicant, "B Limited at all material times verified the identity of its clients. Bank references, proof of address, World Check documents or equivalent documents were invariably requested for and obtained for each client Also, some customers came in person with their passports. It also happened that during a trip abroad, clients were met with and the original passports were checked. This was the case for B Consultancy Ltd and PRS. Certified true copies were made after verification of the original and the originals were returned to the client. For some clients, reliance was placed on the introducer who signed an eligible introducer's certificate, coupled with bank references, proof of address, World Check or equivalent documents.

(iv) As for independent checks on source of funds, in Applicant's words "money transfers are made by reputable banks; thus they are bank to bank transfers. We also hold the required contracts, invoices or other transactional documents which justify the source of funds."

(v) Further, according to the Applicant, most of B Limited's clients came to Mauritius or visited other directors in Geneva. At all material times the Code on the Prevention of Money Laundering was complied with.

(vi) As for the policy on corporate governance, again the investigators failed, in Applicant's view, to ask for same. Had it been asked for, same would have been made available.

(vii) According to the Applicant, paragraph 7.5 of the Code does not refer to "annual refresher training" and set out his work experience, relating mostly to compliance and anti-money laundering in the banking sector.

(viii) In its statement of case, the Respondent maintained that B Limited did not comply with the provisions of the Code.

(ix) In its statement of defence, the Respondent referred to paragraph B 2.1 of the letter dated 28 April 2015 from Mr S, which contained clear averments from B Limited

that they accepted clients without the required checks contrary to Chapter 5 of the Code. Mr S stated that B Limited would ensure that henceforth all documents would be duly certified in accordance with section 4.3 of the Code.

The Investigation Report

(x) The investigators noted that Mr. HM certified CDD documents as true copies without having access to original identity documentations. This deficiency was noted in almost all clients' files of the Management Company, for example, the passport copy of Mr. AL (B Consultancy Ltd) or the passport copy of Mr. C (PRS) was certified as true copies. However, there were no evidence to suggest that Mr. HM had seen the original passports.

(xi) No independent checks were conducted to ascertain the source of funds, which as per the Code, should have been carried out before accepting the respective companies as clients.

(xii) B Limited did not verify the identity of its clients using reliable, independent source documents, data or information. It was noted that the Management Company did not carry out independent checks on source of funds of its clients but rather relied solely on confirmation from clients.

(xiii) The Management Company did not conduct risk profiling of its clients.

(xiv) The letter from Mr S lends support to the investigators' report substantiating fully the infringement of (i) Chapter 4 of the Code, (ii) paragraph 4.1, (iii) paragraph 4.3, (iv) Chapter 5 and (v) paragraph 7.5 of the Code.

C. Breach of Licensing Condition No 5

The Applicant submitted that:

(i) The file review of H Ltd was wrongly conducted inasmuch as the business plan was on record. A copy had also been sent to the Respondent at the relevant time. Again it was in the simple asking of the document which a proper and complete investigation dictates. He enclosed a checklist allegedly filed on the first page of every file and the business plan.

(ii) The Respondent at the investigation stage never asked for B Limited's Corporate Governance Policy. Had they asked, it would have been made available. He had attached a copy of the policy to the 13th January 2014 letter – representations to the Chief Executive.

(iii) In its statement of defence, the Respondent reiterated that B Limited failed to comply with condition 5 of its Management Licence insofar as it did not have a

policy on corporate governance. The Respondent did not find any evidence of corporate governance policy on file at the time of investigation. Furthermore, no “officer” was present during the investigation so as to allow the Respondent to query. The Respondent took note of the submission of an alleged corporate governance policy by the Applicant. But, the Respondent noted that it is not in compliance with the conditions of the Management Licence of B Limited inasmuch as it does not reflect any evidence of board approval, it does not contain any signature and it was not on file.

(iv) In their report, the investigators observed that the management company did not have a policy on corporate governance

(v) In his letter dated 28 April 2014, Mr S underlined at the outset that B Limited or any other member of the Board did not fully subscribe to the views of Mr HM as expressed in his response to Respondent's queries dated 31 December 2013. His views did not represent that of the company. He set out the restructuring plan proposed by the company and requested for an urgent meeting with the Respondent where they would further explain their plans to the Respondent.

(vi) A copy of the proposed new structure was annexed.

