



Financial Services Commission
Mauritius

PRACTICE NOTES FOR MANAGEMENT COMPANIES WHEN PROVIDING CORPORATE TRUSTEE SERVICES

1.0 SCOPE OF THE PRACTICE NOTES

- 1.1 The objective of these “Practice Notes for Management Companies” (the “Notes”) is to provide for the implementation of a common set of standards for Management Companies (“MCs”) when they act as corporate trustees.
- 1.2 The Notes neither derogate nor restrict the powers vested upon the FSC by statute, and should be read together with the relevant Acts¹ as well as guidelines² and Circulars issued by the FSC.
- 1.3 MCs should ensure that their officers and staff are fully conversant and comply with the provisions of these Notes.
- 1.4 These Notes are part of ‘guidelines²’ issued by the FSC pursuant to its powers under section 7(1) (a) of the Financial Services Act 2007 (the “FSA”). 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 MCs or its officers/staff to comply with any practice notes or any part thereof, failure to do

¹ ‘Relevant Acts’ has the same meaning as in the Financial Services Act and includes Regulations and FSC Rules.

² ‘guidelines’ has the same meaning as in the Financial Services Act and includes codes, guidance notes, practice notes and such other similar instruments issued by the Commission.

so will constitute a contravention of the law and may lead to prosecution- quite apart from any other regulatory action that may be taken.

2.0 Definitions

In these Notes, the following words have the following meanings:

“client” means a person with whom a MC has entered into an agreement to provide corporate trustee services relating to trust or who has received or might reasonably be expected to receive the benefit of such services and includes beneficiaries of trust;

“corporate trustee services” means services refers to in section 77(1)(b) of the FSA³ ;

“Management Company (‘MC’)” means a holder of management licence under section 77 of the FSA and providing or advertising to provide corporate trustee services;

“officer” has the same meaning as the FSA⁴.

3.0 Practice Notes

3.1 *Conduct of Management Companies*

A MC should:

- a) conduct its business with honesty, fairness, integrity and professionalism;
- b) act with due care, skill and diligence in the conduct of its business activities;
- c) organise and control its affairs in a responsible, efficient and timely manner; and
- d) comply with any all guidelines, laws rules and regulations issued by the FSC regarding conduct of business in the global business sector.

³ **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,

⁴ “officer” means a member of the board of directors, a chief executive, a managing director, a chief financial officer or chief financial controller, a manager, a company secretary, a partner, a trustee or a person holding any similar function with a licensee;

3.2 *Integrity*

A MC should observe the highest standards of integrity and fair dealing in the conduct of its business and shall not delegate or attempt to delegate any or all of its functions, duties and responsibilities..

3.3 *Conflicts of interest*

A MC should ensure that there arises no conflict of interest when dealing with its clients in the conduct of its functions as corporate trustees. Should a situation of conflict of interest arises, the MC shall inform the FSC of such a situation and shall adopt measures to ensure fair treatment to all its clients with regards to, amongst others, governance practice as to for disclosure, internal rules of confidentiality, declining to act.

Where a MC has a material interest in a transaction to be entered into with or for a client, or a relationship which may give rise to a conflict of interest in relation to such a transaction, the MC should not advise, deal or otherwise act in relation to that transaction or relationship unless it has:

- a) disclosed in a substantial manner the said material interest or relationship, as the case may be to the client; and
- b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the client.

Where an officer or employee of a MC is also a partner/director/employee in an audit firm, the financial statements/accounts of the trusts in which the MC acts as corporate trustee shall not be audited by that audit firm.

3.4 *Code of Conduct & Ethics*

A MC should have in place a Code of Conduct & Ethics which provides for a set of rules of conduct and behavior for its officers/employees following their discharge of their duties regarding corporate trustee services.

The MC shall ensure that their officers/employees are fully conversant with the Code of Conduct & Ethics, which provides for disciplinary actions and sanctions for breach or non-compliance thereof.

3.5 Interaction with Customers

A MC should ensure that, its officers and employees have full understanding of the duties and functions arising under the laws relevant to Trusts and the administration and affairs of clients for whom the MC are acting for. Its officers should furthermore have skills and knowledge of the requirements and regulatory framework of the other jurisdictions from which the clients of the MC are carrying out business and in which, their assets are held/managed.

A MC must ensure that all transactions entered into or undertaken by or on behalf of clients are appropriately dealt with and that such transactions are authorized or handled by persons with the appropriate level of skill, knowledge, and experience.

Any correspondence or document shared between a MC and its clients such as emails, faxes, notes must be kept in the files of the clients. A MC may, at its own discretion keep correspondences or documents in an electronic format.

A MC must inform its clients of the means by which complaints about the corporate Trustee's services can be made.