(vii) The submissions of the Applicant that, the representations of Mr S should be discarded, must be taken with a pinch of salt. Mr S was instructed by the beneficial owner whose interests in the company are vital. We are of the view that the representations of the company through its legal advisor has all its importance in the scales of justice.

(viii) We have given due consideration to the statement of case submitted by the Applicant and the Respondent. The representations of the Applicant and that submitted by Mr S whose services were retained by the beneficial owner, all the annexes including the investigation report and the evidence of the investigators.

(ix) From the above, we find that B Limited was in breach of its licensing condition as it did not have a corporate governance policy.

16.5 N Inc.

16.5.1 At this juncture, it must be noted that in the light of the evidence submitted by the Company, the Respondent did not insist on the breaches at paragraph 11 (d), (e) and (f) of the March 2015 Notice.

16.5.2 The decision of the EC is amended accordingly.

16.5.3 We shall now determine whether the company did commit the remaining alleged breaches.

A. Breach of sections 29 and 30 of the FSA and sections 55 and 107 of the Securities Act

(i) In reply to the show cause letter, B Limited on behalf of the company submitted as follows -

"a) Please note that all banking records are available on file;

b) The accounts for years 2008-2012 have already been prepared and audited. Accounts have been sent for signature to non-resident directors. Once they are signed, which should not take time, we will file them all with the Respondent."

(ii) In his letter dated 29 January 2014, Mr R, SC submitted that: [**Not reproduced here**]

(iii) On 10 March 2014, Mr J N from B Chambers addressed the following issues - [**Not reproduced here**]

(iv) By letter dated 6 August 2014, Mr DK (Director of the Company) replied to the 14th June letter from the Respondent -[**Not reproduced here**]

(v) In his statement of case, the Applicant reiterated the representations submitted to the Chief Executive and the EC.

(vi) It is the Respondent's case that from the exchange of correspondences between the Applicant, the legal representatives of the company and the representations of Mr DK, it is abundantly clear that the company had breached sections 29 and 30 of the FSA and sections 55 and 107 of the Securities Act.

(vii) We agree with the Respondent.

B. Non compliance with paragraph 4.1, 4.2 and 4.4 of the Code

(i) In its representation dated 10 January 2014, the company stated:

"We are already in the process of reviewing clients' files and we are requesting for updated documents and information wherever required.

All transactions are bank to bank. Therefore, banks establish source of funds.

Agreements have been requested."

(ii) Mr R, SC submitted that, [**Not reproduced here**]

(iii) Mr N from B Chambers submitted that, [**Not reproduced here**]

(iv) In its statement of case, the Respondent reiterated that the company failed to comply with the requirements of paragraph 4.1, 4.2 and 4.4 of the Code.

(v) In their findings dated 19 December 2014, the inspectors stated that "*No proper CDD are conducted by the Company as recommended under section 4.1 of the Code on the Prevention of Money Laundering and Terrorist Financing.*"

(vi) The representation of the Applicant made on 10 January 2014 and the letter from Mr N are an admission that the company failed to comply with paragraphs 4.1, 4.2 and 4.4 of the Code.

C. Breach of Licensing Condition No 5

(i) In his representation dated 10 January 2014, the Applicant stated that "*we shall contact the client to establish appropriate board committee members*".

(ii) Mr DK stated that "*The Company has an appropriate balance of executive and nonexecutive and independent directors. This is confirmed in the organisational structure of the Company. The current organization and governance arrangements have proved to be viable and sustainable and enable the Company to reach its goals and objectives effectively.*

The Company therefore denies that it has failed to devise and set-up appropriate governance measures or that it has no appropriate balance of executive and nonexecutive directors."

(iii) Based on the investigation report, the Respondent maintained that the company failed to devise and set up appropriate corporate governance measures for the sustainability of the company since the Board of the Company does not have an appropriate balance of executive, non-executive and independent directors to ensure satisfactory performance within a framework of good governance, thereby acting in breach of the Licensing Condition of its Category 1 Global Business Licence and further averred the then Code of Corporate Governance required all boards to have strong executive management presence with at least two executives as members. In this case, it was noted that the resident directors were not actively involved in the management of B Limited and its client clients.

(iv) In the light of the above, we find that the company breached its Licensing Condition No 5.

16.6 C Inc

A. Breach of sections 29, 30 and 71(4)(b)(ii)– (iv) of the FSA

(i) In the letter dated 09 January 2014, B Limited on behalf of the Company submitted:

"

(a) Please note that we do have Board resolutions and minutes in file. For transaction records, we have requested same and they are on file. Henceforth, we are requesting records for transactions on a monthly basis.

(b) The Company had the accounts audited by AV Ltd. We have advised the client that accounts should be audited by a local auditor thus Mr J was appointed as local auditor. The auditor is currently reviewing the accounts and same should be available soon. The client has been advised to ensure that henceforth accounts are prepared and audited, and submitted on time to the Respondent.

(c) The Company did wish to open a bank account in Mauritius; however, the application was delayed and the Company did not apply again. That is the reason for not having a bank account in Mauritius. The Company will contact a few banks in Mauritius in order to maintain its principal bank account.

The accounting records have been requested for and are available at the registered office. Henceforth, all records will be kept at the registered office.
The Company does propose to prepare its statutory financial statements as it has already appointed a local auditor."

(ii) In his letter of 11 February 2014, Mr S, the legal representative of the company submitted that, [**Not reproduced here**]

(iii) In his statement of case, the Applicant reiterated the written submissions submitted on 9 January 2014.

(iv) The Respondent referred to instances where the Company mentioned in its representations that the Company and/or Directors:

(a) were never advised that the audits needed to be carried out in Mauritius;

(b) were never advised that they must meet further requirements other than having two local directors to meet the 'management and control test; and

(c) were never made aware of the requirements under section 71 of the FSA.

(v) The Respondent further submitted that since the directors were not aware of these requirements, it casts doubt on their ability to perform the relevant functions properly and efficiently. This may also lead to the disqualification of the officers from holding an office and/or position in any company licensed by the Respondent.

(vi) The averments at paragraphs (i), (ii) and (iii) of the letter dated 09 January 2014 are an admission that the company acted in breach of sections 29, 30 and 71 (ii), (iii) and (iv) of the FSA. So are the representations submitted by the legal representative. That the company were never made aware of the legal provisions do not relieve the company of its obligations under the FSA.

(vii) We find that the company acted in breach of sections 29, 30, 71 (4)(b)(ii) – (iv) of the FSA.

B. Non-compliance with paragraphs 4.1 and 4.1.2 of the Code

(i) In the written representation dated 9 January 2014, the Applicant stated at paragraphs (iv) and (v) "*We are already in the process of reviewing clients' files and we are requesting for updated documents and information wherever required. The Company does not have direct clients. It has only merchant agreements. The current business of the company is limited to the provision of a payment gateway. The company is not actually involved in payment processing; the acceptance and settlement are undertaken by the bank and therefore the bank that carries out the customer due diligence checks and appropriate AML procedures.*

(ii) In his letter, Mr S stated: "*All the CDD documents of the client companies have been requested and are now-on file. A copy of the documents are attached for the Respondent. The Company undertakes to keep records of all due diligence carried out when establishing new business relationships and periodically review same as prescribed in the AML Code.*"

(iii) The representation of the Applicant in the letter dated 9 January 2014 and that of Mr S are admission of non-compliance with paragraphs 4.1 and 4.1.2 of the Code.

(iv) We accordingly find that the company failed to comply with paragraphs 4.1 and 4.1.2 of the Code.

C. Non compliance with Rule 14(1) of the Securities (Licensing) Rules 2007

(i) At paragraph (vi) of the letter dated 09 January 2014, the company averred that, "*the bank confirmation shows that the account balance is in excess of this sum. The client has already put this sum on a fixed deposit. We have already requested client a copy of the deposit evidence.*"

(ii) Mr S submitted that Rule 14(1) applies only to investment dealers and advisors and not to a Management Company. The Applicant joined in the submission of Mr S.

(iii) The Respondent submitted that no evidence was found that C Inc was maintaining the requisite unimpaired stated capital of MUR 500,000.

(iv) As regards the requisite unimpaired capital, C Inc provided its statement of financial position as at 31 December 2010, showing a negative balance of USD 2,800 as total equity. In other words, the stated capital was impaired. On 15 August 2011, the Respondent reminded C Inc that the stated unimpaired capital had to be maintained at Rs 500,000 at all times.