3.6 Managing Trust Assets/ Investments

MCs acting as a trustee are legally and morally bound to manage the trust property so as to preserve and enhance so far as is reasonable, the value of the trust property and are thus under the absolute obligation to act solely for the benefit of the trust's beneficiaries. In particular:

- a) invest, distribute or otherwise manage each trust's assets under their trusteeship, in accordance with the law and the trust deed,

- b) manage the investment and safe keeping of trust assets professionally and responsibly and engage the services of appropriate professionals as may be necessary,
- c) maintain the highest standard of confidentiality except where disclosure of information is required or permitted by any applicable law/trust deed, or where authorised by the person to whom the duty of confidentiality is owed,
- d) ensure that the funds of different trusts are kept separately from each other and from the MC's own funds,
- e) avoid setting up or participating in discretionary trusts where the trustee's merely carry out the settlor's instructions and exercise no significant discretion, and
- f) deal in a timely manner and in the best interests of the beneficiaries with any valid instruction for transfer to other trustees/termination of trusteeship services.

3.7 *Conduct of Corporate Trustees*

MCs providing corporate trustee services, its relevant officers and employees should be fully conversant with the Trusts Act and the trust deed in each case and to seek legal or other advice where necessary. The requirement for officers/staff to be suitably qualified and experienced to discharge their responsibilities extends to any employee who is relevant to and requires them to understand their duties under the laws applicable to each trust. MCs should:

- a) understand and discharge fiduciary and other duties,
- b) when establishing a trust, use their best endeavours to ensure that settlors receive any necessary professional advice and that the trust is suitable for their needs,
- c) once a trust has been established, identify and act in the best interests of the beneficiaries and avoid or deal properly with any conflict of interest between trusts or between the Trustee and the beneficiaries of a trust;
- d) keep and preserve appropriate records of trust transaction in accordance with section 29 of the FSA.

3.8 Handling of Client's Money and Assets

The MC should ensure segregation of its client's monies and assets from its own. MCs should open and maintain one or more separate and distinct bank account(s), in which it should keep all amounts received from or on behalf of its clients that do not represent an amount immediately due and payable to the MC.

MCs should ensure that all funds received from or on behalf of client that do not represent an amount immediately due and payable to the Management Company, are paid into one or more segregated accounts kept solely for the purpose of handling client money. The bank should be requested to acknowledge in writing that the funds are not available for set off against any other account. Where funds are received, on behalf of a particular client or clients, are regular, substantial or held for lengthy periods, those funds should be held in separate accounts designated in the name of the client, and held to their credit on interest bearing terms for the benefit of the client, unless the client instructs otherwise in writing.

Client accounts should be balanced and reconciled, as well as being agreed with the balances on the individual ledger accounts recording monies held on behalf of those clients, at regular intervals. Any errors should be rectified as soon as practicable after discovery and to the satisfaction of the client.

All co-mingled funds monies received which represent a mixture of client money and MC money (for instance, a cheque which settles an outstanding fee as well as disbursements due immediately or later) should be paid initially into the client account and only the amount immediately due to the MC transferred to the MC account.

Where MCs handle client monies, the sum of such monies should be treated as an off balance sheet item in the accounts of the MC. Interest accruing to the client account should be paid for the benefit of the clients whose funds yielded the interest.

MCs should arrange for proper protection of clients' assets by way of segregation and identification of those properties and assets or otherwise, in accordance with the functions entrusted upon the MC and the responsibilities that they have accepted.

MCs should also ensure that the assets/funds of two different trusts are not co-mingled with funds from another trust unless the necessary consents have been obtained.

3.9 Know your client

MCs should fully comply with the FIAMLA⁵, FIAMLR⁶ and the FSC AML/CFT Code and any such standards set up by international organisations such as the FATF/OECD.

MCs should conduct verification of the identity of underlying principals such as settlors, protectors and beneficiaries of the trust.

3.10 Fees

MCs should ensure that the client agrees to a clear fee structure in their contract in advance of accepting the client and charge fees in accordance with the established agreement, in a fair and transparent manner.

Any exit fees must clearly feature on the fee structure agreement in order to be charged to the client. The basis upon which exit fees are assessed must also be clearly spelt out in the agreement.

⁵ Financial Intelligence and Anti-Money Laundering Act

⁶ Financial Intelligence and Anti-Money Laundering Regulations

Any increase of fees charged by MCs should be mutually agreed by written consent between the MC and the client or its legal representative. Such increase should be notified in writing to the client 3 months prior to it becoming effective.

In the event, a trust deed empowers an MC to increase fees without the express consent of designated persons set out in the trust deed or the client or its legal representatives where applicable are disputing the said increase, the MC should seek the direction of the Court pursuant to section 63 of the Trusts Act.

With respect to any dispute on fees, the MC should seek, at its own costs, the direction of the court under section 63 of the Trusts Act.

3.11 Removal of Trustee

All MCs should comply with its legal obligation under section 31(3) & (4) of the Trusts Act when it ceases to be a corporate trustee of a trust. MCs should not refuse or delay to transfer trust documents and property to an incoming trustee, where it has been signified by written notice, of the valid termination of its trusteeship. MCs should have the duty and obligation to transfer as soon as reasonably practical time, but in any case not exceeding one month, all trust documents and property to the designated incoming trustee, except where, mutually agreed otherwise, between the incoming trustee and itself.