(v) Rule 14(1) of the Securities (Licensing) Rules 2007 provides:

14.Minimum stated unimpaired capital requirements

(1) Subject to paragraph (2), an applicant for a licence shall maintain a minimum stated unimpaired capital as specified in the Fourth Schedule.

(vi) The company held a category 1 business licence and a licence issued under Section 14 of the Act to provide payment intermediary services. Under the Securities Licensing Rules 2007

"licensee" means a person licensed or required to be licensed under the Act as –

(a) a securities exchange;

(b) a clearing and settlement facility;

(c) a trading securities system;

(d) an investment dealer;

(e) an investment adviser; and

(f) a representative of an investment dealer or adviser where specifically mentioned

(vii) The company did hold a licence as defined under the Securities (Licensing) Rules 2007

(viii) We have gone through the reports and financial statements of the company for the years 2010, 2011 and 2012. The company did not have an unimpaired stated capital of Rs 500 000 as required under Rule 14(1) of the Securities (Licensing) Rules.

(ix) We accordingly find that the company did not comply with Rule 14(1) of the Securities (Licensing) Rules 2007.

D. Breach of Licensing Condition

(i) According to the legal representative of the company, in his letter dated 11 February 2014, "*the Board constituted of four directors. Two executive directors, Messrs EK and MP, one from the Management Company, Mr. HM and an independent director, Mr. C (a practicing barrister). Respondent's permission was sought before*

their appointment was finalized. The Beneficial Owners therefore legitimately assumed that they had a good enough mix to ensure a strong and independent Board. However, this will now be reviewed to seek more appropriate directors.

As soon as the Company remedies to the licence issues, the Board will certainly look to add to the above and delegate tasks to specialised committees."

(ii) In their findings of the inspection dated 02 December 2013, the investigators stated that *the company failed to devise and set-up appropriate corporate governance measures for the sustainability of C INC. since the Board of C INC. does not have an appropriate balance of executive, non-executive and independent directors to ensure satisfactory performance within a framework of good governance to serve the interest of all stakeholders and it had not set up any Board committees as of date, thereby acting in breach of the Licensing Condition ("LCS") of its Payment Intermediaries Services.*

(iii) It is our considered understanding that the legal representative of the company tacitly admitted that the company had breached its licensing condition. The evidence of the investigators and their findings have not been challenged. We therefore accept their findings and hold that the company had breached its licensing condition.

16.7 SF

Having regard to the indifference shown by the Applicant, and his failure to submit representations, the EC was perfectly entitled to reach the conclusion that the company committed the deficiencies mentioned in the notice. However, given the power of the Review Panel to hear the matter afresh in order to determine whether to maintain, amend or cancel the decision of the EC, we are prepared to examine the case anew.

A. Breach of sections 23, 24, 29 and 30 of the FSA and section 55 of the Securities Act

(i) At para 21 of his representations, the Applicant stated:

"Under II (N Inc.), III (C Inc), IV (SF)

Please also note that as regards N Inc. Investments Inc, C Inc and SF, replies have already been sent to the Respondent via letters dated 17 November 2013, 9 January 2014 and 10 January 2014 where it was demonstrated, that the issues raised were not valid and others were not of a serious nature and steps were already taken to remedy any minor shortcomings. Their contents were reiterated in reply to the 24th December 2014 Notice. 2 of the 3 letters (*9 January 2014 and 10 January 2014)* were annexed. As regards SF, the Applicant submitted that section 30 refers to the audited statements of corporations licensed by the Respondent. A corporation and

a management company are differently defined under the Act. Therefore, a management company does not fall within the ambit of section 30 of the Act."

(ii) The Review Panel was not favoured with a copy of the letter dated 17 November 2013 and this in spite of our request.

(iii) In response to the Applicant's contentions that a Management Committee does not fall within the ambit of section 30 of the FSA which according to the Applicant refers to the audited financial statement of a corporation and not a management company, the Respondent submitted that under section 77 of the FSA, a licensee includes a management company.

(iv) Section 77 of the FSA reads as follows:

77. Management licence

(1) A company whose main activity is to –

(a) set up, administer, manage and provide nominee and other services to –

(i) a corporation which proposes to apply for, or holds, a Global Business Licence; and

(ii) such class of corporations as may be prescribed; or

(b) act as corporate trustee or qualified trustee under the Trusts Act 2001,

shall apply to the Commission for a management licence.

(2) For the avoidance of doubt, an application for a management licence shall be subject to the regulation of financial services under Part IV.

(3) The Chief Executive may, in addition to the matters set out in section 53(1), act in accordance with that section in relation to a holder of a licence under this section where he is of the opinion that an administrative sanction is necessary to protect the good repute of Mauritius as a centre for global business.

(v) Section 14 reads as follows:

14. Requirement to be licensed

(1) No person shall carry out, or hold himself out as carrying out, in Mauritius any financial services without a licence issued by the Commission.

(2) Any person who contravenes subsection (1) shall commit an offence and shall on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 8 years.

(vi) A licensee under the definition section of the FSA (a) means the holder of a licence; and includes –

(a) any person authorised, registered or approved under the relevant Acts; and

(b) any institution established

(vii) We are in agreement with the Respondent that the company is a licensee under the FSA.

(viii) The Respondent produced details of the investigation carried out on 20 August 2013 by Mr J, Ms D and Ms S in presence of the Applicant who was then director of SF and one Mrs SG, a corporate officer.

(ix) At this juncture, it is pertinent to point out that the Respondent's case is based on the investigation conducted on 20 August 2013. Hence, the contention of the Applicant that on 19 December 2013 no investigation was conducted into the business activities of the company has no substance.

(x) At paragraph 13 (i) - (vi) of Applicant's statement of case it is clear that the company acted in breach of sections 23, 24, 29 and 30 of the FSA. This is also borne out by the investigator's Comment Sheet.

B. Non compliance with paragraph 4.1 and 4.4 of the Code

(i) The company stated that the records of all CDD documents were in possession of the Management Company. This is an admission that the documents were not available at the time of the investigation.

(ii) The company averred that D is a regulated company. A due diligence was also carried out in this company. It also signed an eligible introducer certificate.

(iii) The investigator's Comments Sheets dated 20 August 2013, mentions that "*Request was made for due diligence documentation in respect of D and the agreement between SF and D*". The comments of the investigators are that "*No proper books and records are kept at the registered office of the company. There are no internal procedure manual or compliance manual*".

(iv) The investigators further stated that *"No introducer agreement between the Company secretary/administrator and D (Cyprus)"*.

(v) The admissions of the applicant and the findings of the investigators are evidence of non compliance with paragraphs 4.1 and 4.4.

(vi) The decision of the EC is accordingly maintained

C. Breach of Rule 14(1) of the Securities (Licensing) Rules 2007

(i) The Applicant did not deny that the company had not been maintaining the requisite unimpaired capital of MUR 600,000.

(ii) We accordingly find that the company was in breach of Rule 14(1) of the Securities (Licensing) Rules.

D. Breach of Licensing Conditions No 2 and No 5

(i) The company did not deny that it was in breach of its Licensing Condition No 2.

(ii) The Applicant did not deny that the company was running an online platform in the name of F, which was not a licensee of the Respondent.

(iii) In the Examination Comments Sheets, the investigators stated that "*Resident director has confirmed that he is not aware that the company has a website and that the latter claims to be headquartered in Mauritius. The MC was informed of the following misrepresentations is being made by the Company and F via their websites – Display of Respondent's logo and statement that the Respondent is protecting customers of Financial Institutions from possible fraud and financial risks; and that the Company offers a wide range of financial services.*"

(iv) The document annexed to the Respondent's case supports the findings of the investigators.

(v) We accordingly find that the company breached Licensing Conditions 2 and 5.

16.8 In the light of our findings that the 4 companies (B Limited, N Inc, C Inc and SF) committed breaches and infringements mentioned in the notice dated 16 March 2015 as amended with regard to the breaches found against N Inc, we maintain the decision of the Enforcement Committee.

16.9 Grounds 6 and 7 must accordingly fail.

17. Ground 9

"The decision is tainted with bias and partiality".

17.1 We have given due consideration to the documents produced by both parties including the representations made by the Applicant himself on behalf of B Limited, N Inc, C Inc, SF, the representations of Mr S on behalf of B Limited and C Inc, the representations of Mr R and Mr N from B Chambers and the investigations / inspections reports and the Comment Sheets and find that bias and impartiality cannot be imputed to the Enforcement Committee.

17.2 Ground 9 must accordingly fail.

18. Ground 10

"The decision is unreasonable or manifestly unreasonable or unreasonable in the Wednesbury sense."

18.1 In his statement of case, the Applicant submitted that *"the decision to suspend the Applicant as director and treat him as not fit and proper is in the circumstances of this case unfair, irrational, tainted with illegality, unreasonable in the Wednesbury sense and against the principle of natural justice."* And "*this is a fit and proper case where the Review Panel can set aside the decision of the Respondent*".

18.2 The Applicant listed his academic qualifications and his professional experience. They are indeed impressive.

18.3 The Respondent contended that:

(i) given the span of deficiencies and non-compliance in the business conduct of the companies, the Applicant as an officer failed to perform his duties with due care, diligence , skills and in the best interest of the companies;

(ii) the Applicant, in his capacity as Managing Director of B Limited was responsible for the day to day running of the business conduct of B Limited and its clients' companies;

(iii) the infringements of the relevant Acts and the Code by the companies are evidence that the Applicant failed to exercise his duties as director in the Companies with due care, diligence and skills. Such failure casts doubt on his ability to perform the relevant functions, efficiently, honestly and fairly in a licensee of the Respondent and also impinges on his character, reputation and reliability;

(iv) in the circumstances, the sanction imposed was fully justified, warranted and reasonable and the Respondent did not have any alternative than to issue a disqualification, having regard to its objects, functions and duties as a regulator as laid down under the FSA.

18.4 In the referral letter, the Chief Executive stated, "*in accordance with section 53(1) of the FSA, he had reasonable cause to believe that the officers were not fit and proper. Accordingly, he was referring the matter to the EC to take such action as the Committee deems appropriate against the officers as directors and/or MLRO".*

18.5 We consider it pertinent to refer to the indifferent attitude of the Applicant in the case of SF regarding the request of the Respondent inviting representations from him. Even when the Respondent informed him that it was contemplating to suspend the licence of SF, there was no response from the Applicant.

18.6 Under section 7(1)(c) of the Act, *the Commission shall have such powers as are necessary to enable it to effectively discharge its functions and may, in particular –*

(c) with respect to a present or past licensee or any person who is a present or past officer, partner, shareholder, or controller of a licensee –

(i) issue a private warning;

(ii) issue a public censure;

(iii) disqualify a licensee from holding a licence or a licence of a specified kind for a specified period;

(iv) in the case of an officer of a licensee, disqualify the officer from a specified office or position in a licensee for a specified period;

(v) impose an administrative penalty;

(vi) revoke a licence;

18.7 Section 20 of the FSA set out below refers to "fit and proper person".

20. Matters related to fit and proper person requirements

(1) In considering whether a person is a fit and proper person, the Commission may have regard —

(a) in relation to the person and, where the person is a corporation, the officers and beneficial owners of the corporation, to—

(i) financial standing;

(ii) relevant education, qualifications and experience;

(iii) ability to perform the relevant functions properly, efficiently, honestly and fairly; and

(iv) reputation, character, financial integrity and reliability;

(b) to any matter relating to—

(i) any person who is or is to be employed by, or associated with, the person;

(ii) any agent or representative of the person;

(iii) where the person is a corporation, the officers and any

shareholder of the corporation, the related corporations of the corporation and the officers of those related corporations;

(c) to any matter specified in a relevant Act as relating to the fit and proper person requirement.

(2) For the purposes of this section, the Commission may have regard to any other information in its possession.

18.8 The Applicant's qualifications and professional experience are indeed impressive. However, it does not follow that his qualifications and professional experience are per se evidence that he discharged his duty as an officer of the companies as required by law. Indeed had he performed the duties incumbent on him, the companies would not have committed the infringements as found by the Enforcement Committee and maintained by the Review Panel.

18.9 The maximum penalty is usually imposed in extreme cases. In the present case, the Applicant did not discharge his duties properly and efficiently. However, there is no evidence of dishonesty or previous sanction. In these circumstances, we consider that the period of disqualification is harsh. We accordingly reduce the period of disqualification imposed to three years.

Mrs. R. N. Narayen

(Chairperson)

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Mr. Y. Jean- Louis

(Vice - Chairperson)

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Mr. S. Lalmahomed

(Member)

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Date: 13 April 2